

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## TRADE AND ENVIRONMENT

### Statement by the delegation of Canada

Until the international trading system addresses itself to global environmental realities, we can expect increasing frictions in the GATT as measures taken in response to environmental concerns proliferate with their concomitant impact on the international trading system. Over the past two decades the environment increasingly has provided a focus of discussion in international fora. The Rio Conference provides the next major multi-lateral opportunity to address environmental issues. However, we cannot expect this conference to provide the basis for coherent environmental policies without the benefit of guidance from the GATT respecting the recognized interplay of the environment and international trade.

As early as 1968, the "human environment" was addressed in the United Nations, complementing the work of a number of organizations and agencies (i.e. WHO, FAO, UNESCO, OECD) also engaged in responding to environmental concerns. The GATT participated in the preparatory work for the Conference on the Human Environment convened by the General Assembly of the United Nations in 1972. The results of the GATT Secretariat's survey of national measures undertaken by contracting parties to combat pollution and the impact that these measures might have on international trade in light of the rules and obligations of the General Agreement were presented by the Secretariat to that Conference.

At this time, the GATT working group on environmental measures and international trade was established to "examine upon request any specific matters relevant to the trade policy aspects of measures to control pollution and protect human environment especially with regard to the application of the provisions of the General Agreement taking into account the particular problem of developing countries". Though this working group has not yet convened, a more recently established working group is currently considering an agreement responding to specific concerns about health, safety and environmental protection of contracting parties, namely the working group on the export of domestically prohibited goods and other hazardous substances. Clearly, the issue of the environment is not new to the GATT.

The growing public concern to respond to environmental degradation has encouraged contracting parties to develop environmental policies more appropriate to sustainable development. The right of contracting parties to adopt measures in response to environmental objectives, even where these may impinge on trade, is clearly recognized under GATT rules and in some of the Tokyo Round instruments. These have been identified in the Ambassador Ricupero's note.

In this respect, Canada would note that Article XX provides for specific exceptions for measures aimed at the conservation of natural resources and the protection of human, animal and plant life and health; these words encompass the elements associated with environmental concerns. It is safe to assume that the drafters of Article XX never foresaw the current scope of environmental measures and therefore Contracting parties need to address the means by which these exemptions may be applied in the most effective and least trade distorting manner.

There is limited jurisprudence respecting the use of the general exceptions provided under Article XX. The current GATT rules require a contracting party relying on the exception under XX(b) and XX(g) to demonstrate that a measure inconsistent with the GATT meets the tests established under both the preamble of Article XX and the specific provisions. It is clear, however, that there is a need for greater clarity respecting their scope of the exceptions. These need to be addressed insofar as the answers to outstanding questions respecting this Article could have major implications for the efforts of Contracting Parties to pursue conservation objectives. For example, under Article XX(g), can the term "restrictions" relating to domestic production be interpreted to extend to restrictions on the production process (rather than the good itself)? To what extend does Article XX(g) require the resource being conserved to be the same (of the "like product") as the resource which is the subject of the restrictive measure.

There remains the important question with respect to both Article XX(b) and XX(g) as to when a Contracting Party may adopt measures in support of a unilaterally established standard or objective related to conservation or to human, animal or plant life or health in respect to areas outside national jurisdictions.

In the context of Article XX(b) is there not a need to address the issue of zero versus manageable risk?

Concern about the scope of Article XX and other GATT Articles and code provisions are only one aspect of the trade and environment debate. The review and further clarification of existing GATT rules and obligations related to measures adopted in response to the environment should take into account the GATT principles of non-discrimination, notification and transparency as well as those of appropriateness and proportionality of measures adopted in response to environmental objectives.

Contracting parties have to varying degrees responded to environmental concerns by way of both national and multilateral initiatives. Multilateral "environmental" agreements or accords are focused most often on a "global environmental objective". Again, the issue of the extra-territorial scope of the agreement needs to be examined. Contracting parties may want to examine the extent to which multilateral "environmental" agreements can be applied and enforced with respect to signatories and non-signatories to the agreement.

