

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Committee on Subsidies and Countervailing Measures

### MINUTES OF THE MEETING HELD ON 18 NOVEMBER 1983

Chairman: Mr. M. Ikeda (Japan)

1. The Chairman recalled that the Committee had three items on its agenda:
  - A. Report of the Panel on the EEC subsidies on export of wheat flour (SCM/42)
  - B. Report of the Panel on the EEC subsidies on export of pasta products (SCM/43)
  - C. Conciliation under Article 17:1 of the Agreement pursuant to the United States complaint concerning the granting of subsidies by Brazil and the EEC on the exports and production of poultry (SCM/Spec/19).

He proposed that the Committee consider item A and B at the same time. It was so agreed.

#### A-B. Reports of the Panels on the EEC subsidies on export of wheat flour (SCM/42) and on export of pasta products (SCM/43)

2. The Chairman made the following statement:

"At the end of the last meeting when we discussed the two reports I said that the discussion had shown that there were divergent views among Signatories on the fundamental issues involved and on the specific procedures to be followed. However, all those who had spoken recognized, explicitly or implicitly, the importance of the efficient functioning of the dispute settlement procedure and the responsibilities which the Committee has under the Code. The discussion in the Committee had further contributed to the identification of problems that the Committee would have to confront. Starting from these premises the Committee authorized the Chairman to hold, as a matter of urgency, informal consultations with all interested Signatories with a view to proposing an appropriate solution. In pursuance of this mandate I have held a series of bilateral and plurilateral consultations with all interested Signatories. On the basis of these consultations, I have prepared a text (SCM/Spec/20) which, in my view, might be the basis of a possible compromise. Obviously the tabling of this text by the Chair cannot prejudice the position of any delegation. As any compromise, this one will not completely satisfy anybody. I hope, however, that it deserves at least a very careful examination and a good deal of

reflection. I decided therefore to submit it to the Committee, on my own responsibility, and I hope that you will take your time to carefully examine it and reflect on its merits, bearing in mind the consequences the Committee will face if it is unable to find an appropriate solution and if the present deadlock continues. I am not, therefore, expecting any reactions at this stage. I am only asking you to consider the draft, refer it to your capitals and advise your governments on all aspects of the matter. We should reflect on this matter and after some time has elapsed may decide to hold a special meeting."

3. The representative of the EEC said that recognizing that the Chairman did not expect any reactions he would like to make only two brief remarks. First he wished to remind the Committee that the EEC and the United States had been continuing efforts to resolve these two problems and that they agreed that any solution should be acceptable not only to the two parties but to all Signatories. During these discussions at least one point of disagreement had been noted which had arisen from ideas under discussion in the Committee and referred to in the Chairman's text; this was the crucial question of what practices the Chairman had in mind which should be brought into conformity with Article 9. It was not clear how one could be expected to conform to provisions which the Committee was called upon to examine in order to arrive at a uniform interpretation and effective application. Finally he emphasized that the text should remain confidential to the Committee.

4. The Chairman said that similar or other questions might arise in the minds of other Signatories but at this stage the Committee did not want to go into them and this was why he requested Signatories to have further reflections both here and in capitals. It was understood that each delegation reserved the right to raise any question in relation to the paper at a later stage. The Chairman also stressed the need of strict confidentiality with respect to document SCM/Spec/20 itself and the procedures followed by the Committee. The Committee agreed to revert to these items at its future meeting.

C. Conciliation under Article 17:1 of the Agreement pursuant to the United States complaint concerning the granting of subsidies by Brazil and the EEC on the exports and production of poultry (SCM/Spec/19)

5. The Chairman recalled that the United States request for conciliation in terms of Article 17:1 had been circulated in document SCM/Spec/19. This document also contained background material and other relevant information on the matter. According to Article 17:1 of the Code the Committee should review the facts involved and, through its good offices, encourage the Signatories concerned to develop a mutually acceptable solution.

6. The representative of the United States made a statement, the text of which is reproduced in Annex I.

7. The representative of the EEC made a statement, the text of which is reproduced in Annex II.

8. The representative of Brazil said that the US complaint constituted the first case involving a developing country. It should be, therefore, clear that it was addressed at two different countries and indeed there were two different cases. As far as the complaint against Brazil was concerned he had

very serious doubts whether the US complaint conformed with the Code. Referring to Articles 12:3 and 14:4, of the Code he considered that the complaint did not contain positive evidence, through an economic examination, that there had been serious prejudice to the US producers. The Committee should, therefore, in accordance with footnote 34 of the Code, find that there was no reasonable basis supporting the US allegations and simply dismiss the case.

9. The Chairman said that the statements made had shown that there were a number of points that required further clarification. In this connection he referred to the specific suggestion made by the US representative that the Chairman should organize an informal consultation between the three parties and subsequently inform the Committee about the possibility of finding a mutually satisfactory solution.

10. The representative of Brazil said that if such a conciliation took place it could be perceived as recognition of the receivability of the complaint whereas he thought that the complaint against his country should be simply dismissed.

11. The representative of India said that the conciliation phase of a dispute settlement was governed by Article 17:1 of the Code including footnote 34 thereto. It was unclear to him whether the US delegation would like the Committee to assume its responsibilities under that Article or whether it simply requested the Chairman to offer his good offices.

12. The representative of the United States said that her delegation acted under Article 17:1 and by no means intended to preclude the responsibilities of the Committee. She thought, however, that given the complexity of the case the most efficient way would be to have a sort of pre-conciliation in a small group but the results would certainly be fully reported back to the Committee.

