

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/833

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UNITED KINGDOM COMPLAINT ON ITALIAN DISCRIMINATION AGAINST IMPORTED AGRICULTURAL MACHINERY

Report by the Panel for Conciliation

I. Introduction

1. The Panel for Conciliation examined with the representatives of the United Kingdom and Italy the complaint of the United Kingdom Government (L/649) that certain provisions of Chapter III of the Italian Law No. 949 of 25 July 1952, which provides special credit facilities to some categories of farmers or farmers' co-operatives for the purchase of agricultural machinery produced in Italy, were inconsistent with the obligations of Italy under Article III of the General Agreement and that the operation of this Law impaired the benefits which should accrue to the United Kingdom under the Agreement. The Panel heard statements from both parties and obtained additional information from them to clarify certain points. It also heard a statement by the observer from Denmark recording his Government's interest, as an exporter of agricultural machinery especially of reaper binders, in the United Kingdom complaint. On the basis of these statements the Panel considered whether the provisions of the Italian Law of 25 July 1952 concerning the granting of special facilities for the purchase of domestic agricultural machinery had effects which were inconsistent with the provisions of the General Agreement. It considered further whether and to what extent the operation of these provisions impaired the benefits accruing directly or indirectly to the Government of the United Kingdom under the General Agreement. Finally, the Panel agreed on a recommendation which, in its opinion, would assist the Italian and United Kingdom Governments in arriving at a satisfactory adjustment of the case submitted by the United Kingdom to the CONTRACTING PARTIES to GATT.

II. Facts of the Case

2. In accordance with the Law of 25 July 1952, the Italian Government established a revolving fund which enabled the Ministry for Agriculture and Forestry to grant special credit terms inter alia for the purchase of Italian agricultural machinery. To this fund are allocated by budgetary appropriations 25 thousand million lire a year for five fiscal years starting with the year 1952-53; out of these 25 thousand million lire, the Law provides that 7.5 thousand million would be assigned for the purchase of agricultural machinery, an amount which may be modified by the Italian authorities. The loans are granted at 3 per cent, including fees to the

Credit Institute, for a period of five years to finance up to 75 per cent of the cost of the machinery. The interest and repayments of the loans are paid into the revolving fund and may be used for further loans. The revolving fund will remain in existence until 1964. Eligible purchasers may benefit from these favourable terms when they buy Italian agricultural machinery; if, on the other hand, they wish to buy foreign machinery on credit the terms would be less favourable. The United Kingdom delegation indicated that loans on commercial terms were presently available at the rate of about 10 per cent while the Italian delegation stated that farmers could obtain from agricultural credit institutions five-year loans on terms substantially more favourable than 10 per cent.

3. The Italian delegation estimated that during the period 1952-1957 the purchasers of about half of the Italian tractors sold in Italy (i.e. about one-third of all tractors sold in the country) benefitted from the credit facilities provided under the Law No. 949.

4. In 1949, i.e. before the entry into force of the Law No. 949, the import duties on various types of tractors and other agricultural machinery, were bound under the GATT and, in particular, the duties on wheeled tractors with internal combustion engines of cylinder capacity up to 7,000 c.c. (Italian Tariff item ex 1218-a-1), which are of particular interest to the United Kingdom, were bound at a rate of 40 per cent ad valorem; in the course of the 1956 tariff negotiations, further concessions were granted by Italy, including a reduction of the rate on these tractors to 32 per cent ad valorem.

III. Alleged Inconsistency of the Effects of the Provisions of the Italian Law with the Provisions of Paragraph 4 of Article III

