

# GENERAL AGREEMENT ON

RESTRICTED

Spec(90)27

13 July 1990

## TARIFFS AND TRADE

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### Working Group on Domestically Prohibited Goods and Other Hazardous Substances

#### SIXTH MEETING OF THE WORKING GROUP ON DOMESTICALLY PROHIBITED GOODS AND OTHER HAZARDOUS SUBSTANCES

1. The Working Group on Domestically Prohibited Goods and Other Hazardous Substances held its sixth meeting on 14 May 1990 under the chairmanship of Ambassador John Sankey (United Kingdom). It adopted the agenda proposed in GATT/AIR/2987.

2. Several delegations noted their appreciation for the proposals submitted by the delegations of Cameroon and Nigeria (DPG/W/8) and by the European Community (DPG/W/9) that had been presented at the previous meeting. One delegation stressed that the following factors should be included in any agreement: the establishment of a notification procedure, points of enquiry which would enable exchange of information, more transparency, and technical assistance. This delegation added that it would like to give a permanent basis to the Working Group in order to keep contracting parties informed, generally monitor the economic aspects of the instruments adopted by other organizations, and maintain the link between GATT and other international organizations. Another delegation was concerned with certain provisions in DPG/W/8 that appeared to give the Group authority to make recommendations to other international organizations.

3. Regarding product coverage, one delegation observed that the phrase "subject to the approval for sale being granted by a government controlled regulatory authority", (as stated in product category (i) of the proposal contained in DPG/W/8), implied coverage for all products, whether approved or refused for sale, withdrawn from sale or for which approval was in the process of review. It explained that important differences existed among these categories of products and that the latter category was very large and consisted of products which may not be dangerous but were still under review. This delegation also asked how control of "products whose indicated or approved period of use had expired or was about to expire", (as stated in product category (ii) of DPG/W/8), would be administered and specifically what was meant by "about to expire". Several delegations asked for a clarification as to what was precisely meant by product category (iv) of DPG/W/8, plant, machinery, and capital goods. The delegate of Nigeria explained that this category was broadly meant to include machinery that was deemed improperly manufactured and considered unsafe in the domestic country. Regarding the category of goods whose approved dates had expired, he stressed the need to control circumvention of the regulations applying to such products by exporting them mainly to developing countries.

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4. Several delegations thanked the delegate of Nigeria for his clarification regarding the category of plant, machinery and capital goods and observed that this category, as it was now understood, could be covered by the other product categories included in either of the two proposals.

5. Regarding international measures, some delegations, while generally supportive of the proposal contained in DPG/W/9, noted the potentially complex legal issue involved in imposing binding obligations on GATT contracting parties with respect to other international agreements. Three delegations expressed their view that any agreement negotiated in GATT would have to be formulated as a best-endeavour approach because GATT could not impose obligations on its contracting parties to accept and apply the instruments adopted under other international organizations. The delegate of the European Economic Community explained that his proposal was exhortatory in nature with regard to the substantive obligations established in the instruments of the other organizations. He added that the legal form that the agreement should take should have the objective that it be applied by all contracting parties.

6. Several delegations noted that the innovative dispute settlement provisions contained in DPG/W/8, dealing with interim measures and payment of damages, would need considerable further study. One delegation observed that these dispute settlement procedures appeared to impose obligations only on exporting countries. Another delegation understood that any dispute arising within the context of an agreement in this area would be a dispute with respect to GATT obligations and not with respect to obligations under the other international agreements. However since GATT imposed no obligations to restrict trade but only permitted restrictions under Article XX, it was asked how a failure to restrict trade of the products concerned would give rise to any dispute under the GATT. The delegation of Nigeria explained that these dispute settlement provisions were introduced because his delegation considered that the offending party in a dispute should be obligated to pay for damages. The concept of interim measures was introduced because the products at issue were dangerous and if measures to prohibit trade in such hazardous products were left until the dispute was resolved, dangerous health and environmental risks could arise.

7. The Group took note of the statements made. It was agreed that the Chairman would draft, on his own responsibility, a comprehensive discussion paper which would be based on the proposals contained in DPG/W/8 and DPG/W/9, taking into account the clarifications given by their sponsors and the comments made by other delegations. This would be circulated by the first week of June for discussion at the next meeting. 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.

8. The next meeting of the Working Group would be 6 July 1990.