

WORLD TRADE ORGANIZATION

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Committee on Trade and the Environment

COMMUNICATION FROM THE SECRETARIAT

Attached is the report that the Secretariat has submitted on its own responsibility to the Secretariat of the Commission on Sustainable Development for the meeting of the Third Session of the Commission on 11-28 April 1995.

Geneva, 7 March 1995

GATT/WTO ACTIVITIES ON TRADE AND ENVIRONMENT 1994-95Note prepared by the GATT Secretariat for the Third Session of
the Commission on Sustainable Development
11-28 April 1995

This Note has been prepared by the GATT Secretariat on its own responsibility. It responds to the invitation from the Commission on Sustainable Development (CSD) to GATT/WTO, contained in the Commission's Decision on Trade, Environment and Sustainable Development, to provide a report on GATT/WTO activities on trade and environment. This Note updates the one submitted to the last session of the CSD, contained in the Annex to document E/1994/43. It describes developments and activities related to trade and environment of the GATT/WTO during the period April 1994 to March 1995.

WTO Ministerial Decision on Trade and Environment

With the adoption of the Uruguay Round Final Act in Marrakesh on 15 April 1994, Ministers adopted a Decision on Trade and Environment which called for the establishment of a WTO Committee on Trade and Environment and which set out a detailed work programme for the Committee. The Decision is attached as Appendix 1 to this Note.

The Decision defines the tasks of the Committee as: "to identify the relationship between trade measures and environmental measures in order to promote sustainable development", and "to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system". The Committee's terms of reference provide it with a broad-based mandate covering all areas of the multilateral trading system - goods, services, and intellectual property rights. The work programme assigned to the Committee builds on progress already achieved in GATT through the work of the GATT Group on Environmental Measures and International Trade and the work related to UNCED follow-up in that Group, in the Committee on Trade and Development and in the GATT Council. It sets out matters which the Committee is to address initially, in relation to which any relevant issue may be raised. The Decision requires the Committee to report to the first biennial meeting of the WTO Ministerial Conference, when its work and terms of reference will be reviewed in the light of its recommendations to Ministers at that Conference.

Pending the entry into force of the WTO, it was decided that work on trade and environment should begin at once under the authority of the Preparatory Committee of the WTO. A Sub-Committee on Trade and Environment was established for that purpose by the Marrakesh Ministerial Conference. The Sub-Committee was chaired by Ambassador Luiz Felipe Lampreia of Brazil.

On 1 January 1995, the Agreement establishing the WTO entered into force. The first meeting of the WTO General Council was held on 31 January 1995, when the WTO Committee on Trade and Environment was established. The Committee is open to all Members of the WTO.

The WTO General Council appointed Ambassador Juan Carlos Sánchez Arnau of Argentina Chairman of the Committee on Trade and Environment. The Committee held its first meeting on 16 February 1995, and it has established a detailed schedule of work covering all elements of its work programme for the remainder of this year.

The WTO Preparatory Committee: Sub-Committee on Trade and Environment

The Sub-Committee on Trade and Environment held five meetings from May through November 1994.

At the first meeting in May, the Sub-Committee took up various organizational matters including requests for observership and issues related to documentation, record keeping and the schedule of meetings.

Following a series of consultations on the issue of observership for inter-governmental organizations, and in an effort to further cooperation and complementarity in work on trade and environment, the Sub-Committee invited the secretariats of the UN, UNEP, FAO, ITC, UNDP, OECD, EFTA, the Commission on Sustainable Development, IMF, UNCTAD, and the World Bank to observe its work.

At the second meeting in July, Members presented their initial views on the full range of issues covered by the work programme and identified a number of background papers for the GATT Secretariat to prepare. There was a general feeling among delegations that no priorities should be set but that progress should be made on items of the work programme in a balanced and integrated manner.

At the third meeting in September, the Sub-Committee focused on the following item of its work programme: "the relationship between the provisions of the multilateral trading system and (a) charges and taxes for environmental purposes, and (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling".

Many delegations noted that environmental charges and taxes are becoming more widely used by GATT member governments as a means of pursuing national environmental policy objectives and of internalising their domestic environmental costs. GATT rules only discipline the way in which governments may levy internal taxes and charges inasmuch as those measures are applied to traded goods - either imposed on imported products or rebated on exports. That is a matter of importance to trade and environment policy-makers, particularly so in the context of proposals in a number of countries to increase taxes on environmentally sensitive production inputs such as energy and transportation.