13. The representative of Australia stressed the importance his delegation attached to the conciliation process under Article 17. In order to assist the Committee to fulfill its responsibilities in this regard, he said it would be necessary for each party to the dispute, which had not already done so, to provide the Committee with a written statement of his views on the matter to be taken into account. He did not, however, see any difficulty if the Chairman conducted informal consultations with the interested parties, the results of which would be brought back to the Committee. The representative of Canada was also of the opinion that it would be very useful if the Chairman could conduct some informal consultations before the Committee would revert to the matter. As to the substance of the matter, he considered it important that the representative of Brazil explain why he considered the US complaint as unfounded.

14. The representative of Chile said that he could agree with the two previous speakers. He also wished to draw attention to the fact that during consultations under Article 12 it was not always possible to obtain full information. He considered that in order to conduct the dispute settlement process in the proper way it was indispensable to have all the necessary information; the informal conciliation by the Chairman should remedy this situation. In the absence of full information it would be difficult for the Committee to assume its responsibilities. Speaking more generally, the

representative of Chile said that the notification procedure under Article XVI:1 of the GATT and Article 7 of the Code should be more effectively used and attention of some contracting parties should be drawn to the fact that there were gaps in their notifications.

15. The representative of the United States said that her authorities had requested, under Article 7 of the Code, additional information from the EEC and Brazil but were unable to obtain it. Nobody had, however, contested that the incriminated subsidies had been granted.

16. The representative of the EEC, although having doubts as to the receivability of the US complaint, thought that the solution proposed by the representative of India seemed to offer the best course of action. Without excluding the formal conciliation process under Article 17:1 at a later stage, the representative of India had called for informal consultations. The informal character of these consultations should make it possible for Brazil to participate without prejudicing its position as to the receivability of the complaint.

17. The representative of Brazil said that according to the wishes of some members of the Committee he was ready to make a statement on the substance of the matter. The text of this statement is reproduced in Annex III.

18. The representative of the United States said that there was some misunderstanding as to the question of special and differential treatment under Article 14. The United States had at no time alleged that the Brazilian subsidies were inconsistent with Article 9 of the Code. The United States considered that these subsidies were granted in a manner inconsistent with Article 10 of the Code which, according to Article 14:10, applied to all Signatories, irrespective of whether they were developed or developing ones. She further said that she was ready to rebut, point by point, the counter-arguments advanced by the EEC and Brazil. She continued to believe, however, that it would be more efficient to have informal consultations with the good offices of the Chairman.

19. The representative of Brazil recalled that the Committee had been confronted with two different cases and it would be inappropriate to deal with them in a trilateral consultation.

20. The Chairman said that if the Committee instructed the Chairman to organize such informal consultations, it would prejudice neither their nature nor their modalities. It should be clear to everybody that he would organize these consultations in a way which would be fully acceptable to all participants.

21. The representative of India agreed that the Chairman was trying to set up an informal mechanism which could in no way prejudice the views of the three parties concerned, or of any other interested party. This mechanism fell short of Article 17 and therefore nothing would prevent the Committee from considering, at a future date, whether it should assume its responsibilities. At this stage and given the information available the Committee would not be able to decide whether or not there was a reasonable basis supporting the complaint. He further said that he could support the Brazilian reference to Article 14:4 which required that adverse effects should be demonstrated by positive economic evidence. He also stressed that

a very cautious approach should be taken in a dispute settlement case involving a developing country and in this relation he wanted to avoid giving any impression that his delegation wished to concentrate on Article 14 only. There was no doubt that the United States was entitled, under Article 17:1, to bring the matter to the Committee for conciliation. The Committee would have to take a view and it could make it only once all arguments have been made available. He would, therefore, subscribe to the proposed informal conciliation mechanism on the condition that it would be without prejudice to the procedures provided for in Article 17:1.

22. The representative of the EEC said that notwithstanding differences between the two cases and the fact that, in his opinion, the complaint was not receivable, a satisfactory non-contentious solution could possibly be found if the three biggest exporters were to meet. Nevertheless there should not be any doubt as to the informal nature of such discussions in order not to prejudice legal problems of receivability.

23. The representative of Brazil said that he wanted to avoid any implication that by agreeing to such informal consultations the Committee accepted the complaint. He reiterated his view that the complaint should not be accepted because it did not contain positive economic evidence as required by Article 14:4. His delegation would be ready to enter into any consultations as soon as Article 14:4 was complied with. He further said that although he was endeavouring to have his country's rights adequately recognized he was not losing sight of its obligations. His country had made all possible efforts to remain, even in extremely difficult situations, in conformity with its obligations under the Code. It was therefore very important to him that the right of a developing country to receive special and differential treatment be fully observed.

24. The Chairman said that all views expressed would be duly recorded and that the conclusion he was going to propose would relate only to procedural aspects. He then made the following statement:

- "- the Committee had before it the United States request for conciliation under Article 17:1 (document SCM/Spec/19);
- the Committee has heard presentations of three parties involved concerning substantive issues as well as legal aspects, including compatibility with dispute settlement procedures;
- the Committee wished to further reflect on the matter and therefore decided to maintain it on the agenda of its next meeting;
- in the meantime the Chairman will organize informal consultations with interested Signatories."

The Committee took note of this statement.

ANNEX I

Statement by the Representative of the United States

Mr. Chairman,

On September 27, 1983 the U.S. submitted a request (circulated in document SCM/Spec/19) to the Code Committee for conciliation of its complaint against the EC and Brazil concerning the grant of subsidies on the export and production of poultry. It is our strong hope that the Committee, by reviewing the facts involved, can help the parties to reach a mutually acceptable solution.

