GENERAL AGREEMENT ON

TARIFFS AND TRADE

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Working Group on Domestically Prohibited Goods
and Other Hazardous Substances

SECOND MEETING OF THE WORKING GROUP ON EXPORT OF DOMESTICALLY PROHIBITED GOODS AND OTHER HAZARDOUS SUBSTANCES

1. The Working Group on Domestically Prohibited Goods and Other Hazardous Substances held its second meeting on 19 October 1989 under the chairmanship of Ambassador John Sankey (United Kingdom). It adopted the agenda proposed in GATT/AIR/2851.

2. The delegation of Nigeria submitted a paper (DPG/W/5) which contained specific information on domestically prohibited goods and other hazardous substances that had been exported to Nigeria. It presented ideas for an agreement or legal instrument within GATT based on the elements and product coverage that had been described in its previous proposal, (MTN.GNG/W/18, submitted with the delegations of Cameroon, Cote d'Ivoire, Sri Lanka and Zaire). The following three points, to be included in any such agreement, were emphasized:

- international trade of products which had been banned or severely restricted for sale, distribution, or consumption in the country of production must be banned and/or regulated;

- products directed towards re-export must also be controlled;

- the burden of decision, as to whether to import a product or not, must be equally shared by both the importer and the exporter.

3. Several delegations expressed the need for a more thorough analysis of the issues as well as a broad examination of the work of other international organizations before proceeding with any formulations for disciplines in GATT. In this regard, delegations welcomed the two secretariat documents, "Activities of Other Organizations in Related Fields," L/6459/Rev.1, and the "Synoptic Table Summarizing the Trade Related Provisions in Selected International Legal Instruments", DPG/W/4, and noted the importance they attached to their detailed examination for the next meeting. One delegate noted, preliminarily, that document DPG/W/4 illustrated the view that each of the five selected instruments was limited to highly specific product coverage; this implied a considerable need for GATT to play a supplementary role by providing general rules that would apply to all products that were prohibited or restricted for sale in the domestic market of production and to other hazardous substances.

4. Statements made by the observers from the Food and Agriculture Organization, the Organization for Economic Cooperation and Development, the United Nations Environment Programme, and the World Health Organization, describing the work of their organization in the area of domestically prohibited goods and hazardous substances, are included as an Annex to this note.

5. The Group took note of the statements made. Delegations were invited to further study existing and new documentation from the secretariat in order to continue discussion of the proposal contained in MTN.GNG/W/18 and of the work of other organizations. In this regard, the Group took note of the statement by the Chairman that the secretariat was preparing, at his request, a paper relating the issues being discussed in the Group to relevant GATT Articles and activities; the need for such a document had been mentioned by several delegations at both meetings of the Group. One delegate suggested that such a note include an examination of the Tokyo Round Agreements such as the Agreement on Technical Barriers to Trade, and Import Licensing Procedures, and proposals made in Uruguay Round Negotiating Groups that might be of use to the Group. The Group took note of this suggestion.

6. Members of the Working Group were reminded to provide the secretariat with initial or updated notifications of national laws and regulations as had been agreed at the first meeting of the Group.

7. The next meeting of the Working Group would be 28 November 1989.

Annex I

Statement by the Representative from UNEP

Thank you Mr. Chairman. Like my colleague from FAO, I would like to thank this Group for having allowed me to be here as an observer and provide information to you on work that is being done by the United Nations Environment Programme related to issues that, indeed, as mentioned by you as well as by other delegates, are relevant to the topics that are so much in the forefront in the discussions here. The latest information of UNEP has, to a large extent, been included in the up-dated document that has just been handed out to you and I therefore do not think it is necessary that I go into considerable detail.