Many delegations considered that environmental product taxes and charges are an efficient form of policy intervention to tackle environmental externalities, more so than regulatory measures which do not rely directly on market forces to achieve their objective. However, it was noted that the choices governments make about which type of policies are the most appropriate to achieve a given outcome in specific circumstances are often influenced by a range of factors and not only by economic efficiency. It was stressed that each GATT member government had a sovereign right to decide on the way and extent to which it would address the internalization of domestic environmental costs, and Principle 16 of the Rio Declaration was cited in this regard.

Concerns about the competitiveness implications of environmental taxes and charges were raised. In the absence of any tax adjustment at national borders, some delegations felt that exports taxed in their country of origin could be placed at a price disadvantage on world markets, while taxing domestically produced goods but not imported products could create a price differential in favour of imports. In this regard, GATT rules on border tax adjustment were considered to provide an important accommodation. Article III contains the principal GATT disciplines in this area. They were elaborated upon in 1970 by a GATT Working Party that explored the problem of border tax adjustment in detail and arrived at a broad consensus that taxes levied directly on products are eligible for adjustment at the border (they can be imposed on imports and rebated on exports); examples of such taxes include specific excise duties, sales and cascade taxes and value added taxes. The purpose of a tax does not affect its treatment under GATT rules. Many delegations at the meeting noted that if properly applied, border adjustment of environmental taxes and charges would not alter equality of opportunity in the conditions of competition between domestic and imported products.

The 1970 Working Party concluded also that certain taxes that were not levied directly on products were not eligible for border tax adjustment. These included such taxes as social security charges whether on employers or employees, payroll taxes and income taxes. In this context, several delegations noted that although GATT rules allow for border tax adjustment on incorporated inputs of final products, adjustment of taxes or charges on unincorporated process and production methods is not permitted. Several other delegations took up the question from the point of view of the economic rationale underlying GATT rules on border tax adjustment and of the effectiveness of environmental taxes and charges and of border tax adjustment for achieving environmental objectives. It was felt that further work would be needed in this area, and that it would be assisted by a case-study approach of different types of charges and tax schemes for environmental purposes.

With regard to environmental regulations and standards, a good deal of work was done on packaging and labelling requirements in the GATT Group on Environmental Measures and International Trade; this will be taken into account and used as a basis for further work. Potential problems facing foreign producers from such measures and from schemes adopted to implement them have been identified as higher costs of participation, inadequate access to information, inability to participate in product and criteria selection, and lack of transparency. Several members referred to the importance of the GATT and WTO Agreements on Technical Barriers to Trade (TBT) for measures of this kind, and urged that any uncertainty regarding which measures were covered by the TBT Agreement should be removed. It was felt that another area where further work might be needed was the relationship to the rules of the multilateral trading system of environmental product requirements which incorporate life-cycle analysis based on evaluations of unincorporated process and production methods.

At its fourth meeting in October, the Sub-Committee focused on: "the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements" (MEAs). This item of the work programme had already received attention in the GATT Group on Environmental Measures and International Trade, and Principle 12 of the Rio Declaration was also referred to as requiring that every effort must be made to ensure that environmental measures addressing transboundary or global environmental problems are based on international consensus. Several delegations took up the issue of trade measures applied outside the context of an MEA, saying that unilateral trade measures aimed at achieving environmental objectives which lie outside the jurisdiction of the country imposing them or at correcting environmental damage which does not

impact on that country must be avoided. Some added that resort to unilateral measures ran the risk of arbitrary discrimination and disguised protectionism which would damage the trading system and could threaten broad support for the international environmental agenda.

Noting that trade provisions had been included in only a small number of MEAs and that none has ever been subject to a legal challenge under the GATT, some delegations pointed to the broad scope that exists for negotiators of MEAs to achieve their environmental objectives in a manner fully compatible with the multilateral trade rules, especially when account is taken of the ability of the GATT to accommodate certain overriding public policy objectives through its general exception provisions in Article XX. A number felt that before proceeding to review whether there was a need to increase WTO flexibility in this area, the necessity and effectiveness of including trade measures in MEAs should be examined, notably discriminatory trade measures for use against non-parties. In their view other, equally effective means were available, such as financial and technological assistance, which could secure the environmental objective better than trade measures and prove more effective in gaining support for a coordinated, global response.

