

GENERAL AGREEMENT ON

RESTRICTED

Spec(91)36

8 July 1991

TARIFFS AND TRADE

COUNCIL
29-30 May 1991
Item No. 1

Original: English

TRADE AND ENVIRONMENT

Statement by the Delegation of New Zealand

Over the past few months the international debate about environment and sustainable development has thrown out a few challenges to the GATT. Perhaps the main one is the accusation that GATT simply takes no account of the environment and that GATT rules prevent countries doing what they want to protect their environment and the global environment. If this view holds, and the GATT really is inimical to the environment, the only thing to do would be to write a new broad exception into the agreement. But as soon as that was done, we would find in a very short space of time that the GATT was becoming the pretext for all kinds of disguised protectionist measures.

The GATT certainly needs to be aware of the current debate on the interlinkages between trade and the environment. We need to select from this debate those points which have implications for us as GATT members. There is in New Zealand's view no call on the GATT to carry out a wide-ranging debate on trade and the environment per se - our interest must be to ensure that GATT rules and environmental protection are mutually supportive.

The Chairman's outline gives us a good overview of the areas in which environmental and trade issues overlap or interact. We do not want to dwell on these in this statement, but we would note that there is a good deal of work going on in other organizations to clarify these linkages.

We think it will be helpful today if we say how we see the present framework of GATT rules applying to environmental measures, where Uruguay Round agreements are also likely to apply, and finally note some areas where problems could arise and merit more consideration.

A. Applicability of GATT rules

In our view, the framework of GATT rules, the General Agreement and the codes, apply to trade measures or measures having an effect on trade, taken for environmental reasons, just as they do in other policy areas.

As well as the main GATT rules, one also needs to look at the principles by which they are applied. In our view, the most specifically relevant ones include:

1. Non-discrimination: This most fundamental obligation of the GATT is included in the national treatment principle (Article III) and the Most-Favoured Nation Principle (Article I): it serves to guard against disguised protectionism. At the same time it does not prevent a country setting a level of environmental protection it deems appropriate. Provided the rules are applied fairly and equally, there are very few constraints on national policies. It is certainly not GATT's job to set the level of environmental protection for a particular country.

2. Transparency: From the trade perspective, this obligation is extremely important, and is firmly anchored in the GATT and its associated instruments. It already works with respect to environmental regulations - one might refer, for example to notifications being sent to the secretariat under the transparency provisions of the Standards Code.

3. Legitimacy of objectives: Article XX, implicitly, and the Standards Code, explicitly, recognize States' rights to take measures with trade effects in order to protect the environment, provided they are not disguised protectionism. It is also recognized that on occasions it may be necessary to have exceptions to GATT rules. It is thus clear that the GATT itself does not stand for unbridled free trade as seems to be feared by some environmental groups. But as is shown by the small but significant case history of environmentally-related disputes, the GATT does provide some safeguards against such exceptions being invoked for what are really protectionist purposes.

4. Proportionality: It seems to us this principle has been a useful guide in several cases, particularly when a party is invoking an exception to the GATT for environmental purposes. It is part of the determination of whether or not a measure can be considered necessary.

5. Harmonization: Harmonization has had rather a bad press as it has been misunderstood two ways - as forcing countries to adopt stricter or looser environmental standards than they desire, according to one's perspective. Harmonization should be seen as neither - it promotes trade through an international consensus on a basic agreed level of protection, but does not prevent countries adopting stricter standards if they wish. Again, as in interpretations of Article XX, there is some safeguard against adopting such stricter standards for protectionist purposes.

6. Second level obligations: The obligations in Article XXIV.12 and its equivalents elsewhere are a useful safeguard against discriminatory or excessive environmental protectionism through the actions of State and local authorities.

A similar analysis could be made through some of the other Articles cited in the chairman's paper.

The overall pattern of GATT's applicability to the environment is thus neither ignorance of the environment nor open-ended derogations. It is a set of reasonable disciplines which can both allow genuine measures to

protect the environment and prevent excesses. The short case history has already shown the GATT to have some effectiveness here. One conclusion one can immediately draw is that there is no need for a new broad environmental exception to the GATT, as some have argued.

