

WORLD TRADE ORGANIZATION

RESTRICTED

WT/CTE/W/32

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Committee on Trade and Environment

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DOMESTICALLY PROHIBITED GOODS

Proposal by Nigeria

1. This communication complements the proposal made by Nigeria and circulated in document W/CTE/W/14 on 27 November 1995. It also addresses points and questions raised by other delegations at the December meeting of the Committee on Trade and Environment in relation with the proposal and its presentation made by the delegation of Egypt on behalf of the African Group.
2. Nigeria considers that WTO has a useful contribution to make to increasing the transparency of trade in DPGs. As was underlined by several delegations in December, the coverage of a WTO instrument on DPGs will be the most crucial part to define. Though intensive technical work will be needed in that regard, Nigeria wants at this stage to put forward the following considerations.
3. Nigeria noted that several delegations expressed doubts as to whether such products as food additives, cosmetics or consumer products fall within the mandate of this Committee since they would not be directly related to the "environment". Nigeria considers that this is too narrow a reading of the CTE mandate. The issue of DPGs has been under consideration in GATT/WTO for more than ten years, without any agreements being reached on the matter. When entrusting the CTE with the responsibility to reach an agreement on the longstanding issue of DPGs, WTO Members certainly did not mean to narrow its scope. Furthermore, products such as those listed above are of concern in the protection of human, animal and plant life or health in importing countries.
4. Although the network of international agreements and instruments dealing with trade in DPGs is relatively comprehensive, Nigeria notes that a preliminary survey indicates that certain cosmetics and certain other consumer products, which are of importance to African countries, are not subject to international notification disciplines. Nigeria underlined on various occasions that these products were of particular concern. In addition to gaps in product coverage, Nigeria notes that the membership of these various international agreements and instruments can range from 5 to 150 countries¹. This undoubtedly has consequences on the flows of information available.
5. Some of these international agreements and instruments are of a voluntary nature, which also impacts on the exchange of information amongst parties. For example, the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade, the Code of Conduct on the Distribution and Use of Pesticides, and the Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce, deal with products which are important from the point of view of Nigeria, but are still applied on a voluntary basis.

¹See Appendix II of Doc. W/CTE/W/6, dated 31 March 1995.

6. Nigeria is of the view that there is room for a notification scheme within WTO which would "fill the gaps" without duplicating existing mechanisms. Moreover, a notification scheme in WTO would not undermine the implementation or development of the other specific international instruments, which are and will remain a source of technical expertise in addition to providing their own notification schemes. The GATT 1991 draft decision encouraged GATT contracting parties to join the existing international instruments and stipulated that exports of a product concerned did not need to be notified under GATT if the exporting contracting party already notified the product concerned under the international instruments enumerated in the Annex of the draft decision. These important principles should be carried over.

7. Nigeria considers that duplication has to be avoided between WTO and other international instruments, but also within WTO. Thus, in designing notification procedures for trade in DPGs, the CTE will have to carefully consider the transparency mechanisms implemented under the WTO and build upon them when possible.

8. At the December meeting of the CTE, it was said that consumer goods, to the extent they are subject to technical regulations, and restrictions on foodstuffs, might already be covered under, respectively, the TBT and SPS Agreements. It is true that these two instruments provide some information in this regard. However, to the extent that both these agreements address the issue of standards which are to be respected by imported goods, the TBT and SPS Agreements do not necessarily help in determining what is the status of a product in an exporting country, especially if that country does not sell the good in question on its domestic market (which is, by definition, the problem at stake with domestically prohibited goods).

9. Regarding technical assistance, Nigeria is of the view that it should take place in cooperation with other relevant international organizations.

Draft Decision

Decision on Certain Products Whose Sale is Banned or Severely Restricted in the Domestic Market

Preamble

The Members of the World Trade Organization

Having regard to the provisions of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "General Agreement" or "GATT"), of the Agreement on Technical Barriers to Trade (hereinafter referred to as "TBT Agreement"), and of the Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as "SPS Agreement");

Recognizing that every Member must assume full responsibility for decisions regarding its own imports, but that importing Members may request the co-operation of exporting Members in cases where the importing Member's import control procedures are not yet fully developed;

Recognizing the importance of furnishing technical assistance to developing country Members, in collaboration with the WTO Secretariat and relevant international organizations, in order to assist these Members to control effectively trade in the products concerned;

Noting the importance of notification, information exchange systems, prior informed consent procedures and certification systems developed by other international organizations in exchanging information and in assisting Members in deciding whether to permit importation of the products concerned;

Desiring to facilitate exchange of information in trade in products that are banned or severely restricted in the domestic market of a Member, as well as hazardous wastes, on the grounds that they are dangerous to human, animal or plant life or health, or the environment;

Recognizing the need to ensure that such exchange of information does not create unnecessary obstacles to international trade nor duplicate the work of other international organizations;

Hereby decide as follows:

Article 1

Product Coverage

1.1 This Decision applies to products and wastes (hereinafter referred to as "the products concerned"), as defined in paragraphs (i) and (ii), and Annex I below:

- (i) Products which are determined by a Member to present serious and direct danger to human, animal or plant life or health or the environment within its territory, and which for that reason are banned or severely restricted in the domestic market of that Member by governmental regulatory action, but which may be exported, except:
 - (a) fissionable and radioactive material; and

- (b) arms, ammunition and implements of war supplied directly or indirectly to a military establishment; or
- (ii) Wastes which are determined by a Member to be hazardous and which for that reason are required to be disposed of in accordance with governmental regulatory action, but which may be exported, except:
 - (a) such wastes which, as a result of being fissionable or radioactive, are subject to international control systems, including international instruments, applying specifically to fissionable or radioactive materials; and
 - (b) such wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument.