In the event that a common understanding ultimately emerges among WTO Members that on occasion it may be necessary to use in MEAs trade measures that are inconsistent with existing WTO provisions, even if only as a last resort, two lines of enquiry into their relationship with the multilateral trading system have been suggested. One would rely primarily upon recourse on a case-by-case basis to the waiver provisions of the WTO. The other would involve the negotiation of a collective interpretation of existing WTO provisions to deal specifically with this issue. Both approaches began to be explored in the GATT Group on Environmental Measures and International Trade. Delegations referred back extensively to discussions there and introduced a number of new elements to the debate, such as what criteria that might be established if trade measures taken in pursuance of an MEA were to benefit from greater flexibility than exists at present under WTO rules.

Several delegations addressed specifically the situation of non-parties to MEAs, questioning whether discriminatory trade measures taken against non-parties were an effective means to achieve environmental objectives. Many felt that merely not being a party to an MEA should not make a country more vulnerable to punitive action, and that developing countries would be considerably more vulnerable to the threat of trade sanctions in this respect than would developed countries. They felt it important also to take account of the reasons why developing countries might experience particular problems in participating in MEAs.

At its final meeting in November, the Sub-Committee focused on: "the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions". It was noted that issues of market access cut across virtually all items of the trade and environment work programme and that the effect of environmental measures on market access was already being taken up, particularly in the context of environmental taxes, charges, technical regulations and standards.

Many delegations focused on the environmental benefits of removing trade restrictions and distortions, suggesting that the background for further work should be that trade liberalization was a prerequisite for environmental protection. When the price of a product reflected the real cost of the factors involved in its production and distribution, resources would be allocated efficiently, but where that was not the case price distortion could lead to over-exploitation of resources, and possibly their premature depletion. Many noted the potential environmental benefits of removing trade-distorting and restricting subsidies, particularly in agriculture and other sectors of primary

commodity production. Some added that subsidies also diverted resources which would be better allocated to alternative uses related to internalizing environmental costs and promoting sustainable development in developing countries.

It was noted that a great step forward had already been made through the market access improvements of the Uruguay Round. These enhanced possibilities for production to take place in countries with the environmental capacity to carry it out in an environmentally efficient manner, and increased market access for developing countries.

Several delegations feared there was a high risk that environmental conservation and trade protectionism would go hand in hand. Experience of the past few years, they said, indicated that environmental protection was being used increasingly as a barrier to impede developing countries' access to developed countries' markets and protect commercial interests rather than to achieve environmental goals. Even where environmental measures were not a direct outcome of commercial interests, they transferred unwarranted environmental standards to developing countries. The effects of environmental measures on market access and trading opportunities of developing countries should be looked at from two perspectives: the effects of developing countries' own environmental measures on the competitiveness of their exports, and the impact of environmental policies in developed countries on the trade prospects of developing countries. It was recalled that "Promoting sustainable development through trade liberalization" had been a key theme of the UNCED results, and that Agenda 21 called for an expansion of market access in favour of developing countries. Trade liberalization increased development opportunities, and gains in allocative efficiency reduced over-exploitation and wasteful use of natural resources. Principles 2, 4, 6, 11 and 12 of the Rio Declaration were considered relevant in this context.

During the year, the Chairman of the Sub-Committee conducted informal consultations on how the Sub-Committee, and the Committee on Trade and Environment when established, might best provide input in respect of appropriate arrangements for relations with inter-governmental and non-governmental organizations referred to in Article V of the WTO Agreement. These consultations resulted in invitations to eleven inter-governmental organizations to participate as observers in the meetings of the Sub-Committee. With respect to arrangements for relations with NGOs and other means to increase transparency in the WTO, consultations were not completed before work in the Sub-Committee wound up. They are therefore continuing.

The WTO Committee on Trade and Environment

The WTO Committee on Trade and Environment has initiated work where the Sub-Committee left off. At its first meeting, which was held on 16 February 1995, the Committee focused on: "the issue of exports of domestically prohibited goods". Work was carried out on this issue in a GATT Working Group from July 1989 to June 1991, but it was inconclusive. At the Committee meeting, delegations reviewed developments that had taken place since then within the WTO (the Uruguay Round Agreements and the GATT discussions on trade and environment) as well as outside the WTO, for example through the Basel Convention on the Transboundary Movement of Hazardous Wastes and the London Guidelines on the Exchange of Information on Banned or Severely Restricted Chemicals. Areas identified for further analytical and technical work included product coverage and the relationship between the GATT/WTO work on this issue and the provisions of related environmental agreements.