I would like, Mr. Chairman, in addition to what my colleague from FAO just said, underline in particular work in UNEP related to the implementation of the London Guidelines for the Exchange of Information on Chemicals in International Trade and the amendments thereto that have been adopted by the UNEP Governing Council in May of this year, incorporating the so-called principle of prior informed consent. This principle has now been unanimously adopted by thee member States of the United Nations, as well as other parties that have to play an important role in it, in particular, industry. The London Guidelines, in their amended form are now becoming available in all languages, and, although I did not bring a sufficient number of copies to this meeting, Mr. Chairman, I would be happy to make copies in all United Nations languages available through the secretariat to the delegations so that these Guidelines can be studied. I would in particular like to highlight the importance of the amendments to the London Guidelines incorporating the principle of prior informed consent because a mechanism now exists for importing countries to formally record and disseminate their decisions regarding the future importation of chemicals which have been banned or severely restricted. The Guidelines also outline the shared responsibilities for both importing and exporting countries and exporting industries in ensuring that these decisions are heeded. Furthermore, the Guidelines underline, and this has already come up in your earlier discussions this afternoon, the importance of technical and even financial assistance to developing countries to enhance decision-making and training in the safe use of chemicals which is an important issue, that must be addressed in connection with any exchange of information on the matter.

Mr. Chairman, I would like to also refer to the fact that the Governing Council of UNEP, when it debated the amendments to the London Guidelines, very well recognized that the Guidelines may need time to be put into effect by all countries and that in particular the prior informed consent procedure, would take some time to be adopted and introduced. Countries would also need time to establish their own necessary infrastructures to be able to participate. It is therefore not surprising, Mr. Chairman that the Governing Council of UNEP requested the Executive Director to reconvene an ad hoc working group of exports to monitor the implementation of the amended London Guidelines, in particular with emphasis on the prior informed consent procedure and technical assistance provisions. At the same time the working group should also

review other activities related to the production and use of chemicals in States, and taking into consideration work that is being done in several other international organizations inside and outside the United Nations system and on the basis of such monitoring and review, prepare a report on any further steps that should be taken to supplement the amended Guidelines, including even the possible need for a convention to be debated by the UNEP Governing Council in 1991. In summary, the Governing Council very well recognized that such procedures need time to be implemented and take effect. Also time is needed to see whether they are satisfactory, and whether there is need for further action.

Mr. Chairman, another instrument which has been adopted, not very long ago, which is also mentioned in the documentation for this meeting, is the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. It has been referred to by several delegations, in particular the delegation from Nigeria and again, Mr. Chairman, I would be happy to make the Basel Convention text available to the delegates here in the languages in which it has appeared, through the secretariat. It will lead me too far to introduce the Basel Convention, however, I would very much like to highlight the importance of, in document L/6459/Rev.1, that has been distributed to you this afternoon, paragraph 58 which summarizes, in just a page, the basic principles and major provisions of the Convention which has been adopted by 116 member States when they convened in Basel in March of this year.

Mr. Chairman, I would be happy to further participate, as observer, in the work of this Group and to assist you in your work and allow a conclusion to be made in what way the work of the United Nations Environment Programme can be useful or supplementary to what is being discussed here for GATT. Thank you Mr. Chairman.

Statement by the Representative from FAO

Thank you, Mr. Chairman. First of all I would like to thank the Organisation here for inviting us to participate in this important meeting and also appreciate the fact that we are given the opportunity to help at an early stage in developing the programme of this Group. FAO, as other speakers have mentioned, has been very heavily involved, not only in providing advice to Member Countries in the use of agrochemicals (pesticides and fertilizers) but also in the control of such products, bearing in mind that in the case of pesticides more than 90 per cent of them are used in agriculture. FAO's programme in this field dates back to the early 1950s.

Mr. Chairman, reference has been made to the International Code of Conduct on the Distribution and Use of Pesticides and we believe that this Group could benefit substantially from becoming acquainted with the scope and contents of this Code. The Code identifies potential hazards that can be caused by pesticides, it assigns responsibilities to governments, both of pesticide exporting and pesticide importing countries, and also assigns responsibilities to the pesticides industry, to salesmen of pesticides, to users of pesticides and to other groups.

