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TRADE AND ENVIRONMENT

Statement by the delegation of Switzerland

We are today taking up this subject for a substantive debate, and the statements we have just heard show that we are also beginning a constructive exchange of views and of ideas.

I think that we should be aware that this exercise is an ambitious one but also one that has inherent limits. It would be presumptuous to try to cover the whole ground in the few hours we have allowed ourselves. Indeed, we shall have achieved a great deal here in the Council if this debate helps to bring out the concerns and actual intentions of contracting parties. That will enable them to pursue their reflection and examine this question as a whole at the appropriate level and in the appropriate framework.

First of all, I should like to say a few words on the very broad question of the links between environmental policies and trade policies.

Initially, the positions of the advocates of free trade on the one hand and the supporters of enhanced environmental conservation on the other were fiercely opposed. Thus, as far as external economic relations were concerned, governmental measures to protect the environment were perceived as trade barriers, while for their part environmentalists viewed the free-trade platform as a major source of their troubles.

This period of inflamed opposition between the two camps is now a thing of the past: the rapid deterioration of the environment has highlighted the need for conservation measures, while environmentalists have discovered that market-economy mechanisms may also be used to pursue ecological objectives. The elimination of trade barriers may also help to reduce harmful distortions in the use of resources. At the present stage in our dialogue, it is essential that we deepen our analysis, with greater objectivity and determination, in order to work out an approach that reconciles free trade, as the engine of growth, with the need to protect the environment. We must examine this relationship from the standpoint of the GATT, even - and perhaps especially - if other international organizations have already begun to deal with it.

Environmental conservation measures may be trade-distorting in themselves or for want of harmonization among them. While domestic trade policies are set in a binding multilateral framework - GATT - this is not at all the case of environmental policies, for which, with a few exceptions, national authorities are alone responsible.

Efforts to harmonize environmental measures at the international level are only just beginning, and tangible results cannot be expected in the short term. This work of harmonization of environmental policies in itself goes beyond the framework and objectives of GATT, I grant you. But that does not mean that contracting parties can claim that this far-reaching debate does not concern them.

What is the problem facing us? It is in fact the classic one of the effect on international trade of measures - often internal measures - that pursue a non-trade objective. This problem is not confined specifically to environmental conservation measures. The General Agreement itself recognizes the problem. But above all, ever since GATT extended its action to non-tariff measures, it has recognized that it had to address the domestic policies of contracting parties since they have or may have effects on international trade. Environmental measures certainly fall in this category. That is a consequence of the globalization of trade and the economy.

GATT can no longer ignore this problem.

While economic and trade instruments have, at least so far, rarely been used for environmental conservation, there is nothing to suggest that this will long remain the case: on the contrary, public opinion and pressure groups are calling for the use of such measures. More and more countries are likely to use them in order to offset the adverse effects of their environmental policy on their economic competitiveness.

Would it not therefore be advisable immediately to take action in GATT to strengthen the position of governments which will have to face these demands and may well not be able to refuse them eternally? Governments must be given the wherewithal to respond to these concerns without falling into the pitfall of protectionism.

GATT rules

The difficulty will therefore lie in determining whether, and if so under what conditions, recourse to trade instruments for environmental purposes is necessary and legitimate. Does GATT at present offer sufficiently clear rules to reply to this question? We do not think so.

Mr. Chairman, your list identifies a series of economic and trade measures (import or export restrictions, subsidies, "ecological" taxes and so forth) which are taken to protect the environment but may well affect trade. Of course, we could leave it to the dispute-settlement process to resolve the problems one by one and so gradually establish some rules. But dispute settlement exists to apply the law, not to make it. It is therefore undeniably up to the contracting parties to define precise rules for panelists to apply.

Furthermore, these rules will have the advantage of giving governments arguments to use in withstanding protectionist pressures.

We shall now examine a number of more specific points.

Article XX

By virtue of the principle of national sovereignty, it is accepted that countries have the right to apply sanitary or other rules and standards to goods produced and/or sold in their markets. Article XX extends this national right to imported goods. It recognizes that countries may adopt measures which are "(b) necessary to protect human, animal or plant life or health" and "(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption". Two conditions are set on the exercise of this right: firstly, the measures must not be applied in a manner which would "constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail" (reference to the most-favoured-nation clause) and secondly, they must not represent "a disguised restriction on international trade".

The other principles of the General Agreement remain applicable, in particular that of national treatment. So far, Article XX has rarely been invoked to challenge or justify measures to protect the environment. However, it is cited more and more frequently when environmental standards are set which are higher than elsewhere. States will perhaps be tempted to resort to it to "supplement" their environmental legislation.

- Does Article XX, as it now stands, cover all environmental measures?
- How can one judge whether measures are really "necessary" in relation to the objectives pursued? In this context, how can one determine whether there is sufficient scientific evidence to justify a given measure?