Let me briefly summarize the facts as viewed by the U.S. with regard to 1) the EC's subsidy practices, 2) Brazil's subsidy practices, and 3) the effect of these practices on the world poultry market.

EC Subsidy Practices

The EC first established export subsidies in the form of restitutions on poultry meat, including whole chickens, parts, turkeys and turkey parts, in 1967 and continued them with respect to exports to all destinations through August 15, 1974. Between 1974 and 1980 the EC varied the scope of its subsidies in terms of product and geographic coverage as described on page 2 of our conciliation statement. Since 1980, the EC has subsidized export sales of these products to all destinations except the U.S.

As described on page 2 of our statement the EC restitution on whole chicken has varied during the 18 years it has been in effect reaching as high as 27 ECU's per 100 kg in 1979. Since the beginning of 1982 the subsidy has progressively increased from 13.5 ECU's to 22.5 ECU's per 100 kg. in February of 1983. The restitution levels have dropped somewhat recently but are still well above the level of January, 1982.

According to the EC regulations the size of the refunds depends on some or all of the following factors: 1) the difference between EC and world market prices for poultry; 2) supply of poultry meat products on the EC markets; 3) the need to avoid disturbances which might lead to prolonged imbalance between supply and demand in the EC market; 4) the economic aspect of the proposed exports; and 5) the difference between EC and world market prices for the quantity of feedgrain needed to produce poultry.

In addition to the export restitutions described above, the bulk of EC whole chicken exports benefit from other substantial production aids granted by the government of France. In 1975, France accounted for 46 percent of total EC exports of whole chickens. By 1982, that figure had grown to 72%. What caused this explosive growth? It is important to note first that by 1980, 98 percent of total French whole chicken exports came from three firms located in Brittany and that since 1978 these production of these firms had increased by 75 percent as new processing facilities were built. A number of programs are available to benefit poultry processors in Brittany which are described on page 3 of our statement. Since fully 97 percent of the production of these three Brittany firms is exported, the national subsidies available to them are a matter of great concern to the U.S. The U.S. delegation regrets that it is unable to supply greater detail with respect to these programs. We sought such information during consultations with the EC, but did not receive any. We would suggest that it is appropriate for the Committee to seek such information in order to fulfill its responsibilities under article 17 to review the facts of the matter.

#### Brazil Subsidy Practices

Brazil's subsidy practices as they apply to the production and export of whole chickens are described on pages 3-5 of the U.S. statement. Those subsidy programs which currently apply to poultry include 1) the provision of operating capital at preferential loan rates to poultry exporters under res. 674 and to poultry producers under the rural credit program; 2) the exemption from income tax of profits attributed to export sales; and 3) the provision of subsidized financing on a very large sale of whole chickens to Iraq. The U.S. has requested from Brazil information which would permit a calculation of the total ad valorem effect of each of the Brazilian subsidies. However, to date this has not been supplied.

#### 3 Effects on the Market

The U.S. contends that the subsidy practices of the EC and Brazil operate to increase exports and are inconsistent with these countries' obligations under Articles 8 and 10 of the Code. The U.S. is very efficient poultry producer as demonstrated by the fact that its domestic poultry prices are lower than those of the EC and Brazil. This is not surprising in light of lower U.S. grain costs.

Despite this natural advantage, the U.S. has managed to capture only 15 percent of the total world market for whole chickens. Moreover, with the exception of 4 years in which unusual market conditions existed, the U.S. has obtained less than 6 percent of the Middle East market since 1967, the year that EC subsidies first began.

From 1967 to 1975 the world market for whole chickens was relatively static growing only by 100,000 tons in the period. During this time, the U.S. experienced a loss in market share to the EC on the world market. In 1975, two new factors began having a major influence world trade in whole chickens: first, a rapid expansion in demand for whole chicken especially in the Middle East and second, the entry of Brazil as a supplier of subsidized poultry.

While the expansion of the market enabled the U.S. to increase its exports somewhat, availability of subsidized poultry from the EC and Brazil prevented the U.S. from participating in the market expansion to the same degree as Brazil and the EC. Between 1976 and 1981 EC exports expanded by 328,000 tons, Brazil's exports by 290,000 tons and U.S. exports by only 140,000 tons. The U.S. maintains that the EC and Brazil, who together have obtained 70 percent of the world market in whole chickens through the use of subsidies have more than equitable share of world trade.

Beginning in 1982, the world market for whole chickens began to contract. Because it is the only major, non-subsidizing supplier, the U.S., though accounting for only 15 percent of the world market, bore 80 percent of the burden of market adjustment, with U.S. exports falling by 100,000 tons. Displacement is particularly evident in the Egyptian and Iraqi markets where the U.S. share of the market has declined from 56 percent of Egyptian imports in 1978-'81 to 0.2 percent in 1982. During the same period Brazil expanded its share from 34 to 91 percent. The EC share declined slightly during this period; however, on the basis of tenders in the first 5 months of 1983, the EC share has again grown while the U.S. has dropped to zero.

We have seen a similar problem in the Iraqi market, where the size of the market had trended upward since 1973. In 1979/81, the U.S. supplied 29 percent of the Iraqi market and Brazil supplied 65 percent. In 1982, Brazil continued to supply 65 percent of the market but the U.S. had not sold a single chicken in 1982/83. Further, Brazil in 1983 won an Iraqi tender to supply 130,000 tons of poultry.