At the meeting, and pending agreement by the General Council on conditions and criteria for observer status for inter-governmental organizations in the WTO, the Committee agreed to continue to grant observer status on a meeting-by-meeting basis to those inter-governmental organizations which had observed the work of the Sub-Committee.

The Committee also adopted a schedule of work for the remainder of the year. This is reproduced in Appendix 2 of this Note.

The GATT Symposium on Trade, Environment and Sustainable Development

On 10-11 June 1994, the GATT Secretariat hosted a public symposium on trade, environment and sustainable development at the GATT headquarters in Geneva. Around 300 people participated, and financing from the Ford Foundation made it possible to ensure the participation of a number of representatives of non-governmental organizations from developing countries. The two principal objectives of the symposium were to provide information on the work under way in GATT on trade and environment and to bring together recognized experts in the field to examine and debate the role that trade policies can play in environmental protection and conservation and in accelerating sustainable development. The symposium was organized around a series of presentations by invited panellists on three topics: trade liberalization, environmental protection and sustainable development; the internalization of environmental costs and the implications for the trading system; and international cooperation. Copies of the papers presented by the panellists and a detailed report on the debate which ensued are available from the WTO Secretariat.

APPENDIX 1

WORLD TRADE ORGANIZATION

Trade and Environment

Decision of 14 April 1994

Ministers, meeting on the occasion of signing the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations at Marrakesh on 15 April 1994,

Recalling the preamble of the Agreement establishing the World Trade Organization (WTO), which states that members' "relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,"

Noting:

- the Rio Declaration on Environment and Development, Agenda 21, and its follow-up in GATT, as reflected in the statement of the Chairman of the Council of Representatives to the CONTRACTING PARTIES at their 48th Session in December 1992, as well as the work of the Group on Environmental Measures and International Trade, the Committee on Trade and Development, and the Council of Representatives;
- the work programme envisaged in the Decision on Trade in Services and the Environment; and
- the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights,

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other,

Desiring to coordinate the policies in the field of trade and environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members,

Decide:

— to direct the first meeting of the General Council of the WTO to establish a Committee on Trade and Environment open to all members of the WTO to report to the first biennial meeting of the Ministerial Conference after the entry into force of the WTO when the work and terms of reference of the Committee will be reviewed, in the light of recommendations of the Committee,

— that the TNC Decision of 15 December 1993 which reads, in part, as follows:

- "(a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;
- (b) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system, as regards, in particular:
 - the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and
 - the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12; and
 - surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;"

constitutes, along with the preambular language above, the terms of reference of the Committee on Trade and Environment,

— that, within these terms of reference, and with the aim of making international trade and environmental policies mutually supportive, the Committee will initially address the following matters, in relation to which any relevant issue may be raised:

- the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;
- the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;

- the relationship between the provisions of the multilateral trading system and:
 - (a) charges and taxes for environmental purposes
 - (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;
- the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects;
- the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;
- the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions;
- the issue of exports of domestically prohibited goods,
- that the Committee on Trade and Environment will consider the work programme envisaged in the Decision on Trade in Services and the Environment and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights as an integral part of its work, within the above terms of reference,
- that, pending the first meeting of the General Council of the WTO, the work of the Committee on Trade and Environment should be carried out by a Sub-Committee of the Preparatory Committee of the World Trade Organization (PCWTO), open to all members of the PCWTO,
- to invite the Sub-Committee of the Preparatory Committee, and the Committee on Trade and Environment when it is established, to provide input to the relevant bodies in respect of appropriate arrangements for relations with inter-governmental and non-governmental organizations referred to in Article V of the WTO.

APPENDIX 2

WORLD TRADE ORGANIZATION

Committee on Trade and Environment

Programme of work for 1995

- 16 February: Item 7: "exports of domestically prohibited goods"
- 6-7 April: Item 4: "the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects"
Item 5: "the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements"
Item 10: "appropriate arrangements for relations with non-governmental organizations referred to in Article V of the WTO and transparency of documentation"
- 21-22 June: Item 8: "TRIPS"
Item 9: "Services"
Item 2: "the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system"
- early
September: Item 6: "the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions"
- late
October: Item 1: "the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements"
Item 3: "the relationship between the provisions of the multilateral trading system and:
(a) charges and taxes for environmental purposes
(b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling
Stocktaking and planning programme of work for 1995/96.