

Committee on Trade and Environment

DOMESTICALLY PROHIBITED GOODS

Item 7

Note by the Secretariat

I. INTRODUCTION

1. At the last meeting of the Committee on Trade and Environment (CTE), Members requested the Secretariat to update document WT/CTE/W/73 on *The Product Coverage of Different International Instruments Dealing with Trade in Domestically Prohibited Goods (DPGs) and Other Hazardous Substances*. In its update, the Secretariat was specifically asked to address the United Nations Consolidated List of Products Whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or Not Approved by Governments (hereby referred to as the Consolidated List).¹

2. Document WT/CTE/W/73 identified a number of different international instruments relevant to the export of DPGs. With respect to the multilateral environmental agreements (MEAs) included among them, the Secretariat has informed (and continues to inform) the CTE on a regular basis of trade-related developments in them. In addition, at the various MEA Information Sessions organized by the CTE, the Secretariats of those MEAs have themselves submitted papers to explain and update Members on their agreements.² Since the preparation of WT/CTE/W/73, another MEA has come into existence that could be relevant to the export of DPGs – namely, the Biosafety Protocol. The text of the Protocol was circulated to Members.³ Since they were last reported on, none of the remaining international instruments presented in WT/CTE/W/73 have undergone significant change.

3. Whereas the Consolidated List was among the international instruments addressed in WT/CTE/W/73, additional information has been received in its regard from the United Nations (UN) Secretariat which could be useful to Members. The Consolidated List deserves particular attention by the CTE, since it was prepared in response to many of the same concerns voiced in the GATT /WTO on DPGs.

¹ See document WT/CTE/M/24.

² The recent trade-related developments in the Convention on the Prior Informed Consent Procedure (PIC) for Certain Hazardous Chemicals and Pesticides in International Trade and in the draft International Legally Binding Instrument on Persistent Organic Pollutants (POPs) were presented in document WT/CTE/W/128; and developments in the Montreal Protocol on Ozone Depleting Substances and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in document WT/CTE/W/130. In addition, in the context of the MEA Information Sessions in the CTE, the Secretariats of these MEAs have submitted the following papers on their agreements: WT/CTE/W/55, WT/CTE/W/91 and WT/CTE/W/115.

³ See document WT/CTE/W/136.

II. WHAT IS THE CONSOLIDATED LIST?

4. The Consolidated List is a list of products that have been deemed to be harmful to human health or the environment, and which have been banned, severely restricted, or not approved by governments. It is an attempt by the UN Secretariat to ensure that all countries have information on these products so they may take appropriate regulatory action in light of domestic circumstances, and of their own assessments of the costs and benefits of control. The List is compiled by the UN Secretariat, in cooperation with a number of other international organizations, on the basis of information provided by governments.

5. While the List does not capture all of the regulatory actions taken by governments to protect themselves against harmful products (since it is dependent on what governments themselves report), it is a far-reaching instrument in terms of its coverage. The List does not provide information on whether or not the products it contains are being exported despite domestic restrictions. However, it is designed to be as user-friendly as possible (including not only product names, but data on trade names and manufacturers), permitting governments to match listed products with imports.

6. The idea of preparing the Consolidated List arose in the early 1980s following discussions in the General Assembly's Economic and Social Council (similar to those held in the GATT/WTO) on the damage to health and the environment from the continued production and export of products banned or severely restricted in exporting countries. General Assembly Resolution 37/137 of 1982 (Annex I) called upon the Secretary-General "to prepare and regularly update a consolidated list of products whose consumption and/or sale have been banned, withdrawn, severely restricted or, in the case of pharmaceuticals, not approved by Governments, and to make this available as early as possible."

7. In 1984, Resolution 39/229 was adopted, in which the Assembly decided that an updated list should be issued annually, and that the data should be made available to governments and other users in such a form as to permit direct computer access. In 1985, the UN Secretariat, in cooperation with the World Health Organization (WHO) and the United Nations Environment Programme's (UNEP) International Register of Potentially Toxic Chemicals, carried out the first review of the List. They addressed the criteria to be used in deciding the inclusion of products and the treatment of the legal and public health contexts of regulatory actions and of commercial information.

