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TRADE AND ENVIRONMENT

Statement by the Delegation of the European Communities

The Community's point of departure is to support the EFTA countries' action both on substance and on procedure. However, while this support constitutes a minimum with which the Community could be satisfied, it would in no way enable the Community to develop its position to the full. In plain language, our support does not mean that we do not have our own specific position, with differences as to both basic objectives and strategy.

As far as strategy is concerned, the revival of a dormant working group is a logical step. However, to set one's sights on this to such an extent as to block any discussion of the substantive issues is to demonstrate that this approach has its limits, especially when it implies giving up the search for new terms of reference better adapted to today's world. The 1971/72 terms of reference may well be seen as an attempt to screen environmental protection measures that could have an impact on international trade and on trade policy based on contractual obligations. Besides, those terms of reference were drafted for past circumstances and are outworn, outdated, even mistaken, above all in the way their goals are confined and subordinated to very specific subjects (to be agreed) and the reference to the interests of developing countries. Moreover, with regard to the rôle of GATT, I refer to a 1987 resolution of the United Nations General Assembly - not something I usually do! - entitled "Environmental Perspective to the Year 2000 and Beyond": in paragraph 68 of that resolution it is clearly stated that GATT "should develop and apply effective policies and instruments to integrate environment and development considerations in international trade". Having said that, and as far as this procedural aspect is concerned, I would prefer not to rush things and leave time for Ambassador Ricupero's consultations, in the hope that they will lead to the establishment of a working mechanism with terms of reference that are commensurate with the challenge to be faced. Meanwhile, I would wish to open a substantive debate in the Council. After all, over and above Byzantine procedural disputes, in my view the ideal working group for opening such a debate is the Council itself.

As far as substance is concerned, at this very early stage I shall confine myself to acknowledging certain problems which in their turn give rise to many questions that need answers - and if possible concerted answers, to avoid piecemeal effects or even unilateral solutions in the sphere of trade policy.

My first observation concerns the development of environmental policy. That policy, which struggled to establish its identity and developed jerkily and with varying degrees of success over the last twenty years, both nationally and internationally, has now been pushed to the centre of economic development. This trend, which will strengthen, is largely the result of the growing concern of the public at large over the danger created by uncontrolled economic growth for human safety and health. Economic growth is not an end in itself. Acceptable, "clean", growth has now become both a self-evident truth and an absolute necessity. In that context, I wonder about the wording of the preamble to the General Agreement which advocates "the full use of the resources of the world and expanding the production and exchange of goods", without any limitation whatsoever. May I remind you of something which for me is the basic law of the universe: I have already twice alluded here to LIFE as a balance among three elements - natural resources, production (using those resources and our own grey matter) and finally consumption. Originally, there was no consciousness of the need for a constant search for the essential balance required to preserve LIFE, and the standard of living (in other words, economic development) took precedence over everything else, although without thereby disrupting the original balance. Subsequently, excesses and imbalances created concerns and raised problems. Trade, our daily bread here in GATT, constitutes an organic, intimate relationship between consumption and production, which means that trade can help to preserve or to destroy the balance of the environment, of the universe. That is my first observation.

My second observation, based on very specific examples, is as follows: there are more and more instances of conflict between the GATT principles and environmental protection measures, at three distinct levels: means, objectives and standards.

As far as means are concerned, I would remind you, or inform those who are not aware of it, that in our Community we have resolved, in our own way, conflicts of this kind between different obligations. I refer here to a decision of the European Court of Justice, No. 302/86, delivered in May 1988, following an action brought against Denmark by the Commission of the European Communities on the subject of beer and soft-drink containers. This is a typical case of Community law, which contains, on the one hand, a general prohibition of any trade regulation of Member States that could directly or indirectly, actually or potentially, hinder trade within the Community, and which also recognizes that Member States have the power to take the necessary measures, including trade regulations, to satisfy certain overriding requirements resulting from other policy objectives - in this case environmental policy.

In order to resolve this type of conflict between means, the Court of Justice has established the principle of the use of the means that are least trade restrictive. In other words, if a Member State has a choice among various measures for attaining the same objective, it must choose the means that causes the least hindrance to freedom of trade, which remains a "sacred" principal under the Treaty of Rome.

As far as GATT is concerned, this principle has also been recognized, in the context of Article XX, with regard to the protection of intellectual property (viz. the Panel on Section 337 of the United States Trade Act) as well as with regard to consumer protection (viz. the Panel on restrictions on cigarette marketing in Thailand).

Thus, it would be possible in GATT to transpose the principle that has already been accepted as regards protection of the environment, in particular through internal or autonomous measures.

Moving to objectives, I would cite the examples of tropical wood, baby seals (Community directive on the import of baby seal skins) and tuna (United States legislation on the protection of marine mammals).

If trade restrictions that are necessary to satisfy the requirements of environmental conservation policy are recognized and accepted in the same way as protection of national health and security, a number of questions nevertheless need to be answered. Are the contracting parties completely free to determine such requirements? Are they free to kill a fly (i.e. a minor ecological danger) with a sledgehammer (a general trade prohibition)? Can they use trade means or instruments to attain any ecological objective? Can such objectives be determined unilaterally? Ultimately, is there a principle of proportionality between the objective pursued (environmental protection) and the means selected (trade restriction)? If so, who shall be the judge? And finally, what about extra-territoriality?

