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TRADE AND ENVIRONMENT

Statement by the Delegation of India

At the outset, I would like to take the opportunity of complimenting Ambassador Ricupero, who in his capacity as Chairman of the CONTRACTING PARTIES has been conducting informal consultations in a very balanced and able manner on what the GATT could do with respect to the vast and complex issue of environment and trade. It is as a result of his competent handling of the consultations that we see ourselves engaged in a structured debate in the present Council meeting which should help clarify the issues involved and enable us, hopefully, to take a view on any future course of action in this regard.

Since my delegation had advocated a particular point of view on this issue in the Council, I would like to mention that we are not indifferent to environmental concerns. In my country we have a long cultural legacy of living in harmony with nature. India attaches great importance to promotion and conservation of its environment. Our constitution contains specific provisions for the purpose of improving its environment, protecting its forests and wild life. We have put in place elaborate, domestic, administrative and consultative structures and mechanisms, both at the federal and sub-federal levels to attain these objectives. There are also a number of non-governmental organizations and green groups active in this field.

We have been active in the relevant international organizations dealing with environmental issues in promoting the protection and conservation of the global environment. We are happy, and, indeed welcome the increasing attention that the international community has started paying to this important issue. We consider that the entire international community has a vested interest in protecting environment and ordering its management in a sustainable manner for the welfare of mankind.

It is essential, however, to view the issue of preservation of environment from the perspective of "sustainable development". This would call for development and growth being pursued in a sustainable manner, not only in the national or regional context but in the global framework. Sustainable development has been defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Sustainable development thus requires meeting the basic needs of the global population and promoting a better quality of life for all.

In this context it is well to recall that the industrialized countries of the North have largely contributed to the present state of global environment. This is primarily due to the unsustainable patterns of production and consumption in the industrialized world. This has been explicitly recognized in the United Nations General Assembly Resolution of December 1989, setting up the UNCED. The concept of sustainable development would call for reassessment of the consumption patterns and life styles in these countries. I will not go into details as this issue was covered extensively by the Argentinian delegation in their statement yesterday.

In the case of developing countries, poverty is the main source of environmental degradation. Degradation of soil and deforestation are the main environmental issues in a large number of developing countries. This aspect and the priorities it sets out for developing countries were brought out by Ambassador Jamal in his intervention yesterday on behalf of the African countries. I will, therefore, refrain from giving details. Conservation of environment in developing countries would, thus, have to begin with measures for alleviation and eradication of poverty. Trade could play an important rôle in generating growth and giving an impetus to development. However, for this to be realized, active assistance and positive measures would have to be implemented by the international community. Reversal of the deteriorating terms of trade for developing countries, adequate remuneration for export-commodities, removal of tariff escalations on products of export interest to developing countries and removal of import restrictions and tariff and non-tariff barriers on items like textiles and clothing, agriculture and footwear etc., where developing countries have a competitive advantage, could contribute to the development of developing countries and in releasing resources for the protection of their environment. If specific measures are required to be taken by developing countries for the protection of their environment, they would need new and additional resources for implementing such programmes. Moreover, they would also need the assistance of the international community through concessional, preferential and non-commercial transfer of technology for participating in global action against environment threats which they have done nothing to create. This is not to deny the concept of burden sharing which is being advanced by industrialized countries. However, equity demands that the burden be borne by those who have brought us to this pass.

It is pertinent to note that environment is a relatively new issue on the agenda of the international community. The issue is as new and unexplored as it is vast and complex. A number of international organizations and agencies have been mandated with the task of engaging in multilateral discussions and negotiations to arrive at a better understanding of the issues involved and to establish international instruments for the conservation of specific aspects of the environment. To be specific, the United Nations Conference on Environment and Development has been authorized by the General Assembly via its Resolution No. 44/228 dated 22 December 1989 to convene a conference at the highest possible level in Brazil in June 1992 to "elaborate strategies and measures

to halt and reverse the effects of environmental degradation in the context of strengthened national and international efforts to promote sustainable and environmentally-sound development in all countries". The agenda of this conference and task set before it are as ambitious as they are complex. The volume and scope of documentation by the UNCED and other organizations is only one indicator of the magnitude of the task that faces the international community on this subject. A great deal of scientific and technical uncertainties still prevail in this area which implies that a considerable amount of additional extensive work still needs to be done before one could obtain a clear perspective of the implications of all aspects of the issue of protection of environment.