8. As a result of the review, a memorandum of collaboration that outlined the division of responsibilities between the UN Secretariat, the WHO and UNEP was agreed upon and is still in effect. The WHO collects, screens and processes information relating to regulatory measures taken by governments on pharmaceuticals, and on the health-related and environmental reasons for those measures. UNEP performs a similar function with regard to chemical products. The UN Secretariat coordinates these contributions, ensures that relevant information available in other organizations is utilized for the purposes of the List, and collects and reviews commercial data. It also edits, translates and publishes the List.

9. Recently it has been agreed that the List be divided into two parts, published in alternate years, on chemicals and pharmaceuticals. Six issues of the Consolidated List have been published to date. Whereas the fifth issue (published in 1994) covers both chemicals and pharmaceuticals, the sixth issue (published in 1997), is devoted to pharmaceuticals. A seventh issue on chemicals is forthcoming.

III. COVERAGE AND SCOPE

10. According to the UN Secretariat, there has been an increase in the number of products listed and the number of governments reporting with each new edition of the Consolidated List. While the first issue covered less than 500 products regulated by 60 governments, the fifth issue covered 700 products regulated by 94 governments. The sixth issue, which was the first issue to be devoted to pharmaceuticals alone, covered 366 products regulated by 77 governments.

11. Whereas the 1989 GATT Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances had struggled with various definitions relating to DPGs (such as the term "severely restricted"), these have been defined in the Consolidated List and serve as the criteria for the inclusion of products (Annex II).

12. The Consolidated List covers pharmaceuticals, and agricultural, industrial and consumer products regulated on account of their chemical composition. The UN Secretariat attempts to ensure that the List does not duplicate work conducted in other fora, but complements it. It states that:

The List does not include many widely used industrial chemicals to which occupational exposure limits have been assigned by national authorities, and on which information is available in ILO and UNEP/IRPTC publications. Food additives are also outside the scope of the list, since the FAO/WHO Codex Alimentarius deals with them. Consumer products are only included when they are hazardous because of their chemical composition. Psychotropic and narcotic substances scheduled under one of the international conventions are included only where a Government is controlling a substance more rigorously than required under the relevant international convention.

13. The Consolidated List is generally divided into two parts. Part One, which is jointly prepared by the UN, WHO and UNEP, presents in a unified manner information on the restrictive regulatory decisions taken by governments that meet Annex II criteria (with respect to the product categories mentioned in paragraph 12). Part Two, compiled by the UN Secretariat on its own, presents commercial information, including data on trade names and manufacturers, relating to some of the products covered in Part One. It allows for the cross referencing of commercial names with recognized scientific names, under which the regulatory data are presented. Trade name data is also provided to the extent possible. Due to limited resources, manufacturer data is only provided with respect to agricultural and industrial chemicals.

14. The UN Secretariat cautions that "With the respect to the contents of the List, it should be noted that decisions taken by a limited number of Governments on a specific product may not be representative of the policy position of other Governments, particularly in view of different risk-benefit considerations. It is also important to realize that all pharmaceutical and chemical products are potentially harmful if not correctly used. In addition, the fact that a given product is not listed as regulated by a country does not necessarily mean that its use is permitted in that country. Rather, it may mean that the relevant regulatory decision to prohibit its use has not yet been communicated to the United Nations, WHO or UNEP."⁴

⁴ General Assembly, Economic and Social Council, *Report of the Secretary-General on Products Harmful to Health and the Environment*, June 1998 (A/53/156-E/1998/78).

IV. EXAMPLE OF COSMETICS CONTAINING MERCURY

15. On 7 September 1999, the WHO sent the WTO Director-General a letter informing him that soaps and cosmetics containing mercury are being manufactured in European countries and marketed in the developing world. The letter, which was circulated to Members of the CTE⁵, stated that "Marketing in developing countries is particularly problematic, since people to whom the products are sold do not have access to information and are unaware of the hazards involved." The Secretariat would like to use the example of mercury-containing cosmetics, since it was recently brought to the CTE, to illustrate how the Consolidated List may be used.