A related question is that of export controls or restrictions. Article XX appears to be the only provision that can be invoked here, but again, is it adapted to the purpose? The great majority of cases that have risen so far under this provision concerned measures taken with regard to imports. The question as to whether this Article may be used to control or restrict exports is for the time being an open one. If we admit that Article XX does apply to exports, under what circumstances may a State control its exports for environmental reasons (restrictions on pesticide exports, for example)? This raises the danger of Article XX being used as a legal basis for extraterritorial measures. From this standpoint, what response does GATT allow in the face of export restrictions designed to influence environmental policies in other countries?

Article III

The measures included in your list, Mr. Chairman, also include internal taxation. As far as GATT is concerned, this means we must look more closely at Article III, which authorizes the application of internal taxes and other regulations for like products, provided the principle of

national treatment is respected. Can a State introduce taxes that would penalize goods, whether domestic or foreign, when produced in "environmentally harmful conditions"? Or in other words, can the parameters defining "like product" include manufacturing or processing methods?

Standards

Many governments now have a complete arsenal of legal and economic instruments to prevent any further degradation of the environment (standards relating to emissions, processes, products, etc.). Can provisions relating to animal and health protection, which it is more and more difficult to dissociate from other environmental objectives, also be considered environmental standards? Environmental standards can act as non-tariff barriers. They can be vague, and the procedures may lack transparency. Even environmental standards established voluntarily or set by non-governmental organizations may in fact constitute barriers to trade.

Product and process standards (such as a ban on the sale of drinks in non-returnable containers) are particularly likely to introduce non-tariff barriers. They entail strict requirements and their application is very rigid.

Sanitary controls may also give rise to trade problems: lack of transparency, disagreement as to the value of scientific evidence (for example, the conflict between the United States and the EEC over meat with hormones).

Questions: Should a detailed analysis be made of the whole range of environmental standards, singling out those that have a potentially adverse effect on trade? How can one ensure that environmental protection measures are not used for protectionist purposes? Do the present provisions of the General Agreement ensure sufficient transparency in this area?

Ecological labelling

In recent years it has become clear in industrialized countries that consumer choice is increasingly influenced by product labelling. Labels may indicate whether or not the product contains certain ingredients, has undergone certain processes or has features that respond to ecological concerns (bio-degradable and phosphate-free detergents, lead-free petrol, CFC-free products, foods that do not contain agro-chemical residues, and so forth). The "green consumer movement" is only just beginning, and competition may well go very far in this direction.

Questions: Can environmental labelling give rise to new trade barriers? Should the use of such labelling be co-ordinated or regulated?

Co-ordination between GATT and other international organizations

International conventions relating to the environment have already been concluded under the auspices of the United Nations and its agencies (UNEP, FAO, UN-ECE). Others will follow. Several of these instruments contain trade measures designed to prevent imports (and exports) of products of which the marketing is prohibited or discouraged by international consensus and to enable signatories to comply with the standards prescribed by the conventions.

The application of international conventions by a State may raise trade problems if they imply trade restrictions in the fulfilment of their objectives.

Can the objectives set by these instruments be achieved without infringing GATT principles?

Would the General Agreement cover possible trade disputes arising out of these conventions?

- if both parties to the dispute are signatories to the instrument?
- if only one of the parties to the dispute is a signatory?
- what about discrimination?
- does the "lex specialis derogat generali" principle apply?

Certain principles contained in the provisions of the General Agreement (most-favoured-nation clause, national treatment, transparency, prohibitions on quantitative restrictions) may be used in international instruments for the protection of the environment. This would help to reduce the danger of such instruments introducing unjustified trade barriers. Better co-ordination must be achieved between GATT and organizations dealing with the preparation of instruments for environmental conservation. If GATT has a suitable institutional structure, it will succeed in making its voice heard in the specialized agencies.

Montreal Protocol on the Substances that Deplete the Ozone Layer

This instrument, which entered into force in January 1989, contains a number of provisions aimed at getting governments to reduce consumption and production of chemicals which deplete the ozone layer, such as CFCs. It prohibits exports of controlled substances to States which are not parties to the Protocol and discourages the exportation of methods of production or utilization of such substances to those States. Parties to the Protocol must also prohibit imports from any State not a party to the Protocol of products containing the controlled substances. Thus it is clear that the implementation of the Montreal Protocol depends heavily on trade instruments.

In this context, what about GATT principles, in particular that of non-discrimination?

Conclusion

I began this statement with a reference to the need to pursue this overview of this question "at the appropriate level and in the appropriate framework".

There can be no denying the link between environment and trade. The problems it entails are real and complex.

Consequently, and since we are in GATT, the appropriate framework and level can only be a working group. As my Austrian colleague mentioned, we believe that such a group already exists, and that it can and should begin work, without prejudice to the outcome of the consultations conducted by the Chairman of the CONTRACTING PARTIES (in which, indeed, we see a good chance of agreement on new terms of reference within a reasonable period).

For Switzerland, what matters is that we should set to work quickly and well.