

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Limited Distribution

Working Group on Domestically Prohibited Goods

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EXPORT OF DOMESTICALLY PROHIBITED GOODS SUBMISSION BY THE DELEGATION OF NIGERIA

The following communication has been received from the delegation of Nigeria.

Introduction

At the launching of the Uruguay Round of Multilateral Trade Negotiations, there were moves by some developing countries to include the export of hazardous substances as one of the subjects of negotiations. During the Montreal Ministerial meeting, the importance of including this subject in the Uruguay Round negotiations was again emphasised by some delegations. Both attempts were unsuccessful. Therefore we had to fall back as it were on the last line of defence namely the decision of the Contracting Parties in its forty-second session to deal with this subject under the regular work of the GATT. In recognition of this decision, some delegations have relentlessly insisted that work be started in this subject.

Elements of work to be done

There will be an agreement that will prohibit any international trade in products which have been banned for sale, distribution or consumption or whose sale and distribution have been severely controlled in the country of production for reasons of health and environment. The agreement will also cover products which are sent to another country for the purpose of re-exportation to a third country.

The framework to be adopted will take into consideration the work already done by other international organisations and regional bodies to establish a network for notification, exchange and dissemination of information on products covered by the agreements. In drawing up such a framework, the burden of choice to import or not to import should not wholly lie with the importing country where the importing country is a developing country and where it is established that such a country lacks the technical and the expertise which are necessary factors for rational decisions in this field. On the other hand, the developed countries which are usually the exporters of the products are technologically better-equipped to make decisions not to export when such exportations will constitute danger to human life and the environment in the importing country. The yardstick must be that where a product is banned for sale,

distribution or consumption or severely restricted for sale or circulation in the domestic market for health or environmental reasons, its exportation should be banned and/or regulated. The reasons of environmental, climatic or cultural differences among countries and differences in dietary habits has no strong basis to provide an exception where a product has been banned for health and environmental reasons.

Coverage

The framework of the agreement will apply to:

- I. all products which in the domestic market of a country:
 - (a) are prohibited for sale, distribution or consumption;
 - (b) the sale of which is severely restricted or controlled;
 - (c) are withdrawn from sale, or circulation;
 - (d) are expired products which cannot be legally sold or distributed in the domestic market.
- II. industrial, toxic and other wastes whose disposal in the country of production is severely restricted or controlled.
- III. sub-standard products which are specifically produced for the markets of developing countries on the grounds that they are dangerous to human health and safety, animal or plant life or health or protection of the environment.

WORK ALREADY DONE BY OTHER INTERNATIONAL ORGANIZATIONS

Other International Organisations notably the World Health Organization (WHO) the United Nations Environment Programme (UNEP) and the Food and Agricultural Organisation (FAO) have done some work on the subject of domestically banned or restricted goods and hazardous substances. Some regional bodies like the Organization for Economic Co-operation and Development (OECD) have also done some work on this subject. The WHO Certification Scheme provides an administrative mechanism under which an importing country can obtain assurance that an imported pharmaceutical product is authorized to be sold in the market of the exporting country and if it is not information on the reasons why it is not. The OECD recommendation makes provision for exporting countries to provide all relevant information to the importing countries concerning its exports of banned or severely restricted chemicals. The FAO, UNEP and WHO also provide for an exchange of information on banned or hazardous products. Under the PIC procedure, established under the London Guidelines, chemicals which are banned or severely restricted in their use for reasons of protection of health and environment are not exported without the prior consent by the importing country.

The analysis of the work done by these International Organizations shows that they are mostly concerned with exchange and dissemination of information and the identification of potentially hazardous products. Little has been done to prevent the export of domestically banned or severely restricted goods and hazardous substances. In addition the various provisions do not appear to be binding on the members.

The notion of prior informed consent (PIC) does not address the issue adequately. The question of consent should not arise when it is already established that an import will be harmful to the population or that the country has no facilities to handle such import. In this respect the provision of the Basel Convention that signatories "shall not allow the export of such wastes to developing countries if it has reason to believe that the wastes will not be managed in an environmentally suitable manner" makes sense. Prior informed consent does not take into account the economic, technological and political situations of the developing countries.

It is not however the intention of this submission to ask GATT to interfere with regulations laid down by other International bodies because it has no legal standing and cannot enforce agreements reached in other International Organizations.