Trade is but one aspect in the wide area of human economic activity. Furthermore, it is inappropriate to seek to introduce the all-encompassing, all-pervasive subject of environment and sustainable development in the context of GATT, which is but a contract setting out rules for facilitating trade amongst the contracting parties to the Agreement in the area of goods. A detailed and comprehensive consideration of the interlinkages between trade and environment will necessarily involve substantive discussions on environmental objectives, policies, standards and the future course of action to be pursued in this area. GATT cannot and should not usurp the task of determining environmental policies without any mandate or competence in this field. The very nature and charter of the General Agreement does not permit it to get involved in free-wheeling, no holds-barred exercise in discussing environment per se. My delegation holds the view that the existing GATT framework is adequate to deal with present day trade-related concerns of environment. I will elaborate on this in a while.

I have provided some preliminary views on our thinking on the issue of environment. With respect to the measures, both trade and others, which are listed in document Spec(91)21, I will not go into any great detail. I will, however, make some general comments on the import and export-restrictive measures taken for environmental purposes.

Because of the all-encompassing nature of environment and sustainable development, certain overlaps between the issues of trade and environment could be expected. Protection of environment could, in some circumstances, demand the imposition of certain trade-restrictive measures, either on imports or on exports. GATT and its instruments have, in the past, proved flexible enough to respond to various demands made on it. It is incorrect to say that GATT is insensitive to environmental issues and that this leads countries to adopt trade measures for achieving certain environmental objectives in disregard of GATT disciplines. This was brought out well in the statement of several delegations yesterday, notably that of Hong Kong. It is, however, essential to ensure that trade measures are not employed by countries on environmental grounds to provide arbitrary and unjustified protection to their domestic industries. Various provisions of the

General Agreement like Article XX and its subsidiary instruments like the Standards Code do provide adequate guidelines and a basis on which trade measures for environmental purposes could be adopted by contracting parties. A number of principles like those of non-discrimination, appropriateness or legitimacy, proportionality, scientific evidence, transparency, etc., are already either explicitly or implicitly contained in GATT provisions and need to be observed.

It is also pertinent to note that while advocating liberalization of trade in a balanced manner, GATT has been alive to its responsibilities towards specific environmental issues as and when the need has arisen. This is quite evident from the manner in which environmental aspects have been covered in various negotiating areas under the Uruguay Round - be it the issue of subsidies and countervailing measures or agriculture of the TBT Agreement. Even in its regular work, GATT has risen to the challenges posed to it as is evidenced by the important work done by the Working Group on Domestically Prohibited Goods as also the task entrusted to a panel for resolution of the Mexican complaint on United States' restrictions on imports of tuna fish. We find no reason to introduce any changes in the practice of evolution of the application of the General Agreement through an interpretation of its provisions by the contracting parties on a specific case-by-case basis.

As mentioned earlier, protection of environment in certain cases could demand the imposition of certain trade-restrictive measures on exports or imports. This would generally be applicable on those environmental issues which are global in nature, like for example, preservation of the ozone layer and protection of emission of greenhouse gases; issues such as those which encompass trans-boundary and trans-national concerns. The objectives in these cases cannot be attained except through joint international action. Objectives, guidelines, standards and procedures for environmental protection in these areas would have to be discussed and decided in the relevant international fora. This would, however, call for an international consensus in the relevant international fora which are charged with the mandate of dealing with these issues. Specific aspects of international environmental instruments thus evolved could then be viewed in relation to the existing rights and obligations of the existing economic instruments like GATT.

