

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## EXPORTS OF DOMESTICALLY PROHIBITED GOODS

### Note by the Secretariat

#### I. Origin of question in GATT

1. The question of exports of domestically prohibited products was first raised by Nigeria and Sri Lanka during the preparatory work for the 1982 Ministerial meeting (document PREP.COM/W/16). It was suggested that possible action in this area under GATT might include, inter alia, the acceptance of an obligation by contracting parties to ban exports of products which were prohibited for sale on their domestic markets, or to give advance notification to the customs authorities in the importing countries that the products being exported are banned from sale in the exporting country.

#### II. Ministerial Declaration of 1982

2. The 1982 Ministerial Declaration called on contracting parties, to the maximum extent feasible, to notify GATT of any goods produced and exported by them but banned by their national authorities for sale on their domestic market on grounds of human health and safety. It was agreed that at the 1984 Session of the CONTRACTING PARTIES, the need for study of problems relevant to the GATT in this area and of any action which might be appropriate would be considered (BISD 29S/19). Notifications were invited via airgram GATT/AIR/1885.

3. Up to the 1984 Session of the CONTRACTING PARTIES, twenty-three notifications had been received, from Malawi, Spain, Colombia, Peru, Austria, Yugoslavia, Turkey, Thailand, Pakistan, Romania, Hungary, Singapore, Cameroon, Nigeria, Ireland, Norway, Sri Lanka, Chile, Poland, Cuba, South Africa, Canada and India. Most of these notifications stated that the country did not export any domestically produced goods whose local consumption or sale was banned on grounds of human health or safety. Austria, Colombia and Romania referred to relevant legal provisions.

#### III. CONTRACTING PARTIES' Session of 1984

4. At the time of the 1984 CONTRACTING PARTIES Session, it was recognized that the notifications received so far did not provide a sufficient data base to assess how problems relevant to the GATT might be studied. Consequently, a second request for notifications was issued in GATT/AIR/2087, to which all contracting parties were invited to respond as soon as possible. It was also suggested that contracting parties make available to the secretariat, to the maximum extent feasible, any relevant information which would enable the secretariat to prepare, by mid-1985, basic documentation designed to

facilitate discussion of the matter. The secretariat's documentation would also cover work being done in other organizations. Consultations would be held with delegations in the light of further submissions received.

#### IV. Notifications and consultations in 1985

5. By mid-1985, five more notifications had been received. Indonesia, the People's Republic of the Congo, Ghana and Jamaica notified that they did not export any domestically prohibited goods. The United States provided a notification summarizing provisions of twelve statutes relevant to the question. The secretariat produced a note (DPG/W/1) summarizing relevant activities of other international organizations, including the United Nations, United Nations Environment Programme, Food and Agriculture Organization and World Health Organization, as well as the work of the Organization for Economic Cooperation and Development in the fields of chemicals and consumer products. Consultations were held with interested delegations in July 1985 on the basis of the information provided in these documents and a further airgram (GATT/AIR/2181) was issued in which it was suggested that the provision of similar information by all contracting parties would facilitate understanding of the questions involved. Subsequently, notifications summarizing relevant domestic legislation have been received from the European Communities and most member states, Japan and Australia. Further notifications stating that the countries concerned do not export domestically prohibited goods have also been received during 1985 from Ivory Coast, Uruguay, Senegal and Czechoslovakia. A further consultation with interested delegations was held on 14 November 1985.

#### V. Issues arising from the consultations

6. From the consultations held so far, it appears to the secretariat that there is general recognition that the export of goods which are not permitted to be sold in a particular domestic market for health or safety reasons is an area which is of concern to contracting parties. The discussions have thrown light on problems of defining "domestically prohibited" goods in the light of practices followed by particular contracting parties, which may involve positive certification rather than prohibition or restriction. The material notified by some contracting parties on legislative provisions has provided a useful clarification of the practices followed in these countries concerning production and exports of such goods, which vary considerably from case to case. The question of the extent to which exporting or importing country governments should be primarily responsible for taking measures to restrict trade in such products has also been raised. In that context, questions of the provision of adequate information to importing countries and the ability of importing countries to formulate or enforce adequate criteria for permitting or prohibiting the sale of such imported goods, were brought to light. A number of delegations have pointed to the complexity of the issues involved and the practical problems of management of such trade.

6. The consultations so far have not entered very far into discussing trade policy questions which might be relevant to the issue and of any action which might be taken under GATT provisions. Some delegations have referred to the

provisions of Article XX(b) of the General Agreement. It has been suggested that the notification procedures of the Agreement on Technical Barriers to Trade may provide a basis for a better flow of information and guidance for actions to be taken by exporting or importing countries. The question of the extraterritoriality of standards has been raised in this connection. The possibility of export prohibitions by countries with stringent product standards leading to trade diversion in favour of exporting countries with less strict standards has also been raised.

7. There appears to be general agreement that the exercise of notification of relevant legislation is useful and that all contracting parties should be encouraged to do so. The secretariat has also been requested to maintain close contact with other agencies operating in this area, in order to avoid duplication, and has been asked to provide further information on the products covered by work done in these agencies and the methods used by them in collecting and disseminating information. Delegations which have participated in these consultations have stressed the need for finding practical and applicable solutions within the GATT to trade problems which may arise in this area.

ANNEX

Notifications received on exports of domestically prohibited goods

(a) Notifications stating simply that the countries concerned do not export goods which are domestically prohibited for human health or safety reasons.

|                |              |    |             |
|----------------|--------------|----|-------------|
| DPG/Notif.83.1 | - Malawi     | 11 | - Hungary   |
| 2              | - Spain      | 12 | - Singapore |
| 4              | - Peru       | 13 | - Cameroon  |
| 6              | - Yugoslavia | 14 | - Nigeria   |
| 7              | - Turkey     | 15 | - Ireland   |
| 8              | - Thailand   | 16 | - Norway    |
| 9              | - Pakistan   | 17 | - Sri Lanka |
|                |              | 18 | - Chile     |

|                |                |
|----------------|----------------|
| DPG/Notif.84.1 | - Poland       |
| 2              | - Cuba         |
| 3              | - South Africa |
| 4              | - Canada       |
| 5              | - India        |

|                |                |    |                  |
|----------------|----------------|----|------------------|
| DPG/Notif.85.1 | - Indonesia    | 6  | - Ivory Coast    |
| 3              | - Congo (P.R.) | 7  | - Uruguay        |
| 4              | - Ghana        | 9  | - Senegal        |
| 5              | - Jamaica      | 10 | - Czechoslovakia |
|                |                | 13 | - Austria        |

(b) Notifications referring to relevant laws or regulations.

|                |            |
|----------------|------------|
| DPG/Notif.83.3 | - Colombia |
| 5              | - Austria  |
| 10             | - Romania  |

(c) Notifications summarizing provisions of relevant laws or regulations.

|                |                        |
|----------------|------------------------|
| DPG/Notif.85.2 | - United States        |
| 8              | - EC and member States |
| 11             | - Japan                |
| 12             | - Australia            |