

GENERAL AGREEMENT ON

RESTRICTED

L/6467

2 February 1989

TARIFFS AND TRADE

Limited Distribution

EXPORTS OF DOMESTICALLY PROHIBITED GOODS

Review of the work done in GATT

Introduction

The subject of "Exports of Domestically Prohibited Goods" was included in the GATT's work programme at the 1982 Ministerial meeting as a result of the concern expressed by some developing countries at the increasing trend on the part of industries and firms to export products, the domestic sale of which was either prohibited or severely restricted, in order to protect human health or safety or the environment.

Developments between 1982-1985

The 1982 Ministerial Declaration called on contracting parties to notify to the GATT, to the maximum extent possible, if products were exported which were banned for sale in the domestic market on grounds of human health and safety. This invitation was reiterated at the 1984 Session, with the additional request that these countries also submit information on the laws and regulations which were applicable in the area. To further to assist the examination of the work that could be undertaken in GATT, the secretariat prepared a paper describing briefly the work that was being done by other international organizations to develop information exchange systems on trade in domestically prohibited goods.

Developments in 1986 and 1987

In 1986, with the commencement of the talks for the launching of the new round of negotiations, the Senior Officials' Group and later the Preparatory Committee discussed the possible inclusion of the subject in the programme for negotiations.

While a number of developing countries pressed for inclusion of the subject in the negotiations, others considered that the work in this area should be carried out under the regular GATT activities. The latter view prevailed. At the end of the Punta Del Este Ministerial meeting, the Chairman in his statement recommending the adoption of the Uruguay Declaration, stated that there were four "issues raised by delegations on which consensus to negotiate could not be reached" during the meeting. One of these subjects was: "the export of hazardous substances".

Subsequently, in November 1986, at the Forty-Second Session of the CONTRACTING PARTIES, it was formally decided that work in this area should be carried out under the normal work programme. The decision further called on contracting parties to undertake during 1987 consultations with a view to establishing guidelines for action in this area "taking into account the following elements":

- (a) notification of relevant laws and regulations;
- (b) information on specific measures restricting or prohibiting domestic sale, exports or imports of goods on grounds of human health and safety;
- (c) the need to maintain close contact with other relevant international organizations operating in this area, and to avoid, so far as possible, duplication of information provided in the context of other organizations;
- (d) procedures for consultation among interested contracting parties regarding any problem that may arise as a result of such measures;
- (e) provision for periodic review of developments. (L/6106)

To provide a basis for consultations, the secretariat prepared a background document summarizing the information contained in the notifications received from contracting parties (DPG/W/3). Annex I to the document summarizes information relating to legal provisions applied to domestically prohibited goods. The other two annexes list products which are prohibited for sale in the domestic markets and contain, inter alia, information on whether the ban also applies to exports of such products.

In the informal consultations arranged by the secretariat prior to the 1987 Session of the CONTRACTING PARTIES, delegations noted that the United Nations Environment Programme (UNEP) had recently adopted guidelines relating to banned or severely restricted chemicals entering international trade; these, as well as the work that was being done by other organizations, would have to be carefully studied in order to determine the nature and type of action that could be taken in GATT. In the light of this, at the Forty-Third Session, it was decided that the secretariat should arrange for further consultations and a report on such consultations should be presented at the November 1988 Session of the CONTRACTING PARTIES.

Developments in 1988

In pursuance of the above Decision, the secretariat arranged during 1988 two rounds of consultations with interested delegations. The basis for discussions was provided by the Technical Note and subsequent communications (MTN.GNG/W/18 and MTN.TNC/W/14) circulated by the delegations of Cameroon, Côte d'Ivoire, Nigeria, Sri Lanka and Zaïre,

explaining the type of action that could be taken to bring under control trade in domestically prohibited goods and other hazardous substances. The note emphasized that recent trends to transport to countries in Africa and in the Caribbean region dangerous industrial and toxic waste for storage and recycling warranted that GATT work should cover not only trade in domestically prohibited goods, but also issues relating to the disposal of hazardous waste.

These countries had, inter alia, suggested (MTN.TNC/W/14):

"One form of action in GATT might be to elaborate an Agreement or a Code of Conduct, on the lines of the Agreement on Technical Barriers to Trade negotiated during the Tokyo Round of Trade Negotiations.

The main objective of such an Agreement might be to lay down the principle that governments, in formulating regulations, should pay adequate attention to the protection of environment and of health and life not only of its own country or population but also of those in other countries and populations. It might, inter alia, apply to:

- (i) all products which in the domestic market of a country:
 - (a) are prohibited from being sold;
 - (b) can be sold only under severely restricted or controlled conditions; or
 - (c) are withdrawn from sale;
- (ii) industrial, toxic and other wastes whose disposal in the domestic market is severely restricted or controlled;

on the grounds that they are dangerous to human health or safety, animal or plant life or health or other reasons of environmental protection.