Mr. Chairman, it is realized that the main emphasis of this Group, of course, would be on exports and imports of pesticides and this aspect, in conjunction with many other related technical aspects, has been deliberated in many FAO meetings. It is very encouraging to note that unanimous agreement has been reached by all Member countries on how to handle such a complicated subject, including all the countries represented here, and has also been agreed on by industry and by major environmental groups. Article 9 of the Code on Information Exchange covers this important aspect. Copies of the Code are available here for possible distribution to those who are interested in becoming better acquainted with it.

The provisions of the Code on Prior Informed Consent (PIC) included in Article 9 on Information Exchange, address some of the very issues you are deliberating here.

Mr. Chairman, arrangements have been made with UNEP so that both UNEP and FAO will operate the scheme on Prior Informed Consent in a joint programme. Now this will automatically take care of the need to inform pesticide importing countries, so that they can make their own timely decisions whether to import or not import pesticides which have been banned or severely restricted by other countries. Decision Guidance Documents will accompany announcements on bans or restrictions, comprising up-to-date information and data on toxicology, residues, environmental impact, etc., to make it easier for importing countries to decide.

Mr. Chairman, we would be pleased to continue to help this Group so that it may have access to the experience gained by FAO in dealing with a subject which relates closely to the International Code of Conduct on the Distribution and Use of Pesticides.

Thank you, Mr. Chairman.

Statement by the Representative from OECD

Thank you Mr. Chairman. With your permission I would like to very briefly elaborate on three instruments that are mentioned in your documents. I shall do this with a varying degree of competence because I am in charge of the Committee on Consumer Policy and what I say about the Recommendation of the Guiding Principles on Exchange of Information on Exports of Banned or Severely Restricted Products and Substances, is only second-hand information, but it will be no problem to obtain more information on that from my colleagues. If I may come back to this first Recommendation on the environment matters, I have to say that the OECD has in this field, it seems, been a precursor of the London Guidelines mentioned by my colleague from UNEP. These Guidelines have now, in a certain way, taken up the essence of what was in the OECD Guidelines so that currently the environment committee is following these issues but thinks that basically the ground is now covered by UNEP on a much wider basis than what the region of the OECD countries would offer. But if there are any questions in this respect, I can of course, provide the additional information.

The second instrument that is mentioned here, and I think merits a bit more elaboration, is the Recommendation on Product Safety Policy of 1979 which is briefly mentioned in one of your documents. This Recommendation, in fact, deals with product safety policy in general, and then, in two paragraphs, with the question of the export of hazardous consumer products. I may briefly read that to you, because I think that is something which touches on the subject of consumer products more directly. Under consumer products in this OECD sense, referring to the Committee on Consumer Policy, we mean consumer products except food and drugs, and except automobiles and related products, because we thought that these products were much more competently dealt with by other national and international organizations. What we say in this Recommendation is that "governments of member countries should strive to ensure by means in conformity with their national procedures that those goods that are banned or withdrawn from sale within their territories because they are inherently so hazardous that they present a severe and direct danger to life, health or safety of any consumer of those goods are not exported to other countries". A sub-paragraph then says if powers do not exist to prohibit the export of such dangerous goods, governments of member countries are urged to consider the desirability of seeking such powers. I would like to draw your attention to the words "severe and direct" danger to life, because I think that is something which is at the centre of these considerations. We had to bear in mind, when doing this, that there are dangers that are the result of a very specific national hazard and risk evaluation. And there are other dangers that you cannot discuss away by referring to the question of cultural or environmental differences. One example: if a toy is dangerous because there is a suffocation hazard for very young children, that is something which is universally valid and I think that is something where everybody would agree that something like that should not go into export again. On the other hand, as we had one example, Norway, for very specific reasons, (I take this as an example, it could be any other country) decided at one stage, some ten years back, to ban imports and sales of the then very popular skateboards, as you all remember, for reasons that they considered that this was a very specific health hazard in the urban area and should be therefore prohibited. I think that is the kind of thing which you could not impose on another country, to say that they should not have any skateboards either. So that is why I draw the attention to this question of severe and direct hazard. There should be some way of measuring the hazards involved.