I come now to the question of standards, with the examples of the CITES Convention, elephant ivory and the Montreal Protocol (ozone layer).

Conflicts can or do exist among international standards themselves. The classic case is the relationship between GATT and the Convention on International Trade in Endangered Species. Sometimes these conventions include specific clauses to resolve conflicts; but often they do not. In that case, the general principles of international law prevail, in particular that of "lex specialis derogat generalem". However, this leaves many questions unanswered. What about the situation of those GATT contracting parties which are not parties to a specific international convention for the protection of the environment? Who shall decide on the application of these principles? Is it proper that neither the conventions nor trade measures taken under them have been notified to GATT? Or that they have not been discussed in GATT and hence GATT has made no contribution?

Admittedly, GATT is supposed to deal with trade and trade-related contractual rights and obligations, while UNEP and other specialized agencies deal with environmental protection issues. But how can at least a modicum of coherence among these various bodies be ensured if one of them, GATT, is deliberately prevented from discussing them?

Here I must make it quite clear: as long as I am denied the working group I have asked for to enable my experts to have their full say, I shall personally raise environmental problems here in the Council, and I

repeat, I shall do so as long as this is necessary. That may be one way of getting a working group set up.

We have to begin discussing in GATT this danger of incoherence or worse, both within GATT and externally with other bodies, so as finally to attain the necessary coherence between trade, finance, money and environment. You will note that I have deliberately left out development, which in my view is encompassed in the environment. Is the Rio Conference on the environment capable of dealing with this challenge of coherence? In Geneva, the Rio Conference is being prepared ever more actively without the least sign of a desire to tackle this challenge of coherence. Is this going to be yet another "fortress", a new UN "gadget", one that is certainly justified but nevertheless an "ivory tower" because it fails to take account of realities outside the environment?

A debate in GATT is necessary, with or without the Rio Conference, which in any event cannot be the driving force for GATT's debate. How can the Rio Conference be expected to take account of trade policy if we do not first put some order into our own affairs, sort out our own problems - and there is plenty of sorting out to do? To be frank, I have serious doubts about whether the GATT debate should be viewed solely as a means of preparing GATT's contribution to the Rio Conference. That cannot be the prime purpose of the debate. Nevertheless, if there is a debate, and especially if it is a fruitful one thanks to genuine dialogue, at the end there may nevertheless be a credible content, for a credible contribution by GATT to the Rio Conference.

Be that as it may, it must be obvious that any environmental policy will have the effect of causing some contraction in the volume of trade; the crux of the matter is to ensure that this remains compatible with the present balance of rights and obligations in GATT.

All in all, I do not wish to worry my colleagues from India and elsewhere too greatly. My aim is also to reassure. I must point out that there is no question of trying, through the debate on the environment, to legitimize any abuse or exaggerated use of new trade obstacles in the name of the environment. We want to take up this debate, we want a mechanism whereby we can discuss this subject, in order to forestall and identify the impact (if it cannot be channelled) of environmental policies on trade policy, so as to safeguard the survival of two key concepts, protection and competition, as reflected in the present contractual balance of rights and obligations in GATT. Today, I can only take the first step for this future substantive debate, by referring to the Commission's Green Book on our environmental policy (which I am making available to the Council to make our policy better known), and to a report entitled "Report on the Planet Earth" by Edward Goldsmith and Nicholas Hildyard, co-founders of "The Ecologist" magazine. I recommend that you read these two documents. As far as the Goldsmith report is concerned, I would observe that it has a somewhat Malthusian tinge but nevertheless has the merit of tackling taboo subjects - in particular, the very sensitive one of Third World development. In any case, you will note its striking message: "the unlimited growth of production to satisfy steadily rising and unlimited consumption, through an unlimited growth of trade, to support equally

endless growth, can only lead to devastating effects on the eco-system which ensures mankind's survival". Is that the right message for Rio and for GATT?

To come back to more mundane matters of immediate concern, beyond a technocratic, punctilious, scrupulous desire to keep a zealous watch over the collective and individual contract of rights and obligations under the General Agreement, shouldn't we, as the people responsible for trade policy, have a wider vision of our own Universe? Awareness of the need for such a vision is already spreading outside GATT. The Rio Conference will, whatever else, be promising in that respect. Nevertheless, it will certainly take many more disasters, and many more human victims, to generate the necessary awareness that will prompt action to prevent the deterioration of our Universe owing to the lack of coherence among the various components of macro-economic policies. The procedural debate here on the creation of a working group is absolutely trivial by comparison.

Meanwhile, the over-exploitation of the planet's forests, pasture land, arable land, oceans, seas and rivers continues in the name of mismanaged protection, misunderstand competition, overstraining the limits of what the eco-systems can bear.

That is why I intend to open this debate in GATT, and I can guarantee to you that if there is no dialogue, I shall give you monologues, if only for pedagogical purposes, to ensure that GATT comes to grips with the problem of the environment as it relates to trade and trade policy.