

TRADE IN DOMESTICALLY PROHIBITED GOODS

Submission by Bangladesh¹

I. INTRODUCTION

1. The impact of trade and environment on each other has become an important global issue in recent years. The link between trade and environmental protection, consisting of both the impacts of environmental policies on trade as well as the impacts of trade on the environment, was recognized as early as 1970. The decade following the 1972 Stockholm Conference witnessed a flurry of deliberations at the global level over explaining the relationship between the two. Those deliberations focused on the implications of environmental protection policies on international trade, reflecting the concern of trade officials that such policies could become obstacles to trade, as well as constitute a new form of protectionism, i.e., green protectionism.

II. BACKGROUND

2. In 1982, a number of developing countries expressed their concern at the fact that products prohibited in developed countries on the grounds of environmental hazards, health or safety reasons continued to be exported to them. With limited information on these products, they were unable to make informed decisions regarding their impact. At the 1982 Ministerial Meeting of the GATT Contracting Parties, it was decided that the GATT examine the issue, and that all Parties should begin to notify the GATT of any goods produced and exported by them that were banned for human health reasons by their national authorities for sale in their domestic markets. This raised ethical concerns which, from the point of view of these countries, needed to be addressed within the bounds of the multilateral trading system. While the notification system began to function following this Decision, Parties tended to notify DPGs whose export had also been prohibited rather than the ones, which they continued to export. The notification system was not successful, therefore, no notifications were received after 1990 (despite the fact that the 1982 Decision remains in force).

3. In 1989, a Working Group on the Export of Domestically Prohibited Goods (DPGs) and Other Hazardous Substances was established in the GATT. The Group met 15 times between 1989 and 1991, when its mandate expired, but failed to resolve the issue.

III. WTO AND DPGs

4. In the 1994 Ministerial Decision on Trade and Environment, it was agreed to incorporate DPGs into the terms of reference of the newly created Committee on Trade and Environment (CTE) under the World Trade Organization (WTO).

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5. While numerous international instruments already address the export of DPGs, such as the Basel Convention of 1989 on the Transboundary Movement of Hazardous Wastes and Their Disposal, these instruments principally address chemicals, pharmaceuticals, and hazardous wastes. The objective was to protect by strict control, human health and the environment against the effects that may result from the generation and management of hazardous wastes and other wastes. Consumer products have been identified as a gap by most WTO studies conducted on this issue. Some delegations have argued that while other instruments exist, a number of them are only voluntary in nature (in other words, Parties to these instruments do not have to fulfill their obligations if they decide not to), and have expressed their wish to see quicker and better progress on the issue in the WTO.

6. Collectively, the CTE has stated that while there is a need to concentrate on the role that the WTO can play on this issue, it is important neither to duplicate nor to deflect attention from the work of other specialized intergovernmental fora. It also recognized the important role that technical assistance and transfer of technology related to DPGs whose trade is allowed can play in both tackling environmental problems at their source and in helping avoid unnecessary additional trade restrictions on the products involved. It stated that WTO Members should be encouraged to provide technical assistance to other Members, especially developing countries, either bilaterally or through intergovernmental organizations. This would assist these countries in strengthening their technical capacity to monitor and, where necessary, control the import of DPGs.

7. Based on a Secretariat note prepared on the information already available in the WTO on the export of DPGs, some delegations requested that the DPG notification system that had been in existence between 1982 and 1990 be revived, particularly as the Decision taken to establish it remain in force today. However, no decision on this issue was taken.

IV. THE RECENT PIC CONVENTION

8. The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention) was adopted and opened for signature in Rotterdam in September 1998. The Convention aims at monitoring and controlling the trade in highly dangerous pesticides and chemicals that - when released into the environment - may poison water and land and eventually human animal and plant life. The Convention enables importing countries to decide whether they want to receive certain substances and refuse others. If countries agree to trade in those substances, procedural rules like labeling and information on potential health and environmental effects will promote the safe use of those chemicals.

9. The PIC Convention applies to banned or severely restricted chemicals and to severely hazardous pesticide formulations. Article 5 of the Convention requires the Parties to notify any final regulatory action that has been adopted for banned or severely restricted chemicals according to the notification guidelines set out in Annex I. The Secretariat forwards this acquired information to all Parties. A Chemical Review Committee, to be established by the COP at its first meeting, reviews the information provided in such notifications and recommends to the COP whether the chemical in question should be made subject to the Prior Informed Consent procedure and accordingly be listed in Annex III.

10. Developing countries may propose to the Secretariat the listing of hazardous pesticide formulation in Annex III to be subject to the PIC procedure. Each party is obliged to implement appropriate legislative or administrative measures with respect to the import of chemicals. A response concerning the future import of the chemical concerned shall be transmitted to the Secretariat, consisting of a Final decision to:

- (a) Consent to import;

- (b) refuse import; or
- (c) consent to import only subject to specified conditions.

