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ADEQUACY AND EFFECTIVENESS OF THE ARRANGEMENT AND OBSTACLES TO ACCEPTANCE WHICH CONTRACTING PARTIES MAY HAVE FACED

Note by the Secretariat

The present note has been prepared by the secretariat in an attempt to facilitate the preparations for and the discussion at a special meeting of the International Dairy Products Council on 15 May 1985. It might be recalled that the purpose of that meeting is to examine the adequacy and effectiveness of the International Dairy Arrangement and the obstacles to acceptance which contracting parties may have faced. The meeting is held in pursuance of the action taken by the CONTRACTING PARTIES on 30 November 1984 (L/5756).

General remarks

1. The International Dairy Arrangement came into operation on 1 January 1980, and was a result of the Multilateral Trade Negotiations 1973 to 1979. It was in a way a successor to the Arrangement Concerning Certain Dairy Products of 1970.
2. The objectives of the Arrangement are: to achieve the expansion and ever greater liberalization of world trade in dairy products under market conditions as stable as possible, on the basis of mutual benefit to exporting and importing countries; and to further the economic and social development in developing countries. In adopting these objectives, the economic importance of milk and dairy products to many countries, and the need to avoid surpluses and shortages and to maintain prices at an equitable level were recognized, and it was considered that improved co-operation in the dairy products sector contributed to the attainment of the objectives agreed upon in the Tokyo Declaration of 14 September 1973.

3. Participants have agreed to foster recognition of the value of dairy products in improving nutritional levels and of ways to make such products available to developing countries and to do this in co-operation with the FAO and other organizations. Members have also agreed within the limits of their possibilities, to furnish dairy products to developing countries as food aid. Provisions are made in the Arrangement to avoid harmful interference of food aid or concessional transactions with normal patterns of production, consumption and trade. The price provisions of the Arrangement are not applying to exports to developing countries which are donated or destined for relief purposes, food-related development purposes or welfare purposes. The Committees established under the Protocols have the authority to grant derogations from certain provisions of the Protocols in order to remedy difficulties which the observance of minimum prices might cause to certain participants.

4. Exporting participants have agreed to use their best endeavours to supply on a priority basis the normal commercial requirements of developing importing participants, especially import requirements for food-related development purposes and welfare purposes. The obligations of importing participants are in particular: to co-operate in implementing the minimum price objectives and to ensure that the relevant products are not imported at less than the prescribed minimum; to supply information concerning imports of the products covered by the Protocols; and, to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum prices threaten the operation of the Protocols.

5. As of 1 May 1985, the Arrangement had the following participants: Argentina, Australia, Austria, Bulgaria, Egypt, the European Communities and its member States, Finland, Hungary, Japan, New Zealand, Norway, Poland, Romania, South Africa, Sweden, Switzerland and Uruguay. Furthermore, the following countries have been represented at meetings by observers: Bangladesh, Brazil, Burma, Canada, Chile, Cuba, Gabon, Haiti, India, Israel, Ivory Coast, Jamaica, Malta, Nicaragua, Nigeria, Portugal, Spain, Trinidad and Tobago, Turkey, Yugoslavia, Mexico, Panama and Tunisia (L/5517/Add.17). This means that a total of 45 contracting parties and four other countries were participating in or associated with the operation of the Arrangement. The United States was participating in the Arrangement until 12 February 1985 and Austria has announced that it will withdraw from the Arrangement, with effect as from 9 June 1985.

6. The countries participating in the Arrangement account for approximately ninety per cent of total world exports of dairy products and for around forty per cent of total world imports of dairy products.

7. During the years the Arrangement has been in operation, there has been a development towards a situation characterized by a general and structural surplus of dairy products and the accumulation of surplus stocks. This has had and still has a depressing effect on international markets and prices. World market prices for dairy products have followed a downwards trend since 1981. The appreciation of the United States dollar tended to accentuate these developments. The appreciation of the United States dollar and/or the depreciation of other currencies also had the effect of raising the relative value of the agreed minimum export prices as the latter have been stipulated in US dollars. The

result was that international market prices reached the level of minimum prices and may even have fallen below that level in 1984/85. This was in particular the case for whole milk powder, anhydrous milk fat and butter. The adoption of a Resolution in November 1984 (DPC/13) had the effect of suspending the price provisions regarding milk fat, at least partially and on certain conditions, but has not helped sufficiently to restore the market situation for butter. However, further efforts are being made to reach agreement on a modification of the minimum price levels for some products and to agree upon an orderly disposal of surplus stocks, notably of butter. Participants have started to reflect on steps to take in order to cope with currency fluctuations and to alleviate the adverse effects on the market and prices that such fluctuations may have. Hopefully, these questions may be settled in the near future, and at the same time the Resolution of 16 November 1984 could be rescinded.

Functioning of the Arrangement

8. The functioning of the Arrangement has been reviewed on several occasions by the Council. The first such review was made in April 1981 (L/5226, DPC/4, DPC/6). A second review was made in September 1982 (DPC/8, L/5546) and further reviews were made in 1983 and 1984 (L/5693). In general, the view prevailed from these examinations that the Arrangement had functioned in a satisfactory manner, and that it had contributed to a better knowledge of the dairy market and to a strengthening of international co-operation in the dairy sector.

9. By the end of 1985, the Arrangement will have been in operation for six years. According to Article VIII:4, it shall be extended for a further period of three years, unless the Council decides otherwise. Amendments to the provisions in the Arrangement may be recommended by the Council and such amendments shall enter into force upon acceptance by the governments of all participants (Article VIII:5).