This also implies that it would be inappropriate for countries to adopt unilateral measures on the basis of environmental considerations which are trans-national in character and for which no multilateral instruments exist. The use of unilateral trade measures in such cases like those which would seek to link the continuation of liberal market access for an exporting country with the pursuit of "sustainable development" policies and measures to protect environment in that country would be inconsistent with not only GATT provisions, but also international law. The question of sovereignty over national economic space and of extraterritoriality assumes crucial importance in these discussions. No country has the right to unilaterally impose its will and its views on

another country with respect to the management of its environment of resources. It would, however, be legitimate for countries to take internal measures on environmental considerations which are local or national in nature, as long as such measures are consistent with the relevant provisions of the GATT and instruments like the Standards Code.

I will not deal, in any detail, with the other issues that have been mentioned in the Spec document. We have heard some interesting ideas from New Zealand and other delegations on the possible ways of bringing it into conformity with the General Agreement. Some of the trade aspects are contained in international agreements dealing with environmental issues through Article XXV action by the contracting parties. We would be interested in a further elaboration of these ideas.

I would like to refer briefly to the point made in this debate, that products should reflect the full costs of production including the damage that might be caused to the environment. It has to be recognized that differing-environmental situations and standards prevail in different countries, particularly between developed and developing countries. There is a fallacy in the argument that since higher product or environmental-protection standards result in increasing the cost of production, imports from sources where the standards are not so stringent actually amount to a subsidy and constitute an "unfair" trade practice in the exporting country. We believe that all countries have to make their own judgements on the balance of their advantages in all areas of human activity. Protection of environment is a component of the competitive situation of a country and is reflected in its balance of advantage. Countries which require higher standards of environmental protection not covered by any international consensus will have to make their own judgement, keeping in view their overall interests; they cannot be allowed to impose these standards on other countries or penalize them for alleged "unfair" trade practice.

I will now turn to some of the procedural aspects of this debate. As to the proposal made by EFTA countries for convening of the Group established in 1971, before the second-half of September 1991, I would point out that the Group established in 1971 had a very tightly-circumscribed mandate. The mandate reads as follows:

"to examine upon request any specific matters relevant to the trade policy aspects of measures to control pollution and to protect human environment especially with regard to the application of the provisions of the General Agreement taking into account the particular problems of developing countries."

The Group does not have the mandate to undertake an examination of issues proposed by EFTA countries. Even at the time of the setting up of the Group in 1971, the magnitude and complexity of the environmental issues

were well known and recognized. Let me quote from the observations of the Director-General at the Council meeting held on 9 November 1971. I quote:

"The functions of the proposed Group would be limited to the consideration of specific matters that were relevant to the application of the provisions of the General Agreement. There was, thus, no danger of duplicating or encroaching on work going on in other bodies on this very large problem of environment."

We have to be extremely cautious while approaching these complex issues. Consultations being conducted by Ambassador Ricupero are proceeding well. The structured debate presently under progress has thrown up some useful ideas, which would facilitate the consultation process. We hope that these consultations would result in a better understanding of the issues involved, which should be our main objective at this stage of the discussions.

On the contribution by GATT to the UNCED process, we could envisage a factual secretariat paper sent on its own responsibility without committing the contracting parties in any way, as was done in 1972. The subject of this secretariat document would need to be discussed and decided through a process of consultations. In the meantime, we would support the ASEAN request for a purely factual document on the basis of suggestions contained in their communication.

In our view, it is evident that:

1. Protection and conservation of environment is a vast, complex and new issue on which considerable work needs to be done which is being pursued in the relevant international organizations.
2. GATT is a contract amongst contracting parties setting out rules for trade in goods and cannot be the forum for consideration of all economic issues.
3. Objectives, policies and standards on environment should be arrived at through a multilateral process in relevant international fora. This work cannot be dealt with under the aegis of GATT.
4. Trade measures could be taken for meeting environmental objectives only when there are international agreements or conventions on such issues. These measures should, however, be in conformity with the relevant GATT provisions and instruments.
5. Economic and regulatory instruments employed for protection of environment in the national context should be least trade distortive and should not be designed as disguised barriers for protection of domestic industries.

6. GATT is presently adequate and well-equipped to deal with trade-related environmental issues; it has an admirable record in dealing with the issues until now.
7. There is no case for a free-wheeling exercise on the linkage between trade and environment in GATT.
8. Informal consultations should continue for determining the GATT contribution to UNCED 1992 and any other relevant issues.