The U.S. contends that these sales by both the EC and Brazil were possible only because of large and increasing subsidies. The level of EC refunds for poultry has nearly doubled. Brazil, in addition to other subsidies, provides low interest financing for poultry exports.

Then there is the question of undercutting. The information provided on page 7 of the U.S. conciliation request (SCM/Spec/19) shows the existence of price undercutting in a series of Egyptian tenders.

With respect to trade in poultry parts, the U.S. remains the largest supplier; however, with the EC's reintroduction of restitutions, we are worried that our exports will be displaced in selected markets and we are certain that our overall exports will be reduced.

Mr. Chairman, the United States has held consultations with the EC and with Brazil in an effort to resolve these problems. This effort was unsuccessful. Nevertheless, the U.S. delegation remains convinced that a mutually satisfactory solution is attainable. We would suggest that the most likely way to arrive at such a solution, Mr. Chairman, would be for the parties to the dispute to get together under the Chairman's auspices to try to develop a solution and report back to the full Committee.

ANNEX II

Statement by the representative of the European Economic Community

The United States complaint which has just been referred to the Committee for examination under Article 17 calls for the following comments on the part of the European Community. Over a period of nearly two years now, we have indeed had certain discussions with our American friends, initially within the framework of Code procedures, then in other more or less formal contexts. There is indeed a problem on the world poultry market, I think no one can deny this, but the Community has always considered that it had not infringed the relevant provisions of the Code. What has always hampered the discussions has been the "contentious" attitude of the United States, which is always trying to question the consistency with GATT of its partners' export policies. This is again the case in the United States document that has been circulated. Once again the Community cannot be convinced that the United States arguments are relevant and valid. Accordingly, I should like to make a number of remarks which bear both on the substance, i.e. the material elements, and on the inevitably resulting legal problems.

I. As regards the existence and nature of the subsidies complained of (I speak only for the EEC, I shall leave my Brazilian colleague to comment on what the Americans think about any subsidies granted by Brazil), it is correct that the European Economic Community has an export refund which is based on the texts cited by the United States. I believe the Committee is beginning to be quite familiar with our export refund system, and so I shall simply recall that the refunds are granted to offset the price differential between internal prices on the Community market and prices ruling on the world market or markets. On the other hand, as regards the "subsidies" of one of the Community member States of the Community which the United States has cited, I have a number of comments to make which are very important from the aspect of legal implications. In this regard, I am afraid that once more we may be raising a question that may involve serious problems of interpretation, and I regret that this should happen on the occasion of a complaint whereas, as you know, we had decided to address these questions more calmly in various bodies, including this one.

Indeed, I see that the regional aids, aids to agricultural adjustment and aids granted to co-operatives by France are all subsidies - if one can term them subsidies - to production. It is not the matter of subsidies granted directly to exports. Regional development aids are something that I believe all the countries represented here grant to some of their less-privileged regions. In this case, these aids are granted to Brittany which is indeed one of the regions of France suffering from some imbalance of development, and which consequently needs aids granted within the framework of a regional policy.

I would remind you that Article 11 of the Subsidies Code specifically states that subsidies of that kind are allowed for economic, political and

social reasons, which is precisely the case here. Moreover, the United States terms them "regional development grants". In the present instance they are aids granted for job creation. In a period when we are all more or less faced with unemployment, I find it difficult to criticize a State for granting job creation aids in a limited amount that certainly does not cover all the investment involved, since the ceiling is F 25,000 per job. These bonuses are granted for any job created, whether under industrial or agricultural programmes.

The second aid complained of is one that is specific to agriculture but still has the same objective: to encourage development in less-favoured regions. I believe this is a very important element and one should bear in mind the provisions of Article 11.

As regards the grant to co-operatives, I can immediately reassure our American friends who have named three French firms. Those firms have not received any such grant, so you can dismiss that idea. At this stage, I would like to draw your attention to the legal nature of those grants and the legal consequences that we can draw from them. This is a very important problem because it concerns production grants, not export grants. The amounts mentioned by the United States do not correspond to reality. I am told by certain colleagues from the member State concerned that they probably correspond to 10 or 20 per cent of the investment concerned. The three firms are indeed important for both production and export (although they do not export 97 per cent of their production) but the investments which have benefited from aids do not represent their entire production capacity. Investment aids have been granted only on a tiny part of their production potential, not on their entire production capacity.

In these circumstances, can one consider that production subsidies granted to less-favoured regions for job creation are to be deemed export subsidies? From the purely economic aspect, one can already have serious doubts, and from the legal aspect a very serious problem arises. Can one consider a production subsidy to be an export subsidy solely because it is granted to an undertaking that exports part of its production? Indeed, problems of this kind have been raised in the Agriculture Committee and are being examined in that framework. I shall merely mention, so that the Committee can appreciate the extent of the problem, that the United States operates agricultural aid programmes that are quite substantial, of the order of \$20 or 30 billion, and it exports 50 per cent of its production, so that part of that money is used to facilitate United States exports.

That is the kind of problem we are faced with. Once again, on the occasion of a complaint we are faced with serious problems of interpretation. And I wonder whether one should not be very cautious before agreeing to take up such problems in a contentious framework, so as not to repeat the delicate operations that have caused us so much trouble. I think one must be very cautious, because here the United States is raising a serious problem, a problem of basic interpretation, on the occasion of a complaint.

II. As regards the other aspects of the complaint, I must say that after having examined it in detail, in the view of the Community there seem to be serious gaps at the level of evidence regarding the effects of an export subsidy, since it is customary to consider that the Community refund is an export subsidy and leaving aside therefore the French pseudo-subsidies about which I have the reservations already mentioned. As you know, the Code requires the establishment of a causal link. Article 10 requires the effects of a subsidy to be established. Perhaps not everyone likes that, but the Code as it stands requires a causal link to be established between the grant of a subsidy and its alleged adverse effects or pseudo-effects.

