

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

L/6769

12 December 1990

Limited Distribution

WORKING GROUP ON THE EXPORT OF DOMESTICALLY PROHIBITED GOODS AND OTHER HAZARDOUS SUBSTANCES

Report by the Chairman of the Working Group

1. The Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances was established by the Council in its Decision of 19 July 1989 with the terms of reference as set out in L/6553.
2. The Working Group, chaired by Ambassador John Sankey (United Kingdom), has held twelve meetings. A number of informal meetings have also been held.
3. On the basis of the proposals made by various delegations, the Working Group has been considering the attached draft Decision on Products Banned or Severely Restricted in the Domestic Market. The Group has been unable to reach consensus on it as one contracting party has reserved its position. It has therefore authorized me to request the CONTRACTING PARTIES at their Forty-Sixth Session to extend, until the end of March 1991, the deadline for completing the work of the Working Group.
4. The Working Group has requested me to thank the representatives of other international organizations (UNEP, WHO, FAO, ILO, UN secretariat and OECD) for their co-operation and participation in its work.

Working Group on Domestically Prohibited Goods
and Other Hazardous Substances

28.11.90

Decision on Products Banned or Severely Restricted
in the Domestic Market

Preamble

The CONTRACTING PARTIES

Desiring to further the objectives and principles of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Having regard to the provisions of the General Agreement as they apply to the products covered by this Decision;

Desiring to encourage the development of international rules on trade in products that are banned or severely restricted in the domestic market of a contracting party, as well as hazardous wastes, on the grounds that they are dangerous to human, animal or plant life or health, or the environment;

Desiring further to ensure that such rules do not create unnecessary obstacles to international trade nor duplicate the work of other international organizations;

Recognizing the need for complementary action in GATT regarding trade in the products covered by this Decision, while taking into account the important contribution that is being made by international organizations which have competence in the areas concerned;

Noting the importance of notification, information exchange systems, prior informed consent procedures and certification systems developed by other international organizations in exchanging information and in assisting contracting parties in deciding whether to permit importation of the products concerned;

Recognizing that every contracting party must assume full responsibility for decisions regarding its own imports, but that the co-operation of exporting contracting parties may be necessary in cases where the importing contracting party's control procedures are not yet fully developed;

Bearing in mind that no contracting party should be prevented from taking measures to ensure the quality of its export products, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between contracting parties where the same conditions prevail, or a disguised restriction on international trade;

Mindful of the need for governments to pay the fullest attention possible to the protection of the environment;

Hereby decide as follows:

Article 1

Coverage

1.1 For the purpose of this Decision the meaning of the terms given in Annex I applies.

1.2 This Decision applies to products, substances and wastes (hereinafter referred to as "the products concerned") which are determined by a contracting party:

- (i) to present serious and direct danger to human, animal or plant life or health or the environment in its territory, and which for that reason are banned or severely restricted in the domestic market of that contracting party by governmental regulatory action, except:
 - (a) fissionable [and radioactive] materials; and
 - (b) arms, ammunitions and implements of war supplied directly or indirectly to a military establishment; or
- (ii) to be hazardous and which for that reason are disposed of, intended to be disposed of, or are required to be disposed of in accordance with governmental regulatory action, except:
 - (a) such wastes which, as a result of being [fissionable or] radioactive, are subject to international control systems, including international instruments, applying specifically to [fissionable or] radioactive materials; and
 - (b) such wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument.

1.3 The instruments adopted by the relevant international organizations relating to the products concerned are enumerated in Annex II.

Article 2

General Provisions

2.1 All measures taken to regulate and control international trade in the products concerned shall be applied:

- (i) in accordance with the provisions of the General Agreement; and
- (ii) for those contracting parties which are signatories to other Agreements and Arrangements of GATT, in accordance with the provisions of such Agreements and Arrangements to contracting parties which are signatories to them.

2.2 Each contracting party shall ensure that the provisions of this Decision are not applied in such a way as to create unnecessary obstacles to international trade.

2.3 Nothing in this Decision shall affect the rights and obligations of signatories or participants under the international instruments enumerated in Annex II.

2.4 The question whether a contracting party, which is a signatory or participant of an international instrument enumerated in Annex II, is applying the procedures therein, shall be determined by the body which, under that instrument, is competent to do so.

Article 3

Measures to be Taken by Contracting Parties

3.1 Any contracting party adopting measures to ban or severely restrict in its domestic market any of the products concerned, should examine whether the reasons for such measures would also require the adoption of equivalent measures for exports of the same products.

3.2 However, paragraph 3.1 should not be construed in such a way as to affect in a discriminatory manner exports of contracting parties which have adopted different standards of health and environmental protection, or the prerogative of individual contracting parties to determine whether to allow, in their specific situations, the import and use of products which the exporting contracting party determines to be products concerned.

3.3 If the ban or severe restrictions referred to in paragraph 3.1 do not apply to exports of the products concerned, the contracting party shall promptly notify the GATT secretariat of such measures, as well as the reasons for which they were adopted, and where possible and appropriate notify such information to the enquiry points established under paragraph 5(b) in the contracting parties with which it has significant trade. The GATT secretariat shall immediately forward such notifications to all such enquiry points.

