

# GENERAL AGREEMENT ON

RESTRICTED

## TARIFFS AND TRADE

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### TRADE AND ENVIRONMENT

#### Statement by the Delegation of Australia

I am pleased to have the opportunity to speak early in today's important debate.

The issues being discussed are of great importance and are fundamental to the future of the world. They are also issues which have the potential to change the traditional way the GATT has functioned or, if you like, the personality or character of this organization.

These are not issues that we should shirk from - to do so would not be in the GATT's interests now or in the future.

Many eyes are on us as this subject is of continuing domestic and international interest and of research by both government and non-governmental organizations, as well as by international economic bodies such as the OECD and UNCTAD.

If we do not or cannot come up with answers to the questions being put to us, we may well find ourselves being forced from the outside to provide solutions for a range of environmental problems or risk having our position eroded.

It is for these reasons that the Australian Government fully supports these discussions. Australia, as you will know, has taken an active interest in environmental issues both domestically and internationally. We are actively seeking international consensus to address the issues of climate change and the conservation of biological diversity. Our initiative on the Antarctic environment (natural reserve devoted to peace and science) would be well known. Australia is a signatory to, among other international agreements, the Convention on Trade in Endangered Species (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer and the South Pacific Convention on Driftnet Fishing.

My delegation supports the establishment of a Working Party with appropriate terms of reference to study in detail, as well as give constructive consideration to, the question on how contemporary environment issues are to be best addressed in the GATT system. Mr. Chairman, my delegation will actively participate in such a working party.

Any discussion on the relationship between the environment and trade cannot ignore their often contradictory objectives. Many of the issues that have been raised in previous discussions in the GATT and in other forums have emphasised this fact, as well as the need for a balance to be struck between the basic objectives of both and, wherever possible, to integrate the goals of both. The task before the GATT is therefore not an easy one.

We have given much thought to the issues before us today and I would like to take this opportunity of sharing with you some of our initial thinking.

As a result of recent research on environment and trade by international economic bodies including the OECD which, through its Joint Trade Committee and Environment Committee deliberations, is in the process of preparing an authoritative and comprehensive paper on the issue, we believe that the range of measures available to enforce environmental policies and the effect that these may have on international trade are familiar to and widely understood by contracting parties. In terms of the present debate on the issue, rather than reiterating what is already well documented, we would urge contracting parties to focus instead on what action, if any, it would be appropriate for the GATT to take on the issue.

Most unilateral trade measures are presently confined to specific products and, arguably, do not yet have a measurable impact on world trade. There is no doubt however, that as countries seek to resolve what they perceive to be environmental problems - whether these are global or local in nature - and as international environmental agreements lag behind Governments' domestic imperatives to be seen to take action, there is likely to be an increasing move toward the use of trade instruments. Furthermore, as countries move towards policies of sustainable development, there will be efforts to internalise environmental values into market prices and a greater use of economic and fiscal instruments. All of these responses to environmental concerns have the potential to affect international trade. The task now before contracting parties is to decide whether the GATT should ignore this trend or should adapt to accommodate it and provide direction for countries contemplating taking environmental measures.

All of the trade measures used for environmental purposes that have been identified by the OECD and by individual contracting parties, have the potential to affect trade. However, as a GATT panel has noted, it is the application of a measure and not the measure itself that needs to be examined (United States - Imports of Certain Automotive Spring Assemblies). One of the fundamental questions is to distinguish between legitimate trade measures taken for purely environmental reasons and ones taken for protectionist reasons and, what approach the GATT should take toward legitimate environmental measures which are potentially inconsistent with GATT rules. That is, should legitimate trade measures continue to be

assessed on existing GATT rules or should the GATT change in some way to accommodate measures that may be currently inconsistent.

International agreements such as the Montreal Protocol, the Convention on International Trade in Endangered Species and the Basel Convention on Transborder Movement of Hazardous Waste have not been required to be tested for their GATT conformity.

It is my delegation's view that where an International Convention exists which has the primary objective of resolving non-trade concerns that have political or moral goals, the controls on trade flows necessary to give effect to the Convention's primary purpose would be considered apart from a party's GATT obligations.