In this connection, I would point out that as regards world market trends, the United States gives only one argument - only one - regarding the possible effect of the subsidy, which is that in the absence of the subsidies the United States share would have been larger. That is an a contrario reasoning based on presumption, not on a causal link. Indeed, such a presumption condemns any subsidy as a matter of principle, where it has the effect of allowing exports to take place. In general, an export subsidy is granted to permit exports which would otherwise not exist. Clearly, the Community has internal prices that are much higher than world prices, and unless it offset that difference the EEC could not export. If, from the moment when a party grants an export subsidy, the other parties consider that injury exists because they could otherwise have exported still more, then I think we are again faced with a serious problem of interpretation because one would inevitably be condemning any export subsidy. That may please some people, but in the present state of the provisions of the Code, it is not what the Code is seeking. Furthermore, this sole and very weak argument, based on a mere presumption, omits some factors that are very important for developments in the world market. As you know, Article 10 of the Code also requires identification of any other factors that may have been involved.

The United States contends that it has been prevented from participating fully, even though it has participated in world market expansion, and that since 1982 it has had to bear the burden of adjusting to the declining market trend.

The United States contends that this loss of earnings is due to unfair competition through subsidization - which has not been established in fact, but simply presumed. It is, however, forgetting one thing that we all know here, namely that the United States dollar has appreciated strongly in recent years and I think that we are all affected more or less by United States monetary policy. I think one cannot pursue a policy that causes one's currency to appreciate and at the same time complain of losing export competitiveness.

The United States contends that its competitiveness is confirmed by its low prices, and that its producers are the most efficient in the world. Let us examine its domestic prices therefore; I have studied an American periodical "Outlook of Situation (Livestock and Poultry)" published by the

Economic Research Service of the United States Department of Agriculture. The August 1983 issue of that periodical contains an article on prices ruling on the United States domestic market as compared with production costs; it has even calculated what is termed the net return i.e. the difference between the production cost and the actual selling price on the United States market.

I was very surprised to see that most of the time United States producers sell at a loss on the domestic market. Not a great loss I must say - a few cents - but they sell at a loss. Knowing that for them, exports are only a marginal outlet in relation to their domestic production, I wonder how they can continue to sell at a loss. That is perhaps why they sell at too high a price on the world market, to offset losses incurred on the domestic market. In these conditions, I find very doubtful and quite inadequate the United States submission which is based on a presumption of facts that are absolutely not established, and on an assertion of greater efficiency and greater productivity in the United States, trying to show that the latter does not have in export trade the place that it deserves. Similarly, I must say that as regards displacement, the two instances of market displacement mentioned by the United States, I was very surprised at the accusation made by the United States against the EEC. I note that with some frankness the United States has recognized that on the Egyptian market (where we and our Brazilian friends are accused of having displaced the United States) the EEC share is declining; I read that "the EEC share declined slightly from 11 per cent in 1979-81 to 9 per cent in 1982".

I know that we have always had major problems of legal interpretation on this concept of equitable share and more particularly of displacement, but it does seem to me that common sense should allow anyone to think that if the EEC has suffered a decline on the Egyptian market, it is difficult to allege that we have displaced United States sales.

In addition, I must say that I have sought some information about the Egyptian market, but have not found very much. What I have was in United States publications, and I find that the United States has made two omissions that I consider very serious.

The first of these in the American complaint is failure to mention a fact that is nevertheless reported in a publication of the US International Trade Commission entitled "Summary of trade and tariff information: Live poultry and poultry meat" (September 1983, USITC publication 841). I will read you a sentence from page 18: "Egypt suspended imports of frozen broilers for most of 1982 mainly because of infrastructure problems such as shortage or refrigeration facilities".

Now, if Egypt suspended its poultry imports during most of 1982, clearly we all suffered a decline. Is that good reason to conclude that the decline experienced by the United States is the result of competition? Is the result of subsidization which, furthermore, has not been established?

The second omission made by the United States is that the latter contends that prior to 1982 it had a relatively large share (even if it considered that share inadequate) of the Egyptian market; we are not told in what conditions that share was obtained. I have found, again in "Outlook and Situation" (September 1983) a sentence that will certainly bring back to you unpleasant memories because it raises the problem of food aid. It reads: "After importing substantial quantities of US poultry in 1980 and in 1981 with food aid funds provided by the United States, closed its ports to foreign poultry meat partially to help spur domestic production via higher prices" (page 17).

Clearly, and as the United States has written, Egypt suspended part of its imports. In addition - again as stated by the Americans - the United States share of the Egyptian market was obtained with food aid and you well know the legal problem that this raises at the level of appreciating the world market trend, and of tied aid.

I think these are two important facts, and I regret that they were not mentioned in the United States complaint, knowing furthermore that the EEC share has diminished. I believe that in all good faith it is difficult to contend that we have displaced United States exports on the Egyptian market. I know that strange things happen on the Egyptian market, you have heard about sales of flour, perhaps indirectly sales of dairy products. It may be that the Egyptian market is governed by special laws. In any case, however, if I read the Code I see nothing in the United States complaint to substantiate the idea that we could have displaced United States sales.

I think that the situation is much the same in regard to Irak, because the United States submission says that we had 6 per cent and that we still have 6 per cent.