The need for action

During the preliminary discussions on this subject matter, many delegations argued that much work has been done by other International Organizations to warrant any more work by GATT. As discussions progress and the kind of work done by these organizations is analysed, many of those delegations that first opposed the subject being brought up in GATT have become convinced of the need for action in the GATT. The evidence of trade that has continued in domestically banned products is a further proof that GATT indeed has an obligation to put in place a framework that will bring such trade under control and stop its proliferation.

TRADE IN DOMESTICALLY BANNED PRODUCTS MERCURY BASED SOAP AND COSMETICS CONTAINING MORE THAN 2% HYDROQUINONE

A number of developed countries are still producing medicated soaps containing mercury and creams containing hydroquinone above the permitted 2%. Though these countries legislate against the use of these products in their countries, they are busy exporting these products to developing countries.

CHLOROFLURO CARBON CONTAINING COSMETICS

There is a consensus among all participating countries that the use of the compounds that destroy or deplete the ozone layers of the atmosphere should be reduced.

A number of developed countries have taken measures to restrict and prohibit the use of Chlorofluoro Carbons (CFC's) as propellants in cosmetics and drugs. The Montreal Protocol of the United Nations Environment Programme of 1987 seeks to control the production and consumption of these compounds. While compliance with the Protocol is to start immediately, the developing countries are entitled to delay the implementation by ten years. This delay in the implementation was agreed as it was considered that for technological and financial reasons these countries may not be able to reduce production of products which use such compounds. Unfortunately, however, because of this situation, industries in developed countries have started shipping these products, which they may not be able to export to other developed countries, to developing countries. We see this as a plan for developed countries to exhaust stock already piled up by the industries of developed countries at the expense of health of developing countries.

TOXIC CHEMICALS

The Koko (Nigeria) episode concerning the importation of large quantities of toxic waste into Nigeria is well known in international circles. The incident created a lot of national consciousness in the developing countries on the desperate efforts of the developed countries to use them as dumping grounds inspite of the health hazards these substances cause.

In August 1989, our national authorities were alerted of two chemical substances, cumen and oleylamine, which are covered by the toxic substances Control Act of 1976 in USA which were being exported to Nigeria. Because of the timely alert it was possible to prevent these chemicals from landing. More reports indicated that industrial wastes containing zinc oxide were being shipped from Europe to a developing country. But because that country refused entry to this ship, it began to head towards other third world countries hoping to find a landing place.

Attempts were also made by two western companies to bring into Nigeria 2-Ethyhexanon, Diethyl tetramine (DETA) and C9 aromatic hydrocarbons.

FOOD

CONTAMINATED BEEF

A few weeks ago it was discovered that about 1,000,000 kilos of beef originating from cows contaminated by the 1986 radio-active fall out of Chernobyl had been sold to some West African Countries. This timely alert helped to stop the landing and distribution of the contaminated cargo.

Similarly, attempts were made by some European Countries to bring in powdered milk and chicken products originating from the area affected by the fall out.

EXPIRED DRUGS

A number of developed countries still deliberately export expired drugs or drugs that are near expiration to developing countries. Only recently a company based in Western Europe exported expired drugs to a charity organization in Nigeria. Fortunately the consignments were impounded and destroyed before they could get to the end users.

PESTICIDES

DDT has been banned or restricted in circulation in many developed countries for use as an insecticide. But it is very much in use in developing countries. These developed countries find a dumping ground in third world countries of products no longer in use in their countries. Many brands of DDT mosquito coils are still being exported to the developing countries when the same products are restricted for use in the countries of production.

What we chronicle above is just a tip of the iceberg. The traffic for these domestically banned products persistently moves in one direction - usually from the developed to the developing countries. Enormous and sometimes permanent damages have been done to the health of millions of people and the environment. It is our belief that GATT will act in order to halt this damage.

CONCLUSION

The instrument of GATT will be used to develop and impose legal framework and binding obligations on both exporting and importing countries. True to the terms of reference setting up this working group, the submission does not suggest that the GATT duplicate efforts of the other international organizations in this field. At the same time, it reasonably assumes that it will not be comparable with the status of this institution to pick up and deal with the residue of work left undone by other international organizations. The goods and substances which form the core of this work are subject of international trade and there is no better or more competent body to deal with them than the GATT. In any case, none of the International Organizations had developed any binding rules to govern international trade in the subject. It is of course outside their jurisdiction.