B. Uruguay Round

GATT's applicability to the environment is likely to be given greater clarity, though no fundamental change through some of the agreements currently under discussion in the Uruguay Round. Some relevant points here are:

1. More explicit coverage of process standards. In the TBT Agreement this should help to some extent to give a better coverage of environmental measures because often problems will occur in the processing of a product rather than in the final form.
2. Equivalency. Another useful strengthened acknowledgement of this principle occurs in both the Sanitary and Phytosanitary (SPS) and TBT texts. This will allow countries who may be able to achieve the same environmental results in a different way from the one specified in the regulation still to export.
3. The concept of 'least trade restrictive' measures which has been developed in some panel reports, has been given useful extra precision in the TBT Agreement and the SPS draft decision.
4. Proportionality has now been made more explicit (in the same texts).
5. The subsidies code addresses the question of subsidies used to protect the environment, and recognizes that under certain conditions they should be considered non-actionable.
6. In the context of the services agreement, environmental exceptions have been considered. The agreement will include coverage of environmental services.
7. And, apart from the Uruguay Round, the present text on the export of domestically prohibited goods recognizes the desirability of some trade restrictions on goods which are harmful to the environment.

This does not exhaust the list of relevant work. It emphasizes the point that the GATT is reasonably well equipped to allow the framework of national trade regulations to be supportive of environmental measures.

C. Areas for further consideration

Global environmental issues pose a special case in that countries may want to influence what others do to protect a global resource. This may or may not result from the existence of an international agreement. In GATT terms, the main problems are as follows:

- Extraterritoriality (measures which apply to protection of the environment beyond the territory of the importing country).
- Possible conflict with the GATT definition of "like product" where restrictions may be on a product because of its relationship to another product, or where the product is restricted not because of its harmful effects per se but because of the process by which it is being produced.
- Discrimination. Governments face pressures from their environmental lobbies to introduce discriminatory trade measures, even sanctions against others who do not uphold the same environmental standards, or who they may think are 'free riding'.

This is a cluster of issues which warrants further discussion, drawing on work done in other organizations on the trade and environment interlinkages in these cases.

As a general point, we believe that trade measures are a blunt instrument and should be used simply because of failure to achieve an international consensus on environmental rules and disciplines. The GATT in its current form already provides protection against unreasonable unilateral trade measures taken for environmental reasons. Failing an international agreement, countries have some GATT - consistent possibilities to influence the behaviour of others - non-discriminatory labelling schemes for example which if they accurately reflect consumer preferences, would influence consumption of environmentally sound products (for whatever reason) without resorting to mandatory trade restrictive or discriminatory measures.

There seems broad acceptance of the view that trade liberalization and environmental protection are complementary goals and in this case there should be an effort to take into account GATT rules when negotiating international environmental agreements so that any conflict is avoided or minimized.

In cases where it is not possible entirely to eliminate possible conflicts with GATT rules, it should be possible at least initially to look at such problems individually within the GATT context. Currently there are not many environmental issues of such global importance as to require trade measures which will conflict with the GATT, so they should be manageable at this stage on a case-by-case basis. It is likely that if there is a broad international consensus on a global environmental objective, sufficient support from contracting parties will be forthcoming in order to take a decision, for example under Article XXV.

The value of taking careful account of GATT in any such move will always be to eliminate possibilities for disguised protectionism. As tariffs have come down in successive trade rounds, so has the raft of protectionist non-tariff measures expanded. As disciplines have improved

on non-tariff measures, so has the grey area expanded. If the Uruguay Round achieves greater discipline over the grey area, it would be unfortunate if post Uruguay Round were to see the same forces at work in a new "green" area.

D. Rôle of the GATT

As we said in our opening remarks, the GATT must be involved in this international debate. It should include further discussion of trade and environment linkages, without duplicating other work. Ideally, there needs to be a mechanism within the GATT to oversee this, and to assist parties in drawing out from a huge subject what is relevant to our own organization. We believe the suggested working group would be an ideal way of overseeing this process.

Equally the GATT should have something to say at the UN Conference on Environment and Development. A secretariat contribution outlining current rules (hopefully including results of the Uruguay Round), case history, and issues that may have been identified during this debate would be useful.

Involvement of the GATT in the negotiation of international environmental agreements with potential trade impacts should continue. For example, we hope to see a GATT presence at the Second Session of the International Negotiating Committee on Climate Change, which will be held in Geneva next month.

All contracting parties should ensure that their domestic environmental policy making also takes account of GATT obligations.