5. The United Kingdom delegation noted that Article III:4 of the General Agreement provided that products imported into the territory of any contracting party "shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation ..." etc. As the credit facilities provided under the Italian Law were not available to the purchasers of imported tractors and other agricultural machinery these products did not enjoy the equality of treatment which should be accorded to them. The fact that these credit facilities were reserved exclusively to the purchasers of Italian tractors and other agricultural machinery represented a discrimination and the operation of the Law involved an inconsistency with the provisions of Article III of the General Agreement which provides that laws, regulations and requirements affecting internal sale should not be applied to imported products so as to afford protection to domestic producers. The United Kingdom would not challenge the consistency with the General Agreement of subsidies which the Italian Government might

wish to grant to domestic producers of tractors and other agricultural machinery in accordance with the terms of paragraph 8(b) of Article III. However, in the case of the Italian Law the assistance by the State was not given to producers but to the purchasers of agricultural machinery; a case which is not covered by the provisions of paragraph 8(b). Even in the case of subsidies granted to producers the rights of the United Kingdom under Article XXIII of the General Agreement would be safeguarded as was recognized by the CONTRACTING PARTIES in paragraph 13 of the Report on Other Barriers to Trade which they approved during the course of the Review Session.¹

6. The Italian delegation considered that the General Agreement was a trade agreement and its scope was limited to measures governing trade; thus the text of paragraph 4 of Article III applied only to such laws, regulations and requirements which were concerned with the actual conditions for sale, transportation, etc., of the commodity in question and should not be interpreted in an extensive way. In particular, the Italian delegation stated that the commitment undertaken by the CONTRACTING PARTIES under that paragraph was limited to qualitative and quantitative regulations to which goods were subjected, with respect to their sale or purchase on the domestic market.

7. It was clear in their view that the Law No. 949 which concerned the development of the Italian economy and the improvement in the employment of labour was not related to the questions of sale, purchase or transportation of imported and domestically produced products which were the only matters dealt with in Article III.

8. Moreover the Italian delegation considered that the text of Article III:4 could not be construed in such a way as to prevent the Italian Government from taking the necessary measures to assist the economic development of the country and to improve the conditions of employment in Italy.

9. Finally, the Italian delegation, noting that the United Kingdom delegation recognized that the Italian Government would be entitled to grant subsidies exclusively to domestic producers, stressed it would not be logical to exclude this possibility in the case of credit facilities which had a far less pronounced effect on the terms of competition.

10. In the view of the Italian delegation it would be inappropriate for the CONTRACTING PARTIES to construe the provisions of Article III in a broad way since this would limit the rights of contracting parties in the formulation of their domestic economic policies in a way which was not contemplated when they accepted the terms of the General Agreement.

¹ Third Supplement, Basic Instruments and Selected Documents, page 224.

11. The Panel agreed that the question of the consistency of the effects of the Italian Law with the provisions of the General Agreement raised a problem of interpretation. It had the impression that the contention of the Italian Government might have been influenced in part by the slight difference of wording which existed between the French and the English texts of paragraph 4 of Article III. The French text which had been submitted to the Italian Parliament for approval provided that the imported products "ne seront pas soumis à un traitement moins favorable" whereas the English text read "the imported product shall be accorded treatment no less favourable". It was clear from the English text that any favourable treatment granted to domestic products would have to be granted to like imported products and the fact that the particular law in question did not specifically prescribe conditions of sale or purchase appeared irrelevant in the light of the English text. It was considered, moreover, that the intention of the drafters of the Agreement was clearly to treat the imported products in the same way as the like domestic products once they had been cleared through customs. Otherwise indirect protection could be given.

12. In addition, the text of paragraph 4 referred both in English and French to laws and regulations and requirements affecting internal sale, purchase, etc., and not to laws, regulations and requirements governing the conditions of sale or purchase. The selection of the word "affecting" would imply, in the opinion of the Panel, that the drafters of the Article intended to cover in paragraph 4 not only the laws and regulations which directly governed the conditions of sale or purchase but also any laws or regulations which might adversely modify the conditions of competition between the domestic and imported products on the internal market.

13. The Italian delegation alleged that the provisions of paragraph 8(b) which exempted the granting of subsidies to producers from the operation of this Article showed that the intention of the drafters of the Agreement was to limit the scope of Article III to laws and regulations directly related to the conditions of sale, purchase, etc. On the other hand, the Panel considered that if the Italian contention were correct and if the scope of Article III was limited in this way (which would, of course, not include any measure of subsidization) it would have been unnecessary to include the provisions contained in paragraph 8(b) since they would be excluded ipso facto from the scope of Article III. The fact that the drafters of Article III thought it necessary to include this exemption for production subsidies would indicate that the intent of the drafters was to provide equal conditions of competition once goods had been cleared through customs.

