

GENERAL AGREEMENT ON

RESTRICTED

Spec(90)12

29 March 1990

TARIFFS AND TRADE

Working Group on Domestically Prohibited Goods and Other Hazardous Substances

DRAFT REPORT OF THE FOURTH MEETING OF THE WORKING GROUP

1. The Working Group on Domestically Prohibited Goods and Other Hazardous Substances held its fourth meeting on 12 February 1990 under the Chairmanship of Ambassador John Sankey (United Kingdom). It adopted the agenda proposed in GATT/AIR/2912/Add.1.

2. One delegation stated that prohibition of exports was not a solution to the problems raised in relation to trade of products that were forbidden to be sold in the domestic market. It was believed that the solution was further development of channels for information exchange and technical assistance in order to enable importing countries to make informed decisions as to whether or not to allow the importation of certain products. Other delegations noted that although such information exchange mechanisms were necessary, many already existed and were proving to be ineffective and inadequate in controlling the commerce of harmful products.

3. Regarding the disposal and transboundary movement of toxic wastes, one delegation noted its belief that implementation of the Basle Convention would permit the efficient control of such products and suggested that those countries that had not yet ratified this Convention, do so as rapidly as possible. A few delegations stated that they shared the opinion of the Organization of African Unity, which viewed the Basle Convention to be a step in the right direction although it contained a certain number of weaknesses. They believed this rendered action in GATT necessary.

4. It was agreed to discuss items 2(B), "Trade related provisions included the work of the other international organizations (DPG/W/Rev.1 and L/6459/Rev.1)" and 2(C) "Background note on relevant provisions in the GATT, MTN Agreements, and on relevant Uruguay Round proposals (DPG/W/6)", of the agenda together as the items were related and had been the subject of documentation prepared by the secretariat.

5. One delegation noted that the secretariat background note on relevant GATT provisions (DPG/W/6) referred to the provisions of Article XX sub-paragraph (b) dealing with "human, animal and plant life", and sub-paragraph (d) dealing with "prevention of deceptive practices" which could be invoked by countries to prevent imports and exports of goods which were prohibited to be sold in domestic markets as well as of other hazardous substances. However these provisions were permissive; it would

be therefore necessary to impose more binding obligations to prohibit or restrict their export. In the case of hazardous and toxic wastes, this principle could be carried further to impose an obligation to dispose of such wastes within the territory of the country where the wastes had been generated. It was recognized that rigid insistence that exports in such cases be banned could create an imbalance, but in reality such cases were likely to be few.

6. Referring to the section of the secretariat background note on systems adopted by some countries for compulsory inspection of exports, this delegation stated that such systems enabled countries, in certain cases, to prevent exports of products which did not meet the standards laid down for sale in the domestic market or the higher standards prescribed for export products. The adoption of such systems by other countries could enable them to prevent exports of sub-standard products such as pharmaceuticals and food products, whose prescribed dates for use and consumption had expired or were about to expire.

7. This delegation therefore considered that the secretariat background note reinforced the need to negotiate in GATT an umbrella agreement that would further clarify and improve the GATT Articles. The statement by this delegation was circulated as DPG/W/7.

8. One delegation stated that the background note on GATT Articles (DPG/W/6) appeared to indicate that the normal GATT provisions and exceptions provided considerable scope for measures in the field of export controls for health and environmental reasons and called for a need to reinforce the disciplines of the existing arrangements. Several delegations noted that this document would be a helpful contribution to further examination of the issues and added that it was currently under study in their capitals. Another delegation had difficulty with the notion that domestic standards should necessarily apply to exported goods. In this scenario, it envisaged an unfair trade situation in which an exporter with the lowest domestic standards would have an advantage over other suppliers, all of whom satisfied the requirements of the importing country. However, another delegation stated that the standards that were good for one nation were also good for another. It added that in a situation where sub-standard products were exported to other countries, knowing that these products would have hazardous effects on health or the environment, was not only morally wrong but was wrong in all other aspects.

9. Representatives from five international organizations, the United Nations Environment Programme (UNEP), the International Labour Organization (ILO), the International Atomic Energy Agency (IAEA), the International Trade Centre (ITC) and the Organization for Economic Cooperation and Development (OECD), were present as observers. (The statement from the observer from the IAEA is included as an Appendix). The Group agreed to extend an invitation to the International Trade Centre UNCTAD/GATT to participate in the meetings as an observer.

10. The Group took note of the statements made. Two delegations stated that they would soon submit notifications of relevant legislation and regulations. Other members of the Working Group were reminded to provide the secretariat with initial or updated notifications of national laws and regulations as had been agreed at the first meeting of the Group. Three notifications had been received and these had been circulated as DPG/Notif.89.1, DPG/Notif.90.1 and DPG/Notif.90.2.

11. The Chairman emphasized that, in view of the tight deadline for the completion of the work, the Group should expedite the examination of the proposals made at the respective national capitals. All delegations that had indicated their intention to circulate proposals should attempt to do so in advance of the next meeting or orally present any such submissions at that time. He requested those delegations which considered it desirable to negotiate an umbrella agreement or understanding that would complement and strengthen the work being done by other organizations, to give thought to this and, if possible, to submit proposals on this at the next meeting.

12. The next meeting of the Working Group would be 2 April 1990.

Appendix

Statement by the Representative of the
International Atomic Energy Agency at the GATT Working Group
on Export of Domestically Prohibited Goods and
Other Hazardous Substances

12 February 1990

Last week an IAEA Expert Group completed its work on a Code of Practice for the International Movement of Radioactive Waste.

The basic principles in the draft code are meant to serve as guidelines to governments to prevent illicit transactions and dumping of radioactive wastes. They are based on the fact that the foreseeable growth during the coming decades in the generation of electrical energy by nuclear means and the increased utilization of isotopes in industry, agriculture, medicine and research will involve the generation of increased amounts of radioactive wastes, which, if improperly managed, present a potential hazard to human health and the environment.

The IAEA Code takes into account the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and other relevant international legal instruments. It recognizes the sovereign right of States to prohibit the movement of radioactive wastes into, from or through their territories. States should take all steps to ensure that international movements are consistent with international safety standards, and should take place only with the prior notification and consent of sending, receiving and transit States. States should adopt appropriate regulations to that end. Receiving States should not permit receipt of radioactive wastes unless they have the technical and/or administrative capacity to manage and dispose of such wastes in a manner consistent with international safety standards. Sending States have the responsibility to satisfy themselves that this requirement is met. Sending States should also take steps to permit the readmission of radioactive wastes if the provisions of the Code are not followed for one reason or another. All States should co-operate to prevent international movements that are not in conformity with the Code. IAEA should continue to give advice, assistance and to develop international standards and regulations in the field of radioactive waste management and disposal.

This Code of Practice, developed with the participation of UNEP and other interested organizations, has been agreed upon at the expert level. It will be submitted to the IAEA Board of Governors in June 1990 and to the IAEA General Conference in September 1990.