Then, the third instrument that was mentioned here was the informal notification procedure that is operated by the OECD Committee on Consumer Policy. It is a very informal system that runs since 1973, and covers new product safety regulations, bans, recalls, and warnings concerning consumer products and product safety research. We are currently in the process of slightly streamlining and strengthening this procedure and there will be a new Council instrument on this subject in about two weeks or so, and we'll have the pleasure of transmitting that to the GATT secretariat. This could be included in the revised version of the papers mentioning the activities of other organizations in that field. We are of course, also glad to help you with any other documentation or information on that subject that you might wish to have. Thank you very much.

Statement by the Representative from WHO

Thank you very much, Chairman, for the privilege of not only listening to this debate but of giving me the opportunity of taking the thoughts of this Group back to our own Governing Bodies in WHO. I can assure you that the possibility of further amendment to the WHO Certification Scheme remains open and that the concerns that have been expressed around this table are reflected in debates that we hear within our own organization. The background document, DPG/W/4, provides a fair overview of the objectives and the nature of the WHO Certification Scheme for the Quality of Pharmaceutical Products moving in International Commerce. As you will see, it provides a channel of information between the competent authorities in the importing country and the competent authorities in the exporting country. At present, it leaves the initiative for establishing communication entirely with the importing country. In view, Mr. Chairman, of the fundamental and sincerely held concerns that the distinguished delegate of Nigeria has placed before this Group, I wonder if I can give you a little additional background information, not only on the Scheme as it now operates, but on how it has developed in the light of discussions held over many years.

We are very well aware of the problems confronted by countries under development in assuring the quality of both imported and domestically produced pharmaceutical products. They have very limited administrative capacity, they have virtually no enforcement capability, they are very highly dependent on external help yet, in recent years, they have had to contend with many substandard, spurious, and counterfeit products that are, in effect, a murderous assault on the sick. There is no doubt about that, and one can only sympathize with the outrage expressed regarding the existence of cosmetic products in international commerce that contain mercury salts and other skin lightening agents. Notwithstanding these concerns, however, evidence presented by WHO before a House of Representatives Subcommittee in the United States of America a few years ago, argued against a complete ban on the export of products unapproved for sale in the domestic market. At issue was not only the harm that would be inflicted on countries frustrated in attempts to obtain products useful to them, but that happen not to be registered or even, in selected instances, to be banned in other countries, but also because it is simply impossible to engage the involvement of research-based pharmaceutical companies in the development of new products for use in tropical disease unless there is some way of exporting those products legitimately, while they remain under development, for chemical trial in those countries where the target disease is endemic. Situations do arise where products that are simply not available in one country are justifiably needed elsewhere. For instance, generic products made specifically to order, in response to an open tender may not have been registered in the country of origin. Highly evolved national regulatory authorities also sometimes differ in their views about issues of safety. Injectable contraceptives, for example, are accepted in some highly developed countries yet not in others. Similarly, the anthelminthic drug, piperazine, is banned in some European countries where it is used only for trivial pinworm infections, but it remains on WHO's Model List of Essential Drugs as one of the safest and best known products for the treatment of ascariasis which is endemic in many developing countries. At the same time, however, we remain uncomfortably

aware that the Certification Scheme is not being as effectively used as it might. In this connection I should draw attention, Chairman, to two developments that have relevance to the situation. The first is a proposal contained in Resolution 37/137 of the United Nations General Assembly which suggests that pharmaceutical and other products that have been banned should be exported only at the specific request of the importing country. The second relates to an initiative taken recently within the European Commission that has resulted in important amendments to the directives regulating trade in pharmaceutical products among the Member countries (Directive 89/341/EEC of 3 May 1989) that requires each country by 1 January 1992 to institute "all possible measures" to ensure that pharmaceutical products, irrespective of whether they are destined for the domestic market or for export, are produced by officially-authorized manufacturers. Although it will still be permissible, after that date, for an unregistered product to be exported from a country within the Community, foreign buyers will have former assurance that manufacturing premises have been inspected and that they are operated in conformity with internationally-accepted standards of good manufacturing practices. Chairman, once again we are most grateful to have this opportunity to listen to the debate and we stand ready to provide information we can throughout the course of this Working Group.