11. Each party must take appropriate measures to ensure that exporters within its jurisdiction comply with decisions that have been notified to the Secretariat under Article 10. This Article requires any party to provide an export notification to the importing Party when it exports chemicals that are banned or severely restricted in its territory.

V. EXPERIENCE OF DPG REGULATION IN SELECT DEVELOPING COUNTRIES

12. During the UNCTAD sponsored First Regional Workshop on Strengthening Research and Policy-making Capacity on Trade and Environment in Developing Countries held in the Philippines during 11-13 November 1999, delegations from several countries cited examples of DPGs imported by their countries. It was pointed out that some DPGs may serve other functions, such as health and food security. The case of DDT was cited as an example, as it was deemed useful for fighting malaria. Several examples of DPGs were cited by the Bangladesh delegation. It was noted that hazardous waste was often imported in the guise of consumer products, such as fertilizers, vetch as a lentil when it was not even deemed fit for animal feed in Australia. However, the Government has no capacity to deal with the disguises used by firms to export DPGs. Uganda pointed out that carrier bags, used clothing, etc. were also DPGs, which were causing problems to the domestic environment and economy.

13. Costa Rica, however, pointed out that it had successfully dealt with DPGs, which was a large problem about ten years back. It had enacted Regulations for handling, management and use of dangerous products – biological resources, water, heavy metals (mercury), explosives, etc. The Environmental Authority in Costa Rica had the responsibility for regulation of DPGs. Brazil pointed out its regulation, which considers irresponsible disposal of batteries a punishable crime. Several countries felt that import bans would not be enough to control trade in DPGs. It was necessary to regulate handling, management and use of DPGs. But to do that, it may be necessary to draw up an indicative list of DPGs.

VI. SITUATION IN BANGLADESH

14. Bangladesh has formulated a five year import policy from 1997 to 2002 in compliance with the WTO Agreements and the general concept of free market economy. Import has been liberalized to create an opportunity of accession of goods freely to the Bangladesh market. But some goods are banned and restricted for import to Bangladesh on human health and safety as well as environmental grounds. Some of them are mentioned below:

15. Insecticides, namely Heptachlor T-40WP, DDT, Bidrin Brand in the generic name: Dicrotopes, Methyl Bromide: Chlordane -40WP and Daildrin, Poppy seeds and dried Postadana; Ghas (Andropogen SPP) and Bhang (Canabis Sativa); Opium; Petroleum gas and other gaseous hydrocarbons. But the following items, which are restricted but allowed to be imported subject to the fulfilment of specific conditions. These are Sulphur, Petroleum oil and all kinds of oil obtained from bituminous mineral Crude and LPG, Ethylene Oxide gas, all petroleum products except liquid paraffin, Sulphur, Methanol (methyl) Alcohol, Sulphonamides, etc.

16. Like other developing countries, Bangladesh is aware of the harmful effects of DPGs, and seeks cooperation and assistance from the world community to take necessary measures for its control globally. The following recommendations are suggested for control of DPGs.

VII. RECOMMENDATIONS

1. The issue of the export of DPGs has been a matter of serious concern to developing countries since the 1980's. Taking into consideration that no notifications pursuant to the Decision by the GATT Contracting Parties in 1984 (BISD 31S/14) have been received since 1990, the CTE should recommend that Members notify DPG exports in the area of consumer products, where there exists a gap in the coverage of other international instruments. The CTE should take note of this recommendation to notify exports of domestically prohibited consumer products in its Annual Report in 2000, for adoption by the General Council;
 2. In order to address the problem of the export of DPGs, each country should have the necessary domestic health and environmental standards and regulations in place for the management of imports of DPGs. Building on the recommendations contained in paragraph 205 of the CTE Report to the 1996 Singapore Ministerial Conference (WT/CTE/1), and in order to contribute to the development of standards and regulations in this important area, the WTO, in cooperation with other relevant international organizations, should provide technical assistance to developing countries for capacity building;
 3. Previous discussions and documents have set out that there is a gap in the coverage of DPGs by other international instruments, which is within the WTO's competence to address. (See the draft Decision on DPGs submitted by Nigeria in WT/CTE/W/32 and documents prepared by the Secretariat in WT/CTE/W/29, WT/CTE/W/43 and WT/CTE/W/73). As a result, Bangladesh requests the Secretariat, in cooperation with other relevant international organizations, to prepare a study on the export of domestically prohibited consumer products and their possible effects on human health and the environment; and
 4. There should be sharing of information on DPGs among developing and developed countries. In this respect, the issue of the export of domestically prohibited goods should be a priority item on the agenda of the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development. A mechanism should also be developed for South-South information sharing on illicit trade of DPGs;
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