

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

Spec(91)4

25 January 1991

Working Group on Domestically Prohibited Goods
and Other Hazardous Substances

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

12 November 1990

1. The Working Group on Domestically Prohibited Goods and Other Hazardous Substances held its tenth meeting on 12 November 1990 under the chairmanship of Ambassador John Sankey (United Kingdom).
2. The Chairman reported that the revised version of the Draft Decision, dated 5 November 1990, would provide the basis for discussion at this meeting.
3. Delegations generally welcomed the revised version of the text. One delegation, although supportive of the objectives of the Group, registered doubts about its ability to agree to the Decision at this meeting because of domestic political considerations. Two delegations stressed that the language of Article 1 should make absolutely clear which products were to be covered, in particular, whether the Decision would apply to radioactive materials, military weapons, and products that were subject to varying consumer health and safety standards. It was agreed to exclude the first two product categories from the coverage of the Decision. Regarding the third product category, one delegation proposed language which sought to make a distinction between a direct ban and a product which could not be sold only because it did not meet certain required domestic standards. Although many believed this proposal was going in the right direction, some delegations commented on its implications for coverage. One delegation asked if there should be separate treatment of hazardous wastes which were exported for recycling purposes as opposed to those exported for disposal since the issue was presently the subject of international debate and had been the subject of a GATT dispute.
4. Delegations generally agreed on a joint proposal by two delegations for a new paragraph in Article 2 based on language from Article 4.1 of an earlier version of the Decision, dated 22 October 1990. They believed that the idea contained in this new paragraph, that all measures taken under this Decision should be pursuant to the General Agreement and Codes, although reflected in the Preamble, should also be recalled in the body of the text. The representative from the Legal Division of the secretariat explained

that it believed its proposed paragraph 3 of Article 2 was necessary in order to give precedence to any procedures within the existing international instruments for verifying whether countries were following the procedures of the respective instruments. Though he acknowledged that not all such instruments would have such procedures, if they did, they should be utilized first in order to avoid putting the GATT in the inappropriate position of interpreting whether a country was fulfilling its obligations under another international instrument. One delegation asked if the implication was that if no such procedures existed in an existing international instrument, than a determination by the GATT on this matter would act as a substitute for the absence of dispute settlement procedures in this instrument. The representative of the legal department responded that if no such procedures existed in other international instruments, GATT would be obliged to address this question in the event of a dispute arising in relation to this Decision. Another delegation stated that it was uncomfortable with the unsettled nature surrounding the dispute settlement procedures of the Decision and that this was one reason why it was obliged to put a general reserve on the Decision.

5. Two delegations believed that the objectives of Articles 3.1 and 3.3 might be better served if the obligations of these Articles extended to those cases where a simultaneous decision had been taken to apply the same measures to exports as were applied to domestic sales. Another delegation stated that these cases should perhaps be dealt with within the framework of Article XX since the basis for Articles 3.1 and 3.3 was the situation where export policies differed from domestic policies with respect to a specific banned or severely restricted product. One delegation stated that it was not suitable that a GATT obligation become effective only when a contracting party could be said not to be applying the relevant procedures of another international instrument because it was up to the other international organizations to enforce their own rules. This delegation proposed new wording for Article 3.6 which would imply that either Articles 3.3 and 3.4 or the provisions of the Decision would not apply if the product concerned was covered by an international instrument listed in Annex II and "the contracting party was a signatory or participant". Several delegations agreed with this new wording although some other delegations wanted Article 3.6 to go further in order to capture the situation where a contracting party was a signatory or participant of another international instrument but was not applying its procedures.

6. One delegation stated its preference for a "should" clause in Article 7 as opposed to "shall" because the latter would imply that contracting parties would have to be prepared to justify before a GATT panel their determination of the limits and priorities of their available resources. It believed this was inappropriate and would attempt to find appropriate language to meet this concern. Another delegation, however, did not believe that this Article could create cases for GATT dispute settlement procedures; the phrase it had introduced earlier, "within the limit of available resources", had been meant to take account of resource constraints.

7. The representative of the Legal Division of the secretariat explained that, if adopted, the Decision would be a part of the General Agreement and would be subject to normal GATT provisions under Articles XXII and XXIII, regardless of whether or not Article 8, Dispute Settlement Procedures, was included. One delegation stated that it regarded this Article as important and because it did not believe that Articles XXII and XXIII were sufficient to deal with the specificities of this subject, it did not support deletion of Article 8 from the Decision. It requested a debate on this Article to be postponed to the next meeting. Another delegation stated that since Articles XXII and XXIII would apply to this Decision even if Article 8 was deleted, and since its concerns about the Decision and its relationship to dispute settlement had not been allayed, it proposed that the Decision provide for consultation procedures only and would submit language to this effect later.

8. The Group took note of the statements made. It was agreed to discuss the Decision at a meeting the following day, 13 November 1990, after which a revised text would be circulated before the next meeting of the Group.