In our view, the historical approach of the GATT to multilateral agreements that have trade implications presents no conflict for countries that wish to take measures to effect their obligations under these agreements. GATT membership is already over 100 with more in prospect. Its membership represents almost all the world's major economies. Multilateral environment agreements whose objectives are to pose solutions to global environment problems will normally comprise a very large number of contracting parties and be representative with respect to many factors including size of economy and stage of development. In the past, the GATT approach to such international agreements has been implicit and we do not necessarily see that there is a need to directly involve the GATT in examining the consistency of international environmental agreements.

We understand however, that some contracting parties might consider an examination of the interrelationship between international trade and environmental measures to be incomplete if multilateral agreements were to be excluded from GATT discussions. If this is the case, a solution might be to formalise the GATT's recognition of international environment agreements by amending Article XX(h) to include obligations under multilateral environmental agreements in addition to commodity agreements.

The GATT viewpoint might also be usefully incorporated in the drafting of international environmental agreements if the GATT secretariat were to act as an advisory body on request of contracting parties who were involved in the negotiations toward the establishment of a particular agreement.

While in our view there would appear to be fewer problems and also concerns about trade measures being incorporated into international environment agreements, this is not the situation with unilateral actions taken for environmental reasons. As I have already mentioned, when a measure is taken by a contracting party without the cover of an international agreement and the action affects international trade, it is appropriate for the GATT to examine the measure in accordance with its rules.

The GATT already has a framework in place which can accommodate many trade measures taken for environmental reasons. Relevant rules relate to the GATT principles of transparency, non-discrimination and national treatment. However, efforts by a country to make its environment measures as GATT consistent as possible may not always prevent conflict between environmental and trade objectives. If measures are not able to comply with GATT disciplines, the measures need to be justifiable under one of the exceptions to GATT rules contained in Article XX.

Where the environmental problem is confined to one's own customs territory, for example, where export bans are placed on a natural resource because it is under threat and its use is being substantially curtailed in the domestic market, then the application of Article XX provisions are reasonably straightforward.

As other contracting parties are aware, the issue becomes complicated when the environmental goals involve the product or resources of a second country or when the measure is used to discriminate between like products on the basis of production or process methods for environmental reasons.

Taking the last point first, there are very few precedents in the GATT on the legitimacy of measures based on the method of production of goods. Production and process are important issues from the environment perspective, where measures are often aimed at changing the manner in which a product is produced. For example, this is the aim of the Montreal Protocol on Substances that Deplete the Ozone Layer. In assessing a breach of GATT rules relating to national treatment, the GATT looks at whether the imported product is being treated any differently to a "like" domestic product. As drafted, the GATT does not provide for differentiation between products solely on the basis of the method by which they were produced.

When environmental trade measures are questioned with respect to their consistency with the GATT, countries have usually sought justification under Article XX(b) or (g). However, these provisions as drafted and in practice, have commonly been regarded as only providing cover where the measures taken by a country are to preserve its own human, animal and plant life and health or to conserve its own natural resources. The GATT did not anticipate action taken by countries to promote or coerce the adoption of environmental controls in other countries.

The GATT's charter extends rights and obligations to contracting parties in respect of goods traded between each other. The GATT cannot rule on value or moral judgements nor can it consider whether objectives that were not contemplated by the GATT may be invoked to justify measures which are inconsistent with GATT obligations. At present, the GATT can only resolve conflicts that might arise from measures taken for environmental purposes on the basis of their consistency with the specific provisions of the General Agreements.

As we see it therefore, any discussion of environmental measures in the GATT will need to focus on five fundamental issues:

- Should the GATT specifically recognise the environment? If so, is it on the basis that it is an emerging political/moral issue or that it has a demonstrable impact on international trade?
- Should measures that are used to give effect to environmental objectives come under GATT rules? If they do, should these measures be addressed in much the same way as measures used, for example, to address balance-of-payments problems?
- What is the relationship between the GATT and non-trade international environmental treaties (i.e. which has precedence)?
- Is it legitimate from the GATT point of view to discriminate between like products solely on the basis of different methods used in producing or processing the product?
- Do the provisions of Article XX have extra-territorial application?

We have no fixed ideas on how the GATT might best solve the trade/environment issue. Such considerations should be reached only after extensive discussions have taken place. We support moves to reactivate the 1971 working party or to establish a new working party provided that either mechanism will provide a forum for a comprehensive discussion on the full range of environmental issues and will be open to all which have an interest in the subject. We would not expect the working party to complete its task in time for the UNCED conference, nor, in our view, should the scope or timetable of its work be limited by that conference, although the UNCED outcomes may be useful for the working party to consider.