There again, I believe that the Community cannot be reproached with anything. There is only one argument: the effect of subsidization alleged to have been granted by the Community because its refund doubled over a certain period (yet has been reduced recently).

Mr. Chairman, I think you are now an expert on the Community refund, you know that it is an internal price differential in relation to the world price. Any increase in our refund is because of deterioration in the relationship between our internal prices and world prices. I think the matter is no more complicated than that. As you well know, we have always been ready to discuss in order to justify our calculation methods, we are still ready to discuss them; and if it were to be proved that perhaps we do not fully appreciate all the important elements, we can examine those matters. Our objective is to offset a price differential, never anything more, because we respect the discipline of undercutting; we try to do so as best we can, and we are ready to listen to any suggestions. So let no one make unsubstantiated insinuations about the effect of a subsidy which, because it was increased, could have allowed our exports to expand. It is a price differential - if the refund increases, it is because the

difference between internal and world prices increases.

As regards undercutting, Mr. Chairman, I think you are also familiar with the problems involved, since this matter was examined in the flour panel. Above all, I would not wish to re-open the discussion on it, but would simply remind you that in the flour panel too the United States mentioned bid prices which the Panel set aside as not being sufficiently serious, sufficiently detailed. As I see, the lesson was not learnt since the United States has again mentioned prices that in each instance concern tenders that were not awarded to the United States, and with price differences that were substantial and were unrealistic in relation to other participants.

We encountered the same problem in the flour panel, which considered that one could not be convinced of the relevance of bids made in a tender procedure. I would have preferred to see tenders in which the Americans actually exported - bids accepted - and there perhaps one could have compared prices, but not in the case of a bid that was not taken up. If you like - and if this can reassure the United States - perhaps tomorrow in a tender procedure our producers can bid a very high price. One can always make bids that are more or less serious.

Mr. Chairman, I think that there are not many relevant elements in this complaint and I find that, because of deliberate confusion that is being maintained between what Brazil might have done - the effects that might have resulted from possible subsidization by Brazil - and the presumed effects of subsidization by the Community, the complete absence of evidence of any causal link is being concealed. This being further strengthened by major omissions, on points that seem to me essential. This raises a problem. I am well aware that we have to examine this complaint but as you know, Mr. Chairman, since you too have already mentioned it, Article 17 stipulates, in its footnote 34, that where the Committee reviews the facts involved and lends its good offices, "the Committee may draw signatories' attention to those cases in which, in its view, there is no reasonable basis supporting the allegations made".

Mr. Chairman, I hope I have succeeded in showing that in the present case, and because of this confusion between two systems whose effects are presumed, the absence of any causal link is being entirely concealed. This is a first material problem - that of a reasonable basis supporting the allegations made. And then, this confusion also raises another problem, a legal problem. This is the first time that we have before us a complaint involving two entirely different subsidization systems, if you like, with entirely different effects on the market, in order to use the more or less presumed effects of both of them as a basis for the complaint. This raises a legal problem. Can one accept it in these conditions, knowing that Articles 8, 9 and 10, and above all the relevant procedural articles, do not provide for the possibility of such combinations? Article 12, for example, is applicable whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory. I do

not wish to exaggerate this problem but it is nevertheless important. The Code seems to me rather to call for separate complaints, separate cases. Is such a complaint admissible because it mixes two different systems, particularly where the mixture has material consequences and relieves the complainant of having to adduce the necessary reasonable basis?

Accordingly, the Community has major reservations about accepting this complaint, and has doubts about the application of the conciliation procedure.

III. Now, Mr. Chairman, you know the Community, which is in the habit of seeking solutions of appeasement, and I can readily admit that we would like to see a better situation on the world poultry market. We grant a refund that offsets the difference between internal prices and world prices. If world prices can be raised, the Community will save money. Accordingly, I believe it would be useful to forget these contentious aspects a bit. I know that the United States likes to make complaints, to invoke the dispute settlement procedure and to plead automatic entitlement to a panel. Then a panel is established on the basis of disputable interpretations, with the results that you know. I think that is not the best approach. The important thing is for the three of us to discuss together - the United States, the Community and Brazil. We have already discussed with the United States. For the moment, it is rather difficult for the three of us to discuss together. I hope that our Brazilian friends will understand that in the view of the Community the idea is not to develop procedural matters, to embark on disputes. The reason is that we consider it in our common interest that three of the leading poultry exporters should meet and discuss to try to settle problems which, in my opinion, do not have the significance of a dispute and are not covered by the Code - at least not in the perspective, the conception, the reasoning put forward by the United States.

The United States has made a proposal; Mr. Chairman, with a reservation as to the legal framework of that proposal - because I consider that the United States complaint is not consistent with the Code and in any case raises serious problems both as regards the material nature of the evidence submitted and as regards the legal implications - but consistently with the pragmatic approach characteristic of GATT, I am ready to enter into a discussion which I would like to be a trilateral discussion together with our Brazilian friends. In this connection, the United States delegation has asked that the discussion take place under your auspices. Mr. Chairman, I am somewhat reluctant to call on you once more, I know that you have already done a great deal and perhaps suffered a great deal. But we could accept this if you are willing once more. If sometimes you want to designate some other person in agreement with us, that will raise no problem. I think that we have to tackle things very pragmatically.

In conclusion, Mr. Chairman, we are open to a discussion, but we have very strong reservations regarding the legal framework of the discussion. Is it to constitute conciliation? I believe it is a prior phase of

conciliation. Under Article 17, the Committee must at a later stage carry out its conciliation duty. For the moment we have not yet reached it. We wish to enter a reservation as to the relevance of the United States complaint but we are ready to discuss with our United States friends, our Brazilian friends and a third person, perhaps yourself.