10. The bodies established to administer the Arrangement are the Council and the Committees of the Protocols. These have been established according to Article VII, which also contains provisions for meetings, decision making, co-operation with other organizations and the admission of observers. The functions of the Council and the Committees are given in Articles IV and VII and in the Rules of Procedure (DPC/1) adopted by the Council. Furthermore, the provisions of the Protocols indicate other tasks for and competences of the Committees (e.g. Article 3:3(a) of each of the Protocols).

11. One major action taken by the Council under Article IV was the adoption of the Resolution of 16 November 1984 (DPC/13), which had the effect of suspending the provisions of Article 3, paragraphs 1 to 4 of the Protocol Regarding Milk Fat, at least partially and on certain conditions. A proposal to rescind that Resolution is actually under consideration.

12. The Committees of the Protocols have modified the level of the minimum prices specified in Article 3:2 of each of the Protocols twice; on 1 October 1980 and on 1 October 1981. Proposals for further modification of the levels of the minimum prices are under consideration in the Committees. The level of the minimum prices has been regularly reviewed at the September sessions of the Committees in conformity with Article 3:3(b) of each of the Protocols.

13. By derogation from the provisions of Article 3, paragraphs 1 to 4, of the Protocol Regarding Certain Milk Powders, participants may under certain conditions, export or import skimmed milk powder and buttermilk powder for purposes of animal feed at prices below the minimum prices (Article 3:5). The following participants have made use of this opportunity: Australia (DPC/P/W/14 and 22), New Zealand (DPC/P/W/15, 24 and 28), Poland (DPC/P/W/29), South Africa (DPC/P/W/16) and Switzerland (DPC/P/W/26).

14. According to Article 4 of each of the Protocols, participants shall for the products covered by Article 1 of the respective Protocol, and in cases where prices in international trade are approaching the minimum prices, notify all relevant elements for evaluating their own market situation. This obligation has not been fully complied with by any participant in spite of the specific agreements made on the matter (DPC/13 and L/5763).

15. Under Article 7:1 of each of the Protocols, the respective Committee has the competence to grant derogations from the provisions of Article 3, paragraphs 1 to 4. However, so far no such derogations have been granted. In the case of cheese, there is also an Article 7:2 providing that derogation may be made from the provisions of Article 3, paragraphs 1 to 4 for cheese which would be below normal export quality. Australia (DPC/C/W/14 and 20), New Zealand (DPC/C/W/12, 13, 15 and 26), Poland (DPC/C/W/16) and South Africa (DPC/C/W/25), have so far made use of that possibility.

16. Article V of the Arrangement contains provisions regarding food aid and transaction other than normal commercial transactions. Food aid in the form of dairy products was estimated to have reached an annual total of 3 million tons of milk equivalent in 1983. Increased food aid shipments of skimmed milk powder, butter and anhydrous milk fat in 1984, suggest that the total of food aid in dairy products for that year might have been about 4.5 million tons of milk equivalent. Over the years the Arrangement has been in operation, participants have provided more than 1.3 million tons of skimmed milk powder, 21 thousand tons of whole milk powder, 227 thousand tons of anhydrous milk fat, 54 thousand tons of butter and almost 6 thousand tons of cheese as food aid. Food aid shipments of dairy products have varied from one year to the other and it is difficult to say whether there is a clear upwards trend. However, new records were set in 1984 for food aid shipments of skimmed milk powder, anhydrous milk fat and butter. This was mainly due to increased food aid deliveries of dairy products by the European Communities and the United States in that year.

Obstacles to participation in the Arrangement

17. The actual situation with regard to participation in the Arrangement is mentioned in paragraph 5 above. In its notice of withdrawal, the United States mentioned that its decision to withdraw was taken after having reviewed recent decisions taken by the Council and which in the view of the United States had invalidated key provisions of the Arrangement (L/5749). A further clarification of the position of the United States might be helpful for further consideration of the matter. Austria did not indicate any reason for its decision to withdraw when presenting its notice of withdrawal. It might be noted

that Austria had requested the levels of the minimum prices for some products to be redefined and as no agreement was reached on this request, it subsequently proposed to suspend the price provisions until the end of 1985, but neither on this proposal could an agreement be reached. A subsequent request by Austria for derogation under Article 7 of each of the Protocols was not met (L/5786).

18. An obstacle to Canadian participation in the Arrangement was that initially no agreement could be reached on a Canadian request for a derogation from the provisions of Article 2 of the Protocol Regarding Certain Milk Powders by including a reference point in Annex Ia for Canadian exports to the Caribbean area.

19. Although the Arrangement is open for acceptance by governments members of the United Nations (Article VIII, paragraph 1), a number of importing countries both contracting parties to the GATT as well as others, have not joined. It is not evident that the Arrangement itself, nor particular provisions of it, should discourage or prevent importing countries from acceding to the Arrangement. The reason for non-participation by such countries may rather be that their governments have not yet been convinced of the advantages to them of joining the Arrangement, notably in the present situation, characterized by surpluses of most dairy products. However, it might be appropriate to draw the attention of importing developing countries to the provisions of the Protocols regarding some obligations of exporting participants and the non-appliance of some price provisions for transactions other than normal commercial transactions (Articles 3:8 (powders), 3:7 (milk fat and cheese) and Article 5 of each of the Protocols).