In relation to industrial and toxic wastes and of other substances (e.g. those falling under item (ii) above) which are considered to be inherently hazardous, rules of the Agreement should provide for the total ban on exports. Such a ban would be in keeping with the principle that the wastes created in a production process should be re-cycled, further treated or disposed of, in the country of manufacture as in most cases it is not possible for the exporting country to meaningfully evaluate whether the facilities for storage, re-cycling or otherwise disposing waste are adequate in the importing country, particularly in the case of developing countries.

As regard other products (e.g. those falling under item (i) above) governments should, in formulating regulations, give adequate consideration to whether exports thereof shall be prohibited or restricted. In cases where prohibition of exports is not considered desirable and appropriate, given factors such as environmental and climatic differences among countries, and differences in dietary habits, regulations should permit only exports on the basis of export

licences and lay down conditions for their issuance. Such conditions could include an undertaking that in the case of products falling in this grouping (e.g. hazardous chemicals, pesticides, radioactive materials and toxic waste), export licences will be issued only after "prior informed consent" to the importation of such product has been received from the relevant control authority in the importing country.

In addition to laying down rules governing measures to be taken by exporting countries, the Agreement should aim at reinforcing actions that are being taken by organizations like the UN, FAO, WHO and UNEP by urging its member countries to participate effectively in the schemes for notification and exchange of information and in relevant technical work of these organizations.

Finally, the institutional machinery to be established under such an Agreement should, by providing mechanisms for consultation and for settlement of disputes, enable the international community to monitor and control trade in such products in an effective way."

Some of these delegations had further suggested that in order to give priority to work in this area, the subject should be included in the Uruguay Round and that a decision be taken at the Montreal Ministerial meeting of the Trade Negotiations Committee.

An oral report presented by the secretariat on the informal consultations was considered at the November 1988 Session of the CONTRACTING PARTIES. The secretariat stated that (SR.44/2):

"Some developing countries had explained that in most cases they were unable to prohibit imports of hazardous products because their governments did not know the products were prohibited or restricted for sale in the domestic markets of the exporting countries. It was also common, they said, particularly in the case of hazardous substances and wastes, for exporters to make false declarations. Further, the customs authorities in a large number of developing countries did not have adequate testing facilities to check the truthfulness of declarations made by exporters. According to developing country representatives, the absence of consumer protection regulations in many developing countries also enabled other countries to market in those developing countries pharmaceuticals, food and other products, beyond the dates specified on the manufacturer's labels.

Regarding the measures taken by developed countries to control trade in such products, most delegations had replied that their governments considered the problem to be serious, and had referred to measures requiring firms to notify the authorities if any product prohibited for sale was being exported to other countries. Some developed countries stated that further measures were under consideration to make information exchange systems more effective.

Both developed and developing countries had considered that international organizations like WHO, FAO and the UN Environmental Programme, as well as regional organizations like the OECD, had developed useful guidelines and procedures for notification and exchange of information. Some delegations, however, had considered that it would be necessary to examine the operation of these arrangements more closely in order to decide whether further complementary action in the GATT would be necessary and effective. These delegations had also noted that the issues in this area were of a highly technical nature, and had expressed doubt whether it would be possible for the trade policy experts to deal with these subjects effectively. Some of these delegations, however, had thought that GATT could, at the present stage, play a useful rôle in monitoring the work being done in other organizations. Other delegations, mainly from developing countries, had explained that one reason the arrangements developed by other international organizations were not fully effective was that these arrangements were of a voluntary nature and did not impose binding obligations. These delegations believed that the experience of these arrangements had been somewhat mixed. They felt, therefore, that it was necessary to use the GATT to impose binding obligations on both exporting and importing countries. They said that the aim of any action in GATT would not be to duplicate notification and information exchange procedures developed elsewhere, but rather to develop rules which would reinforce the implementation of these schemes."

In the discussions that followed, some delegations, while recognizing the importance of the subject, maintained that it would be inappropriate to include it at this stage in the agenda for the Uruguay Round. The Chairman, in summing-up the discussions, stated that the consultation arranged by the secretariat "had been useful in beginning to identify issues that would need further examination in GATT to complement the work of other international and regional organizations" and suggested that "the secretariat should hold further informal consultations among interested delegations, with a view to enabling Council to make, if necessary, appropriate arrangements of pursuing work further in this area". As regards the proposal for inclusion of the subject in the programme for the Uruguay Round of Negotiations, he observed that since the decision on the matter would have to be taken by the Trade Negotiations Committee, the CONTRACTING PARTIES could only take note of the points made and concerns expressed by the delegations.

In the Montreal Ministerial level meeting of the Trade Negotiations Committee held in December 1988, some delegations emphasized the importance they attached to inclusion of the subject in the Uruguay Round. At the end of this meeting, the Chairman in his concluding statement suggested that, since the subject was covered by the GATT's regular work programme, "the GATT Council be requested to take an early, appropriate decision for the examination of the complementary action that may be necessary in GATT, having regard to the work that is being done by other international organizations".

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At the meeting of the GATT Council held on 20 December 1988, it was decided to include the subject of Exports of Domestically Prohibited Goods in the agenda for the February meeting of the GATT Council for further examination.