ANNEX III

Statement by the representative of Brazil

The present complaint of the United States against Brazil concerning the alleged granting of subsidies on the export and production of poultry represents the first case within the Committee involving a developed and a developing country.

The Brazilian Delegation wishes to draw the attention of the Committee to the fact that, although the request for conciliation presented by the United States is directed towards the EEC and Brazil, we are confronted with two different cases, involving different Parties and, in this connection, we would like to stress that in approaching this question, we have to bear clearly in mind that the General Agreement itself and the Subsidies Code mandate that a differential and more favourable treatment be assured to developing countries. This Delegation does not, Mr. Chairman, prejudge that it would have to resort to claiming for the full enforcement of these principles in order to defend Brazilian trade practices and to ensure that this request for conciliation is appropriately disposed of. But this Delegation very definitely believes that these principles should be recalled here and justifiedly stressed.

The US consultations with Brazil as mentioned in paragraph 2 of document SCM/Spec/19 were requested in accordance with Article 12 of the Subsidies Code, without specification of the pertinent paragraph.

By referring to Article 13.1, the present request for conciliation makes us believe that, in the view of the United States, such consultations were held under Article 12.1 of the Code, where it is recognized to a signatory Party the right to request for consultations when it has good reasons to believe that subsidies are established or maintained in a manner inconsistent with the provisions of the Code. Already at this early stage, my Delegation would like to call your attention to the fact that the Brazilian Government has, in many occasions and through quite an extensive number of cvd cases brought up by the U.S. Administration, demonstrated that Brazilian trade practices are fully consistent with Brazil's commitments and obligations under the GATT and the Subsidies Code. In spite of this fact, both paragraph 2 and paragraph 4 of article 12 mention the need for the contracting party which has requested such consultations to "include a statement of available evidence with regard to the existence and nature of the subsidy in question".

Additionally, the consultations requested by the United States with Brazil should have taken into account the provisions of Article 14.4 regarding developing countries which prescribes that "adverse effects shall be demonstrated by positive evidence through an economic examination of the impact on trade or production of another signatory". Such "positive evidence" through an economic examination of the impact on trade or production of the USA has never been demonstrated by the US.

Taking into account Article 8.4 c) of the Code regarding "adverse effects" it must be noted that such "adverse effects" of the subsidized exports implies necessarily the displacement of the exports of like products of another signatory from a third country market. This cannot be established on the basis of the statistics data which was forwarded by the US in document SCM/Spec/19.

Furthermore, even if a displacement had occurred, Article 8.4 c) must be read together with footnote no 27 which states: "The term displacing shall be interpreted in a manner which takes into account the trade and development needs of developing countries and in this connection it is not intended to fix traditional market shares".

Coming back to Article 8.4 c) the only possibility that we see for continuing this discussion is footnote nº 28 that reads: "the problem of third country markets so far as certain primary products are concerned is dealt with exclusively under Article 10 below".

Article 10 relates to "more than an equitable share". The data presented by the United States in document SCM/Spec/19 does not substantiate the allegations that Brazil has obtained such "more than an equitable share" of the world market.

Taking into account these preliminary explanations and further discussion that may arise in this session, the Brazilian Delegation would maintain that, as provided for in footnote nº 34 of Article 17 of the Code, the Committee should conclude that in the present case "there is no reasonable basis supporting the allegations" made by the United States.

Within the terms of reference of the Articles and footnotes recalled above, one cannot constitute a case in this area with mere allegations and unproven conclusions.

During bilateral consultations, the United States failed to demonstrate any sort of evidence of the existence and the nature of the alleged Brazilian subsidies. Additionally, the United States was not able to demonstrate that the so-called market displacement of the US exports of poultry to the Middle East was due to the alleged Brazilian subsidies or to the so-called "Brazilian price undercuttings".

Much less, of course, was the US able to present arguments which would lead to the evidence that, as a result of the use of the alleged subsidies, Brazil has obtained more than an equitable share of the world trade in poultry.

It is interesting to notice, Mr. Chairman, that the United States allegations, obviously in order to support its case, introduce a differentiation between whole chickens and chickens in parts, as if they were really different products. The Brazilian Delegation cannot see, despite all its good-will, where and by what means one could consider that a whole chicken is a different product than a chicken cut in pieces. Are two or three small bottles of Coca Cola a different product than a liter of Coca Cola, or than

any volume of Coca Cola split in different glasses ? Even the word - POULTRY - that is technically recognized as the appropriate denomination for the product worldwide, applies indifferently to both whole birds and to pieces of the birds. Also, Mr. Chairman, it is well known that many products being exchanged in world trade are treated as single products in great many cases even when they may be classified under various customs items; this is what we see in the great majority of national customs nomenclatures, including the Brussels CCCN. Much sounder and much more relevant than artificial maneuvering with customs nomenclature digits is to recognize that the identity of a product has much more to do with the production process.

We can easily see why this differentiation is so essential an element in the United States case. Indeed only by using two different sets of statistics - that should otherwise be consolidated as they relate to what is in fact the same product - can the United States show an evidence of its decreasing share in a regional market for whole chickens.

Apart from the fact that a world market, which remained relatively static from 1968 to 1975, gives no fundamental basis for determining "traditional shares" among

exporters, maybe the main reason for the US not having had a strong argument to convince Brazil, in those consultations, that what was supposed to be its share in the so-called "traditional market" had increased more than what it was expected to, is the additional fact that the concept of "more than an equitable share" is a very controversial one, as members of this Committee are fully aware of.