16. In using the fifth issue of the Consolidated List, the restrictive action that governments have taken with respect to mercury-containing cosmetics can be found. If either cosmetics (a chemical-containing product) or mercury (a chemical), are the object of a search, they are to be looked for in the tables of contents. The List contains two such tables, one for a "Listing of Products by Product Name" (i.e. the name of the chemical or pharmaceutical in question), and another for a "Classified Listing of Products" (i.e. agricultural chemical, industrial chemical or consumer product).⁶ Mercury and mercury compounds can be found under the first table of contents and the regulatory action taken in their regard discussed in pages 291, 397, 470 and 656 of the List. Cosmetics can be found in the second table of contents, under the heading of "Consumer Products/Personal Products/Cosmetics and Quasi-Pharmaceuticals", and the regulatory action taken in their regard discussed on many different pages (with pages 466-7 containing legislation on the ingredients - including mercury - in cosmetics).

V. DISSEMINATION AND UTILIZATION

17. According to the UN Secretariat, the Consolidated List has been a valuable source of information for governments in considering regulatory action, as well as for non-governmental organizations (NGOs), academic institutions and the media. It states that "The List has been instrumental in helping national authorities to disseminate information about products on the List and take actions ranging from the review of licensing provisions, laws and regulations to the enforcement of new laws and regulations."⁷

18. Consumer groups also use the List to urge governments and manufacturers to remove hazardous products from the marketplace. The International Organization of Consumer Unions and Greenpeace, for instance, have employed it in monitoring the use of hazardous products and distributing information to policy makers, the media and consumers. In this connection, General Assembly Resolution 44/226 of 1989 has called on the Secretary-General to promote a more effective involvement of NGOs in disseminating the List.

19. The Consolidated List is not available on the Internet, but the possibility of making it accessible electronically is being considered. According to the UN Secretariat, the periodicity and availability of the List in different languages is being examined.

⁵ Fax from Ambassador István Major, former Chairman of the CTE, to Members of the CTE, dated 16 September 1999.

⁶ The main headings under the "Classified Listing of Products" of the fifth issue are included in Annex III of this Note to provide Members with an indication of the categories of products covered by the Consolidated List.

⁷ General Assembly, Economic and Social Council, *Report of the Secretary-General on Products Harmful to Health and the Environment*, June 1998 (A/53/156-E/1998/78).

VI. CONCLUSION

20. DPGs and severely restricted products are covered by a variety of different international instruments. The Consolidated List attempts to fill in gaps under other instruments (that cover goods that are hazardous to health or the environment on account of their chemical composition), so that the information available to governments can be as comprehensive as possible.

21. The wealth of information which already exists on DPGs was reflected in General Assembly Resolution 39/229 of 1984, which was adopted to decide various matters pertaining to the Consolidated List. It "Urges importing countries, bearing in mind the extensive legal, public health and safety information already provided to the United Nations Center on Transnational Corporations, the United Nations Environment Programme, the International Labour Organization, the Food and Agriculture Organization of the United Nations, the World Health Organization and the General Agreement on Tariffs and Trade, to avail themselves of the information provision facilities of those organizations, which include, in some cases, direct computer access."

22. With respect to consumer goods, while the List only covers those that are regulated on account of their chemical composition, chemical composition is usually the subject of greatest concern with respect to DPGs. In that sense, the List can play an important role in providing information on those goods. Consumer goods regulated on account of other safety features (such as restrictions on the use of cars that are not equipped with airbags) are not covered by the List.

Periodicity of the Consolidated List

23. Whereas General Assembly Resolution 39/229 of 1984 called for the publication of the Consolidated List on an annual basis, the seventh issue of the List has not yet appeared. According to the UN Secretariat, its preparation is under way. Given the importance of the Consolidated List in providing information on DPGs, it is important that it continue to be produced in a timely fashion. In addition, it is important for the various issues of the List to be posted on the Internet for easier access by regulatory bodies.

