TRADE AND ENVIRONMENT

Statement by the Delegation of Hong Kong

Hong Kong is aware of the emergence of linkages between trade and environment, in the sense that increasingly, trade measures are being employed to achieve particular environmental goals. We also recognize the potential for conflict between environmental and trade objectives, and that GATT has a duty to ensure that its rules and disciplines are observed.

We recognize too that in other fora the relationship between environmental objectives and GATT obligations and principles is being explored and that GATT has perhaps been misunderstood in certain quarters, or criticized for being insensitive to environmental objectives. Given such sentiments, which we do not wholly share, we feel it vital to show that GATT is responsive to this debate on trade and environment.

We therefore welcome today's debate as the beginning of a learning process which will equip us better to deal with trade and environment linkages in future, and as a means to ensure that the interests of GATT and the multilateral trading system are understood and properly served.

Having said this, we would wish to sound a few notes of caution. While welcoming the opportunity to increase our collective understanding of the subject, there are some important points to keep in mind.

First, top priority has to be the successful completion of the Uruguay Round. Hong Kong would be extremely concerned if the trade and environment issue were to distract energy and attention from the urgent need to finish the Round. It is clear, of course, that this new issue was put on the agenda last December in the expectation that it would be a post Round subject. That it is not is unfortunate and unplanned. Nevertheless, there are risks if this new subject is accorded prominence at the expense of the Round. It is even more vital that we avoid allowing this new subject to "infiltrate" or influence the substance of issues which are at an advanced stage in the Round. There is a temptation for linkages to be made, and it is important that this be avoided.

Secondly, Hong Kong has learned to be cautious whenever trade issues are linked to non-trade issues. While welcoming these discussions, we would emphasize that within GATT they must be guided by trade policy considerations. Domestically we believe a balance has to be struck between trade and environmental interests where there is a difference. In the application of trade related environmental measures, each government has to judge, in the first instance, whether the measure in question is really justified, if it is GATT consistent, if it is unarbitrary and if it is the
least trade restrictive of the possible alternatives. GATT should not attempt to resolve this balance on our behalf, but should present us with the arguments on the trade side.

We therefore see merit in proceeding carefully and in an incremental way so that we develop a common understanding of the proper parameters and objectives of this discussion. We should start from the basis of ensuring that GATT principles and disciplines are upheld and strengthened where there is an environmental linkage; and of ensuring that the work in GATT on this subject is geared to preventing protectionism creeping in under the cloak of an environmental issue. From Hong Kong's perspective, we question whether GATT has competence to discuss the merits of environmental policies per se, or that it needs to given that we do not envisage any sort of harmonization or rule making exercise. Nor does it seem obvious that GATT should be looking into issues such as the environmental impact of trade policies. The focal point of our work should be the clear issue of the implications for GATT of trade measures taken for environmental purposes.

**IDENTIFICATION OF MEASURES TAKEN ON ENVIRONMENTAL GROUNDS THAT DIRECTLY OR INDIRECTLY AFFECT INTERNATIONAL TRADE**

In document Spec(91)21 there are many issues relevant to the trade and environment debate. These cover so much ground that it is not possible to address them all today. I will therefore focus on selected issues. In particular we believe that the identification of measures taken on environmental grounds that directly or indirectly affect international trade, is of obvious relevance to the GATT. In this I would emphasize that Hong Kong is at a rudimentary stage of understanding many of these issues and we do not have answers - or anything approaching answers - to some of the problems.

The first point, is that we are struck by how many and how diverse are the measures taken on environmental grounds:

"import restrictions, prohibitions and charges, export restrictions, embargoes and charges, emission charges, taxes on generation of noise, product charges like on detergents containing pollutants, subsidies, fiscal incentives for clean technology or production methods, environmental regulations, product standards, health and phytosanitary norms, etc."

The striking thing about this list is how common, and how uncontroversial in GATT terms, many of these measures are. This seems to contradict the argument that GATT, as an instrument of the hardheaded and ungreen 1940's, cannot relate to the environmental issues of the 1990's; or the corollary that GATT has to undergo some major facelift in order to remain relevant to an environmentally conscious age.

Obviously the GATT has to be alive to environmental issues: today's debate is evidence of this sensitivity. But the GATT is not unequipped to deal with trade environment linkages. Many trade-restrictive measures have been introduced for environmental purposes and they are compatible with
GATT obligations. Though the environment is not specifically mentioned in the GATT, there is no doubt that exceptions to certain disciplines, based on a need to protect human, animal or plant life or health, AT LEAST WITHIN ONE'S OWN TERRITORY, are accepted. Articles XX(b) and (g) are relevant. Similarly, the TBT Code specifically refers to environmental grounds for taking measures which are trade restrictive. But it is important that these measures are carefully moderated by disciplines such as national treatment, non-discrimination, the need to avoid arbitrariness, reliance on international norms and the use of the test of least trade restrictiveness, as safeguards against abuse.

In other circumstances, those where conflicts have been identified, the problem may not be an inadequacy in the GATT but rather that measures have been introduced in disregard, presumably accidentally, of GATT obligations. The panel reports on, for example, Canadian export restrictions on herring and salmon, and on United States import restrictions on Canadian tuna, demonstrated that the GATT can offer guidance and distinguish between genuine environmental measures and protectionist measures.