Unilateral measures taken in support of legitimate environmental aims could benefit from harmonization. There is a need to guard against protectionist pressures in the guise of environmental measures. An

examination in the GATT of the interlinkages between trade and the environment provides the starting point for discussion that hopefully will lead to coherent responses and facilitate the complementary goals of sustained economic development and environmental protection.

Canadians are particularly aware of the need to balance economic development with responsible resource management and protection of the environment. In part this can be traced to the fact that Canada's economy has been built in large part from the extraction and exploitation of its natural resources. Canada has adopted standards, technical measures and policies in response to environmental concerns. This is especially evident in respect to Canadian measures necessary to marine conservation.

Canada recognizes that in an increasingly global and interdependent economic order, domestic environmental policies have repercussions that can reach far beyond the limits of territorial jurisdictions. It is also true that however inconveniently, the world's eco-system shows a stubborn disregard for national borders. By definition, there can be only limited benefits to environmental initiatives that are isolated to national environmental objectives and national jurisdiction. In this respect, Canada has recognized that multilateral environmental arrangements in some cases provide the most appropriate means of addressing environmental issues. These arrangements, no less than those undertaken individually by contracting parties, must seek to avoid the adoption of environmental protection measures which unduly restrict legitimate trade regardless of the source.

The underlying economic themes of environmentally sound sustainable development and a liberalized international trading system are similar, and the World Commission on Environment and Development (Brundtland report) stated that economic development and prosperity are necessary in order to be able to address environment issues. There is an obvious nexus in these two purposes.

Canada is committed to sustainable development and in December 1990 after extensive national consultations, the Canadian Government introduced a comprehensive statement outlining government environmental policy and programme initiatives. Canada's Green Plan for a healthy environment will result in extensive adjustments to Canada's industrial and non-industrial production and service sectors. In order "to secure for current and future generations a safe and healthy environment, and a sound and prosperous economy" initiatives in a number of areas will be undertaken respecting:

- clean air, water and land;
- sustainable use of renewable resources;
- protection of our special spaces and species;
- preserving the integrity of our north;
- environmentally responsible decision-making at all levels of society;
- minimizing the impacts of environmental emergencies; and
- global environmental security.

Canada's green plan provides a comprehensive basis for our future domestic and foreign environmental policies.

As we look forward to an increasingly heavy international environmental agenda leading up to and beyond the June 1992 Rio Summit, we must establish a systematic approach within the GATT to ensure that environment and trade questions receive appropriate attention and analysis. As a first step, Canada would strongly support active secretariat participation in the negotiations of a framework Convention on Climate Change and the UNCED preparatory process. In addition, as mentioned above, we feel that the GATT Secretariat, through an analysis of the linkages between trade and environment issues, can make a valuable and needed contribution to the knowledge base that will underpin the UNCED process.

At the same time, within the GATT, it is clearly important that the Contracting Parties engage in a full assessment of trade and environment. This should take place most appropriately in the context of a GATT Working Party. If Contracting Parties forego this discussion, we place at risk the ability of the international trading system to complement urgent environmental concerns in a manner that ensures the least disruption to the legitimate trade interests of all contracting parties.

Canada has already indicated to Council its support for the proposal that a GATT working party, drawing on both trade and environmental expertise, continue to undertake a comprehensive examination within the GATT framework of the interlinkages between environmental policies and trade. The Council itself is not the appropriate forum for this ongoing technical discussion. Canada would urge the early reactivation of the Working Party under terms of reference that would allow full debate and consideration on the wide range of issues that need to be addressed with respect to environment and trade including those identified in the Chairman's note I referred to earlier.

Canada considers that the original terms of reference of the 1971 working group are broad enough for this purpose. However Canada has no objection to these terms of reference being updated should contracting parties consider this useful or appropriate.

In closing Canada would reiterate that the comprehensive outline of points prepared by the Chairman provides a good base of issues upon which a working party can begin its examination.