3.4 Such a contracting party shall, at another contracting party's request, provide in relation to the products concerned information regarding potential hazardous effects and domestic regulations concerning their use, transport and labelling, including any relevant regulations adopted prior to the entry into force of this Decision.

3.5 The provisions of paragraph 3.3 shall not apply if the product concerned is covered by an international instrument enumerated in Annex II and the exporting contracting party is a signatory or a participant thereof.

Article 4

Co-operation at International Level

4.1 Contracting parties which are signatories or participants of the international instruments enumerated in Annex II, should sustain and make more effective such international co-operation, inter alia, by participating to the fullest extent possible in the activities undertaken in pursuance of these instruments. Contracting parties which are not signatories or participants of such instruments should, where possible, accede to them.

4.2 Any contracting party that is a signatory or participant of an international instrument enumerated in Annex II should apply the procedures therein to regulate its trade in the products concerned in the manner foreseen by that instrument. Towards this end, such a contracting party should, as appropriate:

- (a) participate effectively in the systems for notification, exchange of information and registration in the relevant instruments;
- (b) participate in the Prior Informed Consent Procedures (PIC procedure) in the relevant instruments;
- (c) participate in the Certification Schemes incorporated in the relevant instruments; and
- (d) co-operate in the work of international organizations for the further identification of products to which notification systems, prior informed consent procedures or certification schemes should apply.

Article 5

Transparency and Publication Requirements

Each contracting party shall:

- (a) publish promptly all laws, regulations, and administrative rulings insofar as they relate to international trade in the products concerned, in accordance with the provisions of paragraph 1 of Article X of the General Agreement;
- (b) establish or designate an enquiry point(s) from which the further information referred to in paragraph 3.4 could be obtained;
- (c) submit promptly to the GATT secretariat the name(s) of the body(ies) which shall act as the enquiry point(s).

Article 6

Committee on Products Banned or Severely
Restricted in the Domestic Market

6.1 There shall be established a Committee on Products Banned or Severely Restricted in the Domestic Market (hereinafter referred to as "the Committee") open to representatives from each contracting party.

6.2 The Committee shall elect its own Chairperson and meet as necessary but not less than once a year for the purpose of affording contracting parties the opportunity to consult on any matters relating to the implementation and the operation of this Decision, taking into account developments pertaining to the international instruments enumerated in Annex II and any new relevant international instruments, laws, regulations and specific measures taken by contracting parties during the period of review.

6.3 The Committee shall periodically revise and update the list of international instruments enumerated in Annex II in consultation with the relevant international organizations.

6.4 In accordance with paragraph 6.2 above, the Committee shall carry out a comprehensive review of the provisions of this Decision not later than the end of the second year after its coming into effect. A report of any proposed modifications or improvements shall be submitted to the CONTRACTING PARTIES.

6.5 The Committee shall invite international organizations responsible for administering the instruments enumerated in Annex II to submit reports on their work in relation to the products concerned and to participate in the work of the Committee as observers.

Article 7

Technical Assistance

In the context of this Decision, contracting parties shall, in collaboration with the GATT secretariat and relevant international organizations, furnish technical assistance to developing contracting parties on mutually agreed terms, and taking into account the necessity to develop national means to effectively control trade in the products concerned.

Article 8

Consultations and Dispute Settlement

Without prejudice to Articles XXII and XXIII, contracting parties agree to consult on matters arising out of the operation of this Decision. Such consultations should be aimed at finding ways and means for mutually satisfactory solutions.

ANNEX I

Definitions

Banned product means any product that has been:

- (a) prohibited from sale or use; or
- (b) refused approval for sale or use; or
- (c) withdrawn from sale or use; or
- (d) prohibited from sale or use because its period of approved use has expired.

Severely restricted product means:

a product for which virtually all sales and/or uses have been banned but for which certain specific sales and/or uses remain authorized.

This includes only those pharmaceuticals

- (a) which are approved and subsequently subjected to restrictions that exclude their use in a substantial proportion of the potential target population of patients having regard to its safety, and/or
- (b) which contain a substance whose dangerous properties require extraordinarily narrow content limitations.

ANNEX II

International Instruments and Their Administering Organizations

1. Montreal Protocol on Substances that Deplete the Ozone Layer (United Nations Environment Programme).
2. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (United Nations Environment Programme).
3. London Guidelines for the Exchange of Information on Chemicals in International Trade, Amended 1989 (United Nations Environment Programme).
4. International Code of Conduct on the Distribution and Use of Pesticides (Food and Agriculture Organization).
5. Certification Scheme on the Quality of Pharmaceutical Products Moving in International Trade (World Health Organization).
6. Convention Concerning Safety in the Use of Chemicals at Work (International Labour Organization).
7. 1971 Convention on Psychotropic Substances (United Nations Secretariat).
8. Single Convention on Narcotics, 1954, as Amended by 1972 Protocol, (United Nations Secretariat).
9. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations Secretariat).

The United Nations Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Severely Restricted and/or Not Approved by Governments (United Nations Secretariat) is a reference document which contains important information relating to such products.

Among regional instruments, The Recommendation Concerning the Safety of Consumer Products and Recall Procedures for Unsafe Products Sold to the Public (Organization for Economic Co-operation and Development) contains important information pertaining to this Decision.