In sum, our first point is that we should keep the conflict between trade and environment objectives in perspective and recognize that the GATT already deals well with some of the problems identified.

PROBLEM AREAS ESPECIALLY IN FIELD OF IMPORT AND EXPORT PROHIBITIONS

Examples of trade measures taken for environmental purposes include bans on the import and export of ivory and whale meat, restrictions on the import of tropical timber logged in a particular way, bans on trade in CFC's, technical barriers on emission levels of vehicles and machinery, control of trade in hazardous wastes and potentially dangerous chemicals. In focusing on these various examples, certain questions arise.

MULTILATERAL VERSUS UNILATERAL TRADE MEASURES

The first concerns the relative merits of measures multilaterally agreed or unilaterally imposed. As a broad rule, multilaterally agreed trade-restrictive measures, for example the Convention on International Trade in Endangered Species and the Basle Convention, pose less practical difficulties to the GATT system than unilateral ones. This is because multilateral instruments reflect a degree of consensus, rely on a commonly agreed notion of what is an appropriate environmental standard, or what is the correct balance between a positive environmental gain and a negative trade impact and they assist in preventing free riding. Moreover, multilateral instruments, for obvious reasons, are usually the most appropriate response to global problems.

This is not to say that multilateral solutions are perfect. One disadvantage is that they tend to result in the lowest common denominator which in many cases is the blunt instrument of an import or export prohibition. This is easier to secure multilaterally than more sophisticated measures which may be less trade restrictive. It is for
consideration, for example, that the Convention on International Trade in Endangered Species on ivory, which prohibits the export and import of ivory, might have better achieved its objectives through less draconian measures, for example by allowing the international trade of existing legally acquired and held stocks while banning further culling. And of course multilateral instruments do not by themselves guarantee GATT consistency, particularly where membership differs from GATT membership. the Montreal Protocol on CFCs is an example of an international instrument whose GATT consistence has, we understand, been questioned, because in the view of some it appears to discriminate against those GATT parties not members of the Protocol.

PROBLEMS RELATING TO UNILATERAL APPLICATION OF TRADE MEASURES FOR ENVIRONMENTAL PURPOSES

However, it is Hong Kong's preliminary view that unilaterally imposed trade measures for environmental purposes tend to create greater difficulties. They create the most risk of being hidden forms of protectionism. In monitoring the debate in the United States between supporters and opponents of the NAFTA, the tendency for environmental objectives to become intertwined or allied with protectionist interests gave cause for concern.

When considering the unilateral application of trade measures on environmental grounds, the key question would seem to be to what extent does one territory have the right unilaterally to seek to impose or enforce a given level of environmental protection in another, particularly when the first territory is using entirely its own yardsticks to judge the level required. While we accept that there can be no absolutely categorical answer to this question, we question whether there could legitimately be any such right, given that each territory reaches its own conclusions over the balance between its environmental and trade needs.

Another question is to what extent is it necessary or desirable for the GATT to have to pass judgement over what a particular territory describes as an environmental measure, and on the grounds of this seek some form of exemption. This is pertinent in view of the possibility that some so-called environmental measures, particularly some concerning animals, seem motivated more by ethical or welfare concerns, and are not environmental in the commonly understood sense.

Another issue is that although the GATT clearly allows the introduction of trade-restrictive measures to protect a domestic environment, the rules are less clear when the protection of the global environment is being sought; where the domestic situation is only secondary or affected only indirectly, and where views differ over the extent or even the existence of such secondary or indirect impact.

A further issue is that when a territory imposes restrictions on a product which though not by itself environmentally hazardous, is produced through a process judged by that territory environmentally unacceptable. How, particularly in the absence of any commonly accepted norms, can the
validity of the restriction be judged. And, is a restriction on these grounds in any way different from one applied to a product which itself has a direct environmental impact? Can some useful guidance in terms of direct or indirect relationships be developed?

These questions become even more difficult in the situation where restrictive measures are introduced on products because they contain components made by processes deemed environmentally unacceptable by the territory applying the restrictions.

A further, and important issue, is to what extent can the GATT really make judgements about the proportionality and legitimacy of such trade measures without straying into judging the validity of environmental policies per se or making value judgements about the relative priority that should be given to trade and environment policies in a given territory. This we see as a genuine area of difficulty. Clearly GATT - as past panels have shown - is capable and qualified to distinguish between an environmental and non-environmental objective. But is it able to weigh up in all circumstances the merit of a particular environmental objective when compared to its trade consequences?

These then are some of the issues which this delegation finds particularly pertinent. To summarize:

1. We acknowledge the view that there is a trade and environment linkage and that GATT could usefully clarify its position on this.

2. We welcome discussion to the extent that we have the common objective of upholding GATT principles and of avoiding environmental issues being used as a pretext for protectionism.

3. We caution that this discussion should not be conducted at the expense of the Uruguay Round, but that we should move forward cautiously.

4. We restate our belief that GATT copes very adequately with many aspects of the trade environment linkage.

5. We note that there are certain problem areas, especially those concerned with trade measures based on unilateral determinations of environmental objectives, and that there should be further reflection on these.