

GENERAL AGREEMENT ON

RESTRICTED

Spec(91)42

11 July 1991

TARIFFS AND TRADE

COUNCIL
29-30 May 1991
Item No. 1

Original: English

TRADE AND ENVIRONMENT

Statement by the Delegation of Sweden, on behalf of the Nordic Countries

The Nordic countries, together with the other EFTA members Austria and Switzerland, introduced the idea of a discussion in the GATT on the linkages between trade and environment. We therefore warmly welcome this opportunity, taken at the initiative of Ambassador Ricupero, for a more extensive and structured exchange of views on this subject. We feel it is important both for the continued relevance and strength of the General Agreement as such, and for each individual contracting party.

A number of speakers yesterday and today have stressed the importance of taking developing country concerns into account. We fully support this, but at the same time firmly believe that the interlinkages between environment and trade have the potential to affect all countries, not least the developing countries; and that the programme of work we would like to see will prove in the long run to be of benefit for all contracting parties.

Our faith in the benefits of a rules-based system is as strong here as for other trade-related matters. Such a system represents the best and surest way of achieving a reasonable balance between different interests and different countries, and of avoiding costly and disruptive trade disputes. We believe that clearer rules in the GATT on how to treat the trade implications of environmental measures will help to defuse many of the potential problems that appear to be developing in this area.

As many other speakers have already underlined, the GATT already has a framework in place which can accommodate many of the trade-related measures taken to protect the environment. What we are looking for now are agreed interpretations to cover new situations that were not envisaged by the drafters of the original text in 1947, or perhaps even new rules to cover such cases. But on this score, we retain an open mind. It is far too early yet for anyone to be able to tell what the most appropriate solutions will be. We would however agree entirely with those speakers who have cautioned that a blanket exception for environmental measures would be inappropriate. That is not what our discussions should be about.

This is a complex and to a great extent unexplored area. As the distinguished representative for Uruguay, Ambassador Lacarte, and others pointed out yesterday and the distinguished representative for Malaysia speaking on behalf of ASEAN said just a few minutes ago: we should avoid hasty conclusions and proceed in an incremental way. We must first collectively examine the ways in which trade and environment policies interact and how existing GATT rules cover these situations. Only after such an examination has been completed, might we come to what could be termed a negotiating phase, of actually evaluating what implications - if any - all this may have for the content and interpretation of the General Agreement.

We have no decided opinion as to how long a time the first analytical phase should take, but hopefully, if we get started quickly enough, we will have enough material to be able to provide a late contribution from contracting parties themselves to the UN Conference on Environment and Development in 1992.

As was stressed in the joint EFTA statement yesterday, it is our firm view that a suitable forum already exists for the technical work required in the first phase. At least one of the speakers preceding me expressed concern over the limited membership of that forum, the Working Group on Environmental Measures formed in 1971. We do not feel there is cause for any such concern. As the Nordic countries have stated earlier in the Council, the list of countries attached to the original mandate can hardly be binding. A group formed for contingency purposes as this one was should be considered open-ended for all practical purposes. We have not heard anyone contest that view.

Although discussions of many technical issues have actually started in several other fora, we think it is important that discussions on trade and environment be conducted here in the GATT. This would provide an opportunity for all interested contracting parties to contribute to the work of reaching a more complete understanding of the issues, taking all aspects into account and clearing up existing misconceptions. The hard issues may be accurately identified only when such an exercise has been completed.

The outline for this week's structured debate very clearly illustrates the breadth and complexity of the issues raised by the link between trade policies and environmental policies. In the joint EFTA statement a broad-brush attempt was made to illustrate the kinds of questions that need to be studied further at a technical level.

That having been accomplished, we would like to focus in this intervention on a key issue which has been touched upon by many speakers as they have gone into various topics, but usually only in an indirect or implicit manner. And that is the question of how the principle of national sovereignty should be treated in the context of GATT disciplines for environmental measures.

National sovereignty and the equality of States are well established principles of international law, enshrined in the United Nations Charter. At the same time, in this age of increasing interdependence, these principles require an ever more sophisticated treatment. International trade is at the cutting edge of many of the problems that may arise in this area because, by definition, trade policy affects thy neighbour.

In the GATT agreement, contracting parties have voluntarily accepted some limits to their sovereignty in the interests of greater collective welfare. But only a very limited part of their sovereign rights have been given up. For instance, the GATT agreement does not explicitly allow contracting parties to take action to influence conditions within another Party's territory, or that Party's policies outside the trade field. Indeed, the General Agreement's very strong emphasis on non-discrimination underlines the opposite position. Therefore, we should safely be able to assume that we all retain a basic right to remain free from such pressures, which in many cases could be very effectively brought to bear through trade measures.

This is all a bit dry, but there are important implications for a number of the issues we will be discussing in the trade-environment area. We would like to mention some examples.