We would not deny that Brazilian exports to the Middle East have increased during the last few years. However, this increase is not a result of the granting of export subsidies nor of Government assistance to domestic producers. In this connexion, due account should be taken of an efficient policy in respect to marketing, an increase in demand in the Middle East after 1975 and namely the preferences of the Middle East consumers for Brazilian poultry.

Brazil has not obtained more than an equitable share of world export markets and any increase in exports by Brazil has not harmed U.S. interests:

- (a) Brazil's expansion into world poultry markets took place during a period in which

U.S. poultry exports also expanded their world export market share;

(b) U.S. shipments of poultry to the Middle East rose from 1978-1981 and only fell in 1982 after the dollar had risen to record highs and Egypt, announced a ban on poultry meat imports;

(c) As a developing country, Brazil is entitled to obtain an equitable share of the world export market even though it did not ship prior to 1974;

(d) Relevant United States statistics show that in fact the U.S. share in world markets has been steadily increasing for all the period we have been considering. If we want now to focus on trade with Middle East and even taking only figures relating to whole chickens and adopting for this circumstance the sort of statistical method that serve the United States purpose, we can clearly see

that U.S. exports to the Middle East began tumbling down long before Brazil even started having any poultry industry. In fact, the U.S. had in 1964 44.3% of that market, which it gradually lost to other exporters, up to a point where United States exports represented a merely symbolic 0.1%.

During the consultations, the U.S. alleged that Brazil increased its share of world export trade in whole chickens from zero in 1974 to 27 percent in 1981 and concluded that Brazil has captured "more than an equitable share of world export markets". What the U.S. completely ignored is that U.S. poultry exports also increased during the same period. According to our data, the world export market shares in poultry for Brazil and the United States from 1977-1981 were as follows:

	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Brazil	4	4.4	5.9	10.5	15
U.S.	17	17.2	17	20.8	20

While Brazil increased its market share from 4 percent to 15 percent, the U.S. also achieved an increase in

market share from 17 percent to 20 percent. Clearly, Brazil's exports to world markets were not displacing those of the United States during this period. Thus, the United States has no basis for a complaint.

There is a long line of GATT precedent that "equitable world market shares" are to be determined by reference to shares of the entire world export market. Thus, while an analysis of separate regional markets may be useful in determining whether a given signatory has achieved "more than an equitable share" of the total world export market, this determination cannot be made exclusively by reference to one market. Where, as here, a signatory's world market share has been increasing over the prior eight year period, a claim that another signatory has violated GATT Article XVI, by, e.g., increasing its exports to one regional market, is prima facie invalid.

While the Government of Brazil believes that a separate examination of market trends in the Middle East is unnecessary for the reasons set forth, it will, nevertheless, undertake to demonstrate that very recent U.S. problems in the Middle East have been caused by factors other

than alleged Brazilian export subsidies.

In 1980 and 1981, the U.S. Department of Agriculture issued a series of reports presenting highly optimistic assessments of past and future U.S. export performance in poultry products, particularly to the Middle East. In November 1981, for example, USDA published a report which stated that "Trade prospects ... remain bright for must U.S. poultry and egg producers. Total poultry meat and egg exports should increase again in 1982 as the Middle Eastern and Far East markets continue to expand". U.S. shipments to the Middle East nearly quadrupled between 1979 and 1980, from 24,000 metric tons to 96,000 metric tons. They increased again in 1981, to 107,000 metric tons. Although U.S. exports in 1982 have not matched expectations, these and other reports tend to show that the growing U.S. share of world export markets in poultry was not adversely affected by the growth in Brazilian exports.

While U.S. shipments have apparently fallen in 1982, it is significant that this decline has occurred simultaneously with very high U.S. interest rates and a dramatic appreciation of the U.S. dollar against virtually every other currency. According to some estimates,

the U.S. dollar appreciated in 1982 by as much as 30 percent with respect to other currencies. The appreciation of the dollar, of course, makes U.S. exports more expensive to foreign buyers relative to alternative sources of supply. That the strength of the U.S. dollar is a primary reason for the decline of U.S. poultry export was recognized by the USDA in a May 1982 publication. U.S. exports to the Middle East in 1982 also fell because of a six-month ban on poultry meat imports by Egypt, one of the United States' most important Middle Eastern markets in recent years. In 1980 and 1981, U.S. poultry exports to Egypt represented 50 percent and 61 percent, respectively, of total U.S. poultry exports to the Middle East. Loss of this market in 1982 resulted in a substantial reduction in U.S. exports to the area. U.S. exports may also have been adversely affected by the Iran-Iraq war.

In summary, Brazilian poultry exports simply are not the cause of the current problems facing U.S. poultry exporters.

In short, Mr. Chairman, the U.S. has failed:

- a) to present an economic examination showing the alleged adverse effect on trade or production as a result of

Brazilian exports;

b) to prove that Brazilian exports have displaced U.S. exports in the world market;

c) to prove that the increase in Brazilian poultry exports was due to export subsidies.

On the contrary, my Delegation believes it has proven abundantly that:

a) Brazil has demonstrated its continuing consistency with its obligations under the General Agreement and the Subsidies Code;

b) that the U.S. case is inconsistent with the provisions of the Code.

Finally, Mr. Chairman, I think it is extremely relevant to stress on this occasion what is

recalled in footnote nº 27 to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement, that the concept of "displacing" shall be interpreted in a manner which takes into account the trade and development, needs of developing countries and in this connection is not intended to fix traditional market shares.