

# GENERAL AGREEMENT ON

RESTRICTED

## TARIFFS AND TRADE

Spec(91)3  
25 January 1991

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Working Group on Domestically Prohibited Goods  
and Other Hazardous Substances

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

29-30 October 1990

1. The Working Group on Domestically Prohibited Goods and Other Hazardous Substances held its ninth meeting on 29-30 October 1990 under the chairmanship of Ambassador John Sankey (United Kingdom).
2. The Chairman reported that on 12 October 1990 an informal discussion had taken place at the level of experts to discuss the technical issues relating to the definitions in Annex I. This discussion had resulted in a redraft of Article 2 and Annexes I and II which were included in the revised version of the Draft Decision, dated 22 October 1990, which would provide the basis for discussion at this meeting.
3. Delegations generally welcomed the revised version of the text. Two delegations were concerned that Article 2 might imply coverage that was too broad. One suggested limiting the coverage in Article 2 to "products and wastes, the transboundary movement of which was covered by the instruments listed in Annex II." However most delegations did not believe that this would meet the broader objectives of the Group whose mandate was to examine trade-related aspects of domestically prohibited goods that may not be adequately addressed. The other delegation asked if the definition of severely restricted would cover products that were licensed for controlled purposes but were legitimately and freely traded, such as radioactive materials. It did not believe that such products should be included in the category of "products concerned" whose trade would be affected by this Decision. Another delegation recalled, however, that the concept of "controlled products" had been dropped from the definition of severely restricted in order to avoid inclusion of these sorts of products. Another delegation did not believe that this was an issue because the subjective nature of the definitions implied that the domestic legislation of each contracting party would determine whether it would allow the export of a product. This delegation also presented a proposal to combine Articles 1 and 2 because it believed there was some cross-reference between the two Articles.
4. One delegation presented a proposal for paragraph 1 of Article 3 as it was not satisfied with the four alternatives presented in the text. Several delegations voiced initial support

for this proposal, although three requested the addition of the word "should" next to the existing "shall." One delegation believed the concept of "serious and direct" danger, which it had introduced in its alternative paragraph, should be retained and would produce language to this effect later. It also suggested including in the Decision the idea that an export ban could be revoked at a later time in the event that a contracting party indicated that it wished to import the product. Several delegations also requested the retention of the phrase in the fourth alternative "recognizing the prerogative of individual importing countries to determine whether to allow the import and use of the products concerned in their specific situations," but were uncertain as to its appropriate place. Two delegations, however, believed it was unnecessary because it weakened the Article. One delegation circulated a proposal for paragraph 2 of Article 3 to take into account those contracting parties which were not signatories or participants of other international instruments. Several delegations requested the inclusions of the word "should" in the proposal since this paragraph could go no further than exhortatory language.

5. Several delegations had comments regarding Article 4.3. One delegation noted that the language of Article 4.3 presumed that the examination stipulated under Article 3.1 would have been carried out in all cases. It understood this not to be the intention of Article 3.1 and suggested language to resolve this. This delegation also asked if the provisions of Articles 4.3(a) and (b) would be on a shipment-by-shipment basis or on a more general product basis. It believed the former would create practical and resource problems because it was often difficult to keep track of where exports were going. If the intention was the latter, this delegation believed that perhaps the obligations could be fulfilled by Articles 5 and 6. Several other delegations shared this concern but most believed that a notification system, more direct than the obligations of Articles 5 and 6, was envisioned in this Article. One delegation stated that it believed information should go to all contracting parties and, rather than through an enquiry point system, it would be more efficient to send them through the GATT secretariat. Several delegations supported this idea and added that such notifications should be sent on a product basis, not with each shipment. Two delegations stated that bilateral notifications should also be sent and that the general responsibility of ensuring the information flow should be on the exporters, not the importers. Another delegation stated that the criteria of when to notify, as contained in Articles 4.3 (a)-(c) were not necessary because the criterion for notification was simply the discrepancy between the domestic legislation and the action on the export side which would be based on the provisions of Article 3. However, it was noted that this did not address the problem of overlap with the obligations of other international instruments. It was agreed to redraft this Article so as to oblige all contracting

parties to abide by its provisions but create an exception for those contracting parties that had other international obligations which would take precedence. Another delegation suggested that the earlier version of Article 4.4 should be returned to Article 2. One delegation noted that expired products were not always as dangerous as products that had been banned or severely restricted, so perhaps they should not be included in the Decision. However, another delegation pointed out that, as presently drafted, Article 4.4 referred only to expired "products concerned" which would imply only those products that had been already banned or severely restricted. It was agreed to return to this issue later. Several delegations also made comments of a drafting nature in relation to Article 4.

6. It was agreed that Article 5, except paragraph 5.2(c), was unnecessary and should be deleted. In relation to Article 6, one delegation believed that the possibility existed for a central government to be held at fault if provincial or state government took an action to ban or severely restrict a product but did not inform the central government. It also suggested that it should be made clear that this Article would apply only to new legislation. However, another delegation stated that this Article was addressed only to contracting parties and their legislation on international trade and that it was not wise to limit the amount of information that could be available to other contracting parties to national legislation only.

7. One delegation suggested incorporating Article 7.5 into 7.3. However, another delegation noted that these provisions had quite different objectives since the former stipulated a comprehensive review of the provisions of the Decision, while the latter stipulated a review of the implementation and operation of the Decision. A few delegations supported such a comprehensive review but not as an obligation.

8. One delegation sought clarification as to what type of technical assistance would be offered by the secretariat under Article 8 and whether technical assistance would be offered in areas that were already provided for by other international instruments. If so, it believed this would imply duplication. Another delegation stated that it envisioned the GATT secretariat as a focal point to which countries could come for information as to where to go for more technical assistance. It believed that it was up to each contracting party to define its own needs in the context of a flexible technical assistance provision.

9. Two delegations sought clarification as to what sorts of issues could become the subject of dispute settlement procedures under Article 9 of this Decision. Another delegation noted that this Article could provide a forum for discussion and consultation on

issues related to the implementation of the Decision. In this context, another delegation believed that the dispute settlement procedures to this Decision should place emphasis on arbitration procedures. One delegation stated that this Article should include a clause dealing with interim action and compensation. However, it was agreed that dispute settlement procedures in this Decision should not go beyond the provisions of the General Agreement, which were presently considering inclusion of these ideas under the Uruguay Round negotiations. Also it was agreed to move Article 9.2 to Article 4.

10. Regarding Annex I, one delegation believed that the definition of severely restricted pharmaceuticals was too broad and suggested language which could replace the present definition. It expressed the desire to discuss this language with the representatives of the WHO through the assistance of the secretariat and revert back to this issue later. Another delegation noted that the definition of hazardous wastes was inconsistent with the other definitions because it was based on objective criteria and not on the subject criteria of domestic legislation in a specific country

11. Regarding Annex II, it was agreed to put items 7 and 8 into a footnote because the former was a regional instrument and the latter was a list without procedural obligations.

12. One delegation stated that all GATT Articles were relevant to the Decision and therefore suggested deleting those paragraphs in the Preamble which referred to specific GATT Articles. Another delegation suggested compiling these paragraphs into one general paragraph which would recognize the relevant provisions of the GATT as they applied to this Decision. Several suggestions of a drafting nature were made.

13. The group took note of the statements made. It was agreed to continue discussion at an informal meeting the following afternoon after which a revised text would be circulated before the next meeting of the Group.

14. The next meeting of the Group would be held on 12 November 1990 with the possibility of further informal meetings on 13-14 November 1990.