The first is the question of whether "national treatment" means that countries are free under Article XX to require that imported products comply with environmental process standards. That is, to require that they are produced as cleanly abroad as at home. We would say no. How they are produced abroad does not a priori affect the domestic environment. It should therefore not be legitimate to place such requirements on imports. In fact it is important from the environmental point of view that differences in environmental conditions are allowed to affect competitively, so that international specialization is efficient also from an environmental point of view.

There is a clear link here to the "free rider" argument. The term is used in many ways and in many contexts within the GATT, but we are referring now to the idea that countries with lower environmental standards are gaining unwarranted benefits from trade with countries applying high standards. As we see it, the argument basically hinges on the assumption that standards in the exporting country are "wrong" because they are less expensive. This is difficult to accept. Environmental standards must be allowed to differ for the simple reason that environmental conditions vary greatly from country to country. The term "environmental carrying capacity" is often used. There seems to be no justification for a level playing field as such, or for punishing exporting countries for instance through the use of compensatory border charges. At the same time we cannot ignore the "free rider" type of argument, because as environmental

regulations proliferate and economic instruments come into wider use, shifts in competitiveness will become a serious factor that many industries will have to face up to. Clearer rules are needed to help governments withstand protectionist pressures in this context.

The basic fact that each country is unique in its physical endowments also has important implications for harmonization. What kind of harmonization should be sought in the environmental area? The emphasis can hardly be placed on the harmonization of production standards, for the reasons just given. Possibly harmonization of product standards - in the appropriate international fora - would be more relevant. From a trade point of view perhaps terms such as compatibility, equivalence or mutual recognition should be the focus of interest.

Referring back to our argument that countries as a rule should not be free to apply production standards to imports: there is a special case which environmental issues have brought to the forefront, and which deserves our serious attention. In the environmental field there are instances where the manner of production in the exporting country directly or indirectly does affect conditions in the importing country. Here the GATT will be confronted with the problem of trade instruments being used to influence policies in other countries. A good example mentioned by many speakers before me are CFCs. No matter where they are used, the release of CFCs into the atmosphere causes "holes" in the ozone layer affecting many countries, even other continents. The other so-called greenhouse gases have also become a focus of international attention, and new international instruments are expected in time for the 1992 UN Conference in Brazil. The fact that many of these global issues are tackled collectively is a great help, but there always remains the problem of compliance and of how to treat non-participants. It is essential that the multilateral framework for trade is taken into account when evolving new environmental instruments of this type.

Apart from the global issues, similar situations can arise at the regional level: for instance due to the downstream effects of pollution in a common river, or other forms of cross-border pollution.

Whether global or regional, we must carefully consider whether these cases do not represent an exception to the general rule of national sovereignty, and whether the GATT should not explicitly take account of them in order to clearly delimit them. Obviously this raises many new questions about how direct an environmental effect must be, what type of action could be considered legitimate, and under what circumstances. Very difficult questions indeed, but whether we look at them or not, the GATT will probably have to cope with the results of an increasing number of policies designed to tackle global issues or transborder pollution problems.

We have given several examples of issues that we strongly feel need to be discussed further. We have presented them using sovereignty as a starting point, because this is an aspect that sometimes seems to become obscured by the technicalities of each issue. There are of course many other aspects to take into account as well, and we must underline once again that we do not feel that we possess any clear answers yet. We are dependent upon further dialogue with other contracting parties.

We have been concerned by the reluctance of some countries to work on trade-environment issues in the GATT. Many arguments have been put forward. One is that it would be inappropriate to treat environmental issues in the GATT, that there are other more relevant fora. We agree. But we are not proposing to treat environmental issues here. We do not believe that the GATT is the right place to set environmental standards, discuss the transfer of environmentally sound technology, conditionality, and so forth. We are proposing to treat trade issues.

A second argument we have heard is that the GATT agreement is inappropriate because its goal is promoting free trade and not setting up new systems of barriers for environmental or any other reasons. We would dispute that view. Free trade is of course the central theme of GATT rules. But GATT exceptions are an explicit acknowledgement that governments have other goals besides free trade. The GATT may in fact be considered an instrument for balancing these various goals against each other, and this is what the trade-environment issue ultimately is about.

This concludes our contribution to be structured debate. I would however like briefly to bring up one further matter which relates to our work here today.

An informal seminar on "International Trade and the Environment" was held in Oslo, Norway, on 28 February and 1 March 1991, with the participation of independent and government experts as well as intergovernmental organizations, in their personal capacity. The seminar was organized by UNCTAD in co-operation with the Norwegian Government. The purpose of the seminar was to promote an exchange of views on the impact of environmental concerns on the elaboration of trade policies and the evolution of international trade relations. The issue of transfer of financial resources for environment and development was also discussed.

The Oslo seminar was intended - and indeed functioned - as a "brainstorming" event. Firm conclusions were not drawn; rather, a large number of points were made that commanded differing degrees of support.

A report of the proceedings of the seminar has been made by the UNCTAD Secretariat. In our opinion, the summary could be helpful for our further work and the Nordic delegations would therefore request the distribution of the report to the contracting parties.