14. Moreover, the Panel agreed with the contention of the United Kingdom delegation that in any case the provisions of paragraph 8(b) would not be applicable to this particular case since the credit facilities provided under the Law were granted to the purchasers of agricultural machinery and could not be considered as subsidies accorded to the producers of agricultural machinery.

15. The Panel also noted that if the Italian contention were correct, and if the scope of Article III were limited in the way the Italian delegation suggested to a specific type of laws and regulations, the value of the bindings under Article II of the Agreement and of the general rules of non-discrimination as between imported and domestic products could be easily evaded.

16. The Panel recognized - and the United Kingdom delegation agreed with this view - that it was not the intention of the General Agreement to limit the right of a contracting party to adopt measures which appeared to it necessary to foster its economic development or to protect a domestic industry, provided that such measures were permitted by the terms of the General Agreement. The GATT offered a number of possibilities to achieve these purposes through tariff measures or otherwise. The Panel did not appreciate why the extension of the credit facilities in question to the purchasers of imported tractors as well as domestically produced tractors would detract from the attainment of the objectives of the Law, which aimed at stimulating the purchase of tractors mainly by small farmers and co-operatives in the interests of economic development. If, on the other hand, the objective of the Law, although not specifically stated in the text thereof, were to protect the Italian agricultural machinery industry, the Panel considered that such protection should be given in ways permissible under the General Agreement rather than by the extension of credit exclusively for purchases of domestically produced agricultural machinery.

IV. Alleged Nullification or Impairment of Benefits
accruing to the United Kingdom under the General Agreement

17. The Panel considered whether the operation of the Law No. 949 had caused injury to United Kingdom commercial interests, and whether such an injury represented an impairment of the benefits accruing to the United Kingdom under the General Agreement.

18. The Panel and the two parties agreed that under Article XXIII of the General Agreement a case of impairment or nullification may be brought before the CONTRACTING PARTIES whether the impairment was a result of a measure conflicting with the provisions of the Agreement or of a measure which was not inconsistent with the provisions of the Agreement.

19. The Panel had before it statistics relating to the imports of tractors from 1952 to 1957 as well as statistics of imports of agricultural machinery from 1950 to 1957. It also had before it statistics for the registration of tractors of domestic and foreign origin from 1950 to 1957. These statistics showed that total imports of tractors remained at a more or less stable level from 1952 to 1955 (with the exception of 1953 when the imports were abnormally high), and that there was a significant falling off

of imports in 1956-1957. The figures for the imports of tractors from the United Kingdom followed approximately the same trend, in the first part of the period, but the decline in recent years was more marked. The Panel recognized that the fluctuations in the registrations of foreign tractors from 1952 to 1957 were less marked than for imports although the registrations in 1956 and 1957 were also smaller than in the preceding years.

20. The statistics showed that if the variations in absolute numbers were not very large in the case of registrations, the share of imported tractors in the total registrations steadily decreased from 1952 to 1957. The registration of national tractors on the other hand increased up to 1954, and had remained more or less stable from 1955 to 1957 in spite of a diminution in the total number of registrations.

21. The United Kingdom delegation contended that the diminution in the share of imported tractors in the total supply was to a large extent the result of the special credit facilities granted by the Italian Government for purchases of Italian tractors. The Italian delegation could not agree with this and maintained that the growing share of the national industry in the market was due to a better supply from that industry following on its post-war reconstruction and to a better adaptation of Italian tractors to particular conditions of Italian agriculture. The Italian delegation produced figures of production which indicated that production of national tractors in 1952 had amounted to only 12,000 units and increased gradually to a figure of 25,000 units in 1955, 1956 and 1957. As regards reaper binders and other agricultural machinery the import figures indicated that there was a substantial increase in imports from 1952 to 1955 or even later. The reduction of imports of tractors during the last two years was in addition due, in the opinion of the Italian delegation, to a saturation of the market and not to effects of the credit facilities granted by the State to certain purchasers of Italian tractors. In this connexion it was to be noted that imports of other agricultural machinery were continuing to rise. The Italian delegation pointed out that in the years in question the credit facilities had only been applied in respect of some 44,000 domestic tractors or one half of total sales of the domestic product. The other half of sales of domestic tractors had competed on normal commercial terms with imported tractors. Thus the influence of these credit facilities extended to only a part of sales of domestic tractors. The Italian delegation stressed that, apart from the rate of interest, the loans under the Law did not differ from ordinary agricultural loans in Italy. Finally, the Italian delegation stressed that thanks to the credit facilities under the Law a large number of small farmers had been able to buy agricultural machinery which they would not be in a position to acquire in the absence of such measures.