1.2 The instruments adopted by the relevant international organizations relating to the products concerned are enumerated in Annex II.

Article 2

Technical Assistance

2.1 Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations, such as FAO, UNEP and WHO. Such technical assistance would aim at assisting countries which request it to upgrade their technical capacity for monitoring and controlling trade in products subject to this Decision, including the development and implementation of national legislation relating to the products concerned.

2.2 Members which are members or participants of international instruments listed in Annex II shall, on request, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such international instruments.

2.3 Members decide to establish within the context of the regular technical assistance budget of WTO a special trust fund facility dedicated to the provision of technical assistance in pursuance of this Decision.

Article 3

Notification

3.1 A Member exporting a product falling under Article 1.1 shall promptly notify the other Members through the WTO Secretariat of the product concerned, the measures related to it and the reasons for which they were adopted.

3.2 The provisions of Article 3.1 shall not apply if the product concerned is covered by an international instrument enumerated in Annex II and the exporting Member is a signatory or a participant thereof.

3.3 Members shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Members and provide the relevant information relating to the products notified under paragraph 3.1 above, so as to enable importing Members to make an informed decision on imports.

Article 4

Measures to be Taken by Members

4.1 Any Member adopting measures to ban or severely restrict in its domestic market any of the products concerned should examine whether the reasons for such measures would also require the adoption of equivalent measures for all domestic production of the same products.

4.2 For the purpose of this Decision, an import restriction applied on a product concerned which is in conformity with the General Agreement and other relevant instruments may, by mutual agreement, be administered by the exporting Member.

Article 5

General Provisions

5.1 All measures taken for the purpose of this Decision shall:

- (i) be applied in accordance with the provisions of the General Agreement on Tariffs and Trade and other relevant WTO instruments, such as the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, and
- (ii) not duplicate existing provisions contained in the international instruments listed in Annex I, nor undermine ongoing developments of these instruments.

5.2 Each Member shall ensure that the provisions of this Decision shall not be applied in such a way as to create unnecessary obstacles to international trade.

5.3 Members which are members or participants of the international instruments listed in Annex I should sustain and make more effective such international co-operation, *inter alia*, by participating to the fullest extent possible in the activities undertaken in pursuance of these instruments. Other Members should, where possible, become members or participants of such instruments.

5.4 Nothing in this Decision shall affect the rights and obligations of members or participants under the international instruments listed in Annex I.

5.5 The question whether a Member, which is a member or participant of an international instrument listed in Annex I, is applying the procedures therein, shall be determined by the body which, under that instrument, is competent to do so.

Article 6

Final Provisions

- 6.1 The Council for Trade in Goods shall monitor the implementation of this Decision.
- 6.2 This Decision shall be reviewed 2 years after its implementation.

Annex I

1. Banned product

A *banned product* means any product which has, for health or environmental reasons, been prohibited nationally for all uses by final government regulatory action.

2. Severely restricted product

A *severely restricted product* means any product for which, for health or environmental reasons, virtually all uses have been prohibited nationally by final government regulatory action, but for which certain specific use or uses remain authorized.

3. Hazardous waste

A *hazardous waste* means any waste that is defined as, or considered to be, hazardous by the domestic legislation of the exporting country.

4. Disposal operations

Disposal operations include both (i) those operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses of the hazardous wastes, and (ii) those operations which may lead to resource recovery, recycling reclamation, direct re-use or alternative uses of the hazardous wastes.

Annex II

International Instruments and Their Administering Organizations

1. Montreal Protocol on Substances that Deplete the Ozone Layer, (United Nations Environment Programme).
2. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, (United Nations Environment Programme).
3. London Guidelines for the Exchange of Information on Chemicals in International Trade, Amended 1989, (United Nations Environment Programme).
4. International Code of Conduct on the Distribution and Use of Pesticides, (Food and Agriculture Organization).
5. Certification Scheme on the Quality of Pharmaceutical Products Moving in International Trade, (World Health Organization).
6. Convention Concerning Safety in the Use of Chemicals at Work, (International Labour Office).
7. 1971 Convention on Psychotropic Substances, (United Nations Secretariat).
8. Single Convention on Narcotics, 1961, as Amended by 1972 Protocol, (United Nations Secretariat).
9. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (United Nations Secretariat).
10. Code of Ethics on International Trade in Chemicals, (United Nations Environment Programme).
11. The United Nations Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Severely Restricted and/or Not Approved by Governments, (United Nations Secretariat).
12. Codex Alimentarius, (Food and Agriculture Organization).
13. International Register of Potentially Toxic Chemicals (IRPTC), (United Nations Environment Programme).