National Standards and Technical Assistance

24. As had been previously recommended by the Secretariat in document WT/CTE/W/43, entitled *A Review of the Information Available in the WTO on the Export of Domestically Prohibited Goods*, "the development of domestic health and environmental standards by importing WTO Members is essential to addressing the problem of the export of DPGs. The existence of national standards and their effective enforcement is the most important form of protection for developing countries against imports of undesirable products. Capacity building and technical assistance are necessary in this context."

25. Capacity building and technical assistance should be directed at enhancing the ability of developing and least-developed countries to make use of the wealth of existing information on DPGs and other severely restricted goods, including the Consolidated List.

The WTO Library

26. The Secretariat will ensure that copies of all six issues of the Consolidated List are acquired by the WTO library for easy reference by Members.⁸ For further information on the Consolidated List, Members are advised to contact the Division for Sustainable Development at the United Nations Department of Economic and Social Affairs in New York.

⁸ Currently, only the fifth and sixth issues are available at the WTO Secretariat for Members to consult.

ANNEX I

GENERAL ASSEMBLY RESOLUTION 37/137

Protection against products harmful to health and the environment

THE GENERAL ASSEMBLY,

AWARE of the damage to health and the environment that the continued production and export of products that have been banned and/or permanently withdrawn on grounds of human health and safety from domestic markets is causing in the importing countries,

AWARE that some products, although they present a certain usefulness in specific cases and/or under certain conditions, have been severely restricted in their consumption and/or sale owing to their toxic effects on health and the environment,

AWARE of the harm to health being caused in importing countries by the export of pharmaceutical products ultimately intended also for consumption and/or sale in the home market of the exporting country, but which have not yet been approved there,

CONSIDERING that many developing countries lack the necessary information and expertise to keep up with developments in this field,

CONSIDERING the need for countries that have been exporting the above-mentioned products to make available the necessary information and assistance to enable the importing countries to protect themselves adequately,

COGNIZANT of the fact that almost all of these products are at present manufactured and exported from a limited number of countries,

TAKING INTO ACCOUNT that the primary responsibility for consumer protection rests with each State,

RECALLING its resolution 36/166 of 16 December 1981 and the report on transnational corporations in the pharmaceutical industry of developing countries, ⁽¹⁾ and acting in pursuance of Economic and Social Council resolution 1981/62 of 23 July 1981,

BEARING IN MIND in this context the work of the Food and Agriculture Organization of the United Nations, the World Health Organization, the International Labour Organization, the United Nations Environment Programme, the General Agreement on Tariffs and Trade, the United Nations Centre on Transnational Corporations and other relevant intergovernmental organizations,

1. AGREES that products that have been banned from domestic consumption and/or sale because they have been judged to endanger health and the environment should be sold abroad by companies, corporations or individuals only when a request for such products is received from an importing country or when the consumption of such products is officially permitted in the importing country;

2. AGREES that all countries that have severely restricted or have not approved the domestic consumption and/or sale of specific products, in particular pharmaceuticals and pesticides, should make available full information on these products with a view to safeguarding the health and

environment of the importing country, including clear labelling in a language acceptable to the importing country;

3. REQUESTS the Secretary-General to continue to ensure the provision of the necessary information and assistance by the United Nations system in order to strengthen the national capacities of developing countries to protect themselves from the consumption and/or sale of banned, withdrawn, severely restricted or, in the case of pharmaceuticals, non-approved products;

4. REQUESTS the Secretary-General, based upon the work already being done within the Food and Agriculture Organization of the United Nations, the World Health Organization, the International Labour Organization, the United Nations Environment Programme, the General Agreement on Tariffs and Trade, the United Nations Centre on Transnational Corporations and other relevant intergovernmental organizations, to the maximum extent possible within existing resources, to prepare and regularly update a consolidated list of products whose consumption and/or sale have been banned, withdrawn, severely restricted or, in the case of pharmaceuticals, not approved by Governments, and to make this list available as early as possible and, in any case, not later than December 1983;

5. AGREES that the consolidated list referred to in paragraph 4 above should be easy to read and understand and should contain both generic/chemical and brand names in alphabetical order, as well as the names of all manufacturers and a short reference to the grounds and decisions taken by Governments that have led to the banning, withdrawal or severe restriction of such products;

6. DECIDES, on the basis of the above-agreed criteria, to keep under review the format of the consolidated list with a view to its possible improvements;

7. REQUESTS Governments and the relevant organs, organizations and bodies of the United Nations system to provide all the information and assistance necessary for the prompt and effective fulfilment of the task entrusted to the Secretary-General.