22. On the basis of the statistics presented by the parties and the explanations given, the Panel came to the conclusion that the falling off in imports of tractors and, in particular, of the tractors from the United Kingdom, could not entirely be attributed to the operation of the credit facilities

under the Law. It considered, however, that these credit facilities had probably influenced a number of purchasers in the selection of the tractors which they purchased. The Panel considered, furthermore, that if the considered view of the Italian Government was that these credit facilities had not influenced the terms of competition on the Italian market, there would not seem to be a serious problem in amending the operation of the Law so as to avoid any discrimination as regards these credit facilities between the domestic and imported tractors and agricultural machinery.

23. The Panel noted that in the course of the bilateral negotiations between Italy and the United Kingdom the Italian Government mentioned that any modification of the present system might involve special difficulties. The Italian delegation pointed out in particular that if the Law were operated in such a way as to apply to all tractors, whatever their origin, there would be budgetary implications because of the increased appropriations which would be required. Moreover it would be difficult for the Government to justify the use of the proceeds of taxes levied on Italian nationals in a way which would work to the advantage of foreign producers. Finally the limitation of the credit facilities to tractors of domestic origin was necessary to assure national production of agricultural machinery.

24. The Panel considered that the application of the special credit facilities to both imported and domestic machinery need not involve any increase in budgetary appropriations since there could be a different application of the funds within a total already available. In this connexion it noted that the United Kingdom Government was not asking the Italian Government to increase the budgetary appropriation, but rather to extend the availability of the credit facility to permit a fair choice between purchases of tractors of domestic and foreign origin. Further, the Panel noted that the credit facilities were not granted to the Italian producers of agricultural machinery but to the Italian purchasers. Since these facilities were of advantage to Italian citizens the Panel questioned whether their extension to purchasers of imported machinery would be considered by public opinion as representing a benefit to foreign interests. Finally, as regards the need to assure national production of agricultural machinery, the Panel noted that the Italian industry already had the benefit of tariff protection (which in the case of the tractors under reference, amounted to 32 per cent ad valorem) and that the tariff was an accepted means of giving protection to domestic industry under the General Agreement.

V. Conclusions

25. In the light of the considerations set out above the Panel suggests to the CONTRACTING PARTIES that it would be appropriate for them to make a recommendation to the Italian Government in accordance with paragraph 2 of Article XXIII. The Panel considers that the recommendation should draw

the attention of the Italian Government to the adverse effects on United Kingdom exports of agricultural machinery, particularly tractors, of those provisions of Law 949 limiting the prescribed credit facilities to purchasers of Italian produced machinery and suggest to the Italian Government that it consider the desirability of eliminating within a reasonable time the adverse effects of the Law on the import trade of agricultural machinery by modifying the operation of that Law or by other appropriate means.

VI. Draft Recommendation

Having examined, in accordance with Article XXIII the complaint of the United Kingdom Government concerning those provisions of Italian Law No. 949 of 25 July 1952 which provide credit facilities for the purchase of tractors and other agricultural machinery of Italian, but not of foreign, origin,

The CONTRACTING PARTIES

Recommend that the Italian Government consider the desirability of eliminating within a reasonable time the adverse effects on imports of agricultural machinery of the provisions of Law No. 949, referred to above, by making available to the farmers and co-operatives eligible under that Law the same credit facilities for the purchase of agricultural machinery imported from other contracting parties as are now provided for the purchase of domestically produced agricultural machinery, or by other appropriate means.