

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.TNC/W/14

30 November 1988

Special Distribution

Trade Negotiations Committee

Original: English

EXPORTS OF DOMESTICALLY PROHIBITED GOODS

Communication from the delegations of Cameroon,
Côte d'Ivoire, Nigeria, Sri Lanka and Zaire

The following communication is circulated to the Trade Negotiations Committee at the request of the delegations of Cameroon, Côte d'Ivoire, Nigeria, Sri Lanka and Zaire.

1982 Ministerial Decision

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 concerns expressed by some developing countries, at the increasing trend on the part of industries and firms in developed countries, 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.

Although about six years have elapsed, very little progress has been made on the substance of the problems and issues that arise from an almost uncontrolled and increased exports of such products, mainly to developing countries.

Scope of problem

Pharmaceuticals and drugs which have not been registered and thus are not authorised for sale in domestic markets or are at experimental stage, are often exported to countries in Africa, Asia and Central and South America. There have been a number of instances of exports to third world countries of medicines which were banned for sale in the domestic market, either on the grounds of their possibly serious after effects or because the prescribed periods for use have expired.

Apart from pharmaceuticals, a large number of products manufactured by industries producing chemicals, insecticides, pesticides and other products, sale of which is either seriously restricted or prohibited on the grounds that they are harmful to public health or to the environment, are being exported and marketed in developing countries. Though it is difficult to determine the quantum of international trade in such products,

it is generally believed that several hundreds of such hazardous products, worth a few billions of dollars are exported every year and that trade in such products is on the increase. Unlike the situation in developed countries, most developing countries do not have well developed "products liability laws", thereby providing to unscrupulous business interests an easily accessible place for such dumping activity.

In addition to trade in such products, there is a recent trend to transport to countries in Africa and the Caribbean region for storage and recycling, dangerous industrial and toxic wastes. Environmental legislation or other regulations which exist in developed countries, coupled with high costs of waste management and recycling has made industries in these countries look more and more to countries in third world for disposal of such products. As in most of these countries, however, the technology and trained manpower required for storing and managing waste do not exist, the disposal of such wastes poses serious threat to the health of the people and the environment.

International waste business transactions are estimated to be worth about \$12 billion. The business is characterized by the use of brokers and intermediaries and frequently "ghost companies", operating illegally or on the fringes of legality. It is common, particularly in the case of pharmaceuticals, hazardous wastes and substances for exporters to make false declarations. The lack of trained personnel as well as the near absence of adequate testing facilities make it difficult for customs administrations in developing countries to check in such cases the truthfulness of declarations made.

Inadequacy of present efforts at international level

GATT Article XX(b) authorizes countries to prohibit imports, even in cases not otherwise permitted under the General Agreement, if they are considered necessary "to protect human, animal or plant life or health". In practice, however, it has not been possible for countries to take effective measures to prevent imports of such products, as the health and other authorities responsible for controlling such imports do not often come to know that the product is not allowed or is severely restricted from sale in the exporting country. This indeed was one of the reasons why OECD's Committee on Consumers Policy established, as far back as 1973, informal procedures under which its member countries notify one another of products prohibited from being sold domestically on the grounds that they are dangerous to public health. A recommendation adopted by the Committee further calls on the member countries to ensure that goods which are banned from sale or which are considered inherently dangerous should not be allowed to be exported.

If the developed countries with their competent administrations find it necessary to establish machinery to assist them in bringing under control such trade, it is evident that the problems which developing countries with their lack of trained personnel and less sophisticated administrations must be facing would be indeed serious.

It is no doubt true that the work of United Nations, WHO, FAO and United Nations Environment Programme (UNEP) is making a useful contribution in assisting developing countries in their efforts to bring under control trade in such products falling within their competence. Examples in this regard are the Consolidated List published by the United Nations of products whose consumption or sale have been banned, withdrawn or severely restricted; the Guidelines developed by FAO on an International Code of Conduct on the distribution and use of pesticides; the Certification scheme developed by WHO for pharmaceutical products moving into international trade and its Drug Action Programme, through which health ministers of member states are informed of decisions to prohibit or to limit availability of drugs already in use; and the Scheme for notification and for exchange of information on exports and imports of banned or severely restricted chemicals developed by the United Nations Environmental Programme (UNEP). In addition, UNEP is presently actively engaged in the negotiations on a Global Convention on the Control of Transboundary Movements of Hazardous Wastes.

If, however, the guidelines developed and the schemes for notification and exchange of information developed by these organizations have not been fully effective in monitoring and controlling trade in such products and substances, it is largely because they were voluntary in nature and did not impose any binding obligations.

Main priorities of a possible Agreement in GATT

As the Technical Note circulated by some developing countries (GNG/W/18) attempts to bring out, it may be possible to use GATT's legal framework to complement the technical work that is being done by other international organizations, by imposing binding obligations on both exporting and importing countries in the trade field and by establishing a mechanism for consultations and dispute settlement. 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.