109th plenary meeting
17th December 1982

ANNEX II

CRITERIA FOR THE INCLUSION OF PHARMACEUTICAL AND CHEMICAL PRODUCTS IN THE CONSOLIDATED LIST

A. Pharmaceutical products⁹

(a) "Banned product"

A product that has been withdrawn from use and/or sale nationally in one or more countries by order of the competent national authority, having regard to its safety in relation to its intended use.

(b) "Voluntary product"

A product that has been withdrawn from use and/or sale nationally in one or more countries by voluntary action of the manufacturer, having regard to its safety in relation to its intended use.

(c) "Severely restricted"

A product containing:

- (a) A substance that is controlled more rigorously than is provided for under the 1961 Single Convention on Narcotic Drugs or the 1971 Convention on Psychotropic Substances or that is subjected to analogous control at the national level before it has been considered for international scheduling,
- (b) A substance that may be incorporated in pharmaceutical dosage forms only within the specific limits determined by statute;
- (c) A substance that is approved by a competent national authority and is subsequently subjected to restrictions that exclude its use in a substantial proportion of the potential target population of patients having regard to its safety. A substance which from the outset has been severely restricted in its indications having regard to the known balance of safety and efficacy is excluded.

(d) "Non-approved"

A product that has been formally submitted for registration by a manufacturer to a national competent authority and which has been rejected on grounds of safety.

B. Chemical products

(a) "Banned"

A product that has been prohibited for all uses nationally in one or more countries by final government regulatory action because of health or environmental reasons.

⁹ Products which are in illicit trade only would not be considered.

(b) "Withdrawn"

A product formerly in commerce that has been withdrawn for all uses nationally in one or more countries by final voluntary action of the manufacturer because of health or environmental reasons.

(c) "Severely restricted"

A product for which virtually all uses have been prohibited nationally in one or more countries by final government regulatory action because of health or environmental reasons, but for which certain specific uses remain authorized.

ANNEX III

MAIN HEADINGS UNDER "CLASSIFIED LISTING OF PRODUCTS" FIFTH ISSUE OF THE CONSOLIDATED LIST

I. Pharmaceuticals (Monocomponent Products)

1. Analgesics, antipyretics and nonsteroidal anti-inflammatory drugs
2. Antiallergics
3. Anticoagulants
4. Anti-infective drugs
5. Antineoplastic and immunosuppressive drugs
6. Cardiovascular drugs
7. Dermatological drugs
8. Diuretics
9. Drugs acting on the endocrine system
10. Gastrointestinal drugs
11. Immunologicals
12. Drugs acting on the liver
13. Medical devices
14. Drugs acting on the nervous system
15. Ophthalmological preparations
16. Other pharmaceutical products
17. Pharmaceutic acids
18. Radiocontrast media
19. Drugs acting on the respiratory tract
20. Vitamins, minerals, enzymes

II. Pharmaceuticals (Combination Products)

III. Agricultural Chemicals

1. Acaricides
2. Bactericides
3. Fungicides
4. Herbicides
5. Insecticides
6. Miscellaneous other substances
7. Multiple-use pesticides (more than two uses)
8. Nematicides
9. Pesticides for use on livestock
10. Plant growth regulators
11. Rodenticides
12. Substances for ingestion by livestock and poultry

IV. Industrial Chemicals

V. Consumer Products

1. Automotive
 2. Children's articles
 3. Ingredients in consumer products
 4. Ingredients in household products
 5. Ingredients in miscellaneous other products
 6. Personal products
 7. Textiles/clothing
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