

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/Spec/10

24 February 1982

Special Distribution

Committee on Subsidies and
Countervailing Measures

SUBSIDIES ON THE EXPORT OF PASTA

Communication from the European Communities

The following communication, dated 22 February 1982, has been received by the Chairman from the Permanent Delegation of the European Communities.

The European Community has requested that a matter of general interpretation, relating to Article 9 of the Subsidies/Countervailing Measures Code be discussed by the Signatories in restricted session at the earliest possible opportunity. Since this matter is on the agenda for the meeting on 3 March the members of the Committee may wish to have the following background information.

The Committee may be aware that the European Community has received a request, dated 2 December 1981, from the United States for consultations under Article 12:1 of the Code on certain export subsidies alleged to be granted on EEC exports of pasta. The grounds for this request are stated to be that export subsidies on a non-primary product are prohibited under Article 9 of the Code.

The European Community cannot accept a consultation request formulated in these terms in relation to a transformed agricultural product on which the subsidization is limited only to the raw material, in this case the wheat incorporated in the pasta. It is our understanding that such subsidization is not prohibited by the Code: the basic principles involved are directly analogous to those recognized in and permitted by Article 10 of the Code as regards primary products, and there can be no question that subsidization of this kind was deemed during the negotiations to be covered by Article 9. This view is in line with prior precedents and understandings established under the similar provisions of GATT Article XVI:4.

In the light of this divergence of interpretation on a fundamental obligation of the Code it has seemed to us impossible to accept a request for consultations founded on a totally erroneous understanding of the Code. To do so might well have proved prejudicial to the case and might have been wrongly interpreted as a recognition that there were valid grounds for such a consultation. Nevertheless, the Community has offered to discuss the issues informally with the United States, an offer which has now been refused.

The European Community has therefore decided that it would not be appropriate to engage in formal dispute settlement procedures in these circumstances. To initiate such procedures would, in the light of past experience, effectively prevent any early discussion by the Signatories of the Code of an important matter of interpretation of Code obligations. We do not consider that a fundamental issue of this kind is susceptible to solution in the course of bilateral consultations or in the conciliation procedure envisaged in the Code; and we consider that questions of interpretation of this kind are of sufficient importance to merit discussion by all the Signatories rather than to be the subject of a Panel ruling on the basis of submission from two Signatories only.

The European Community will, of course, be ready to explain its views in relation to the issues of interpretation mentioned above in more detail at the forthcoming meeting.

ANNEX I



UNITED STATES TRADE REPRESENTATIVE
1-3 AVENUE DE LA PAIX
1202 GENEVA, SWITZERLAND
Telephone: 320970

December 2, 1981

Mr. Tran Van-Thinh
Chief of Delegation
Commission for the European
Communities
37-39, rue de Vermont
1211 Geneva 20 CIC

Dear Paul:

The U.S. believes that the EC's export subsidies on pasta products manufactured from Durum Wheat are being granted in a manner inconsistent with Article 9 of the subsidies code, which prohibits export subsidies on products other than certain primary products.

The export subsidies in question are granted under Council Regulation No. 2727/75 on the Common Organization of the Market in Cereals. Such subsidies were first authorized in Council Regulation No. 120/67 when the Common Organization of the Market in Cereals was unified. Article 16 of that regulation specifically provides that cereals such as Durum Wheat as well as certain products processed from these cereals are eligible for export restitutions. Pasta products are among the eligible products listed in Annex B of the regulation. Council Regulation 3035/80 sets out detailed rules for granting export subsidies on processed cereal products and the criteria for fixing the amount of such subsidies. Annex C of that regulation specifically cites "macaroni, spaghetti and similar products" as categories to which the rules apply. Moreover, the regulation provides that exporters can apply for advance fixing of this subsidy. We understand that the amount of the subsidy is calculated in relation to the amount of Durum Wheat determined by the Commission to be necessary to produce pasta.

We believe that the subsidies in question are subsidies granted upon the exportation of a nonprimary product, and are therefore forbidden by Article 9. While Durum Wheat is a primary agricultural product, clearly the extent of processing required to transform Durum Wheat into marketable pasta products is so substantial as to preclude consideration of pasta as a primary product.

We request consultations pursuant to Article 12(1) of the subsidies code at your earliest convenience.

Sincerely,


Michael B. Smith
Ambassador

ANNEX II

COMMISSION
DES
COMMUNAUTÉS EUROPÉENNES

Genève, le

25 January, 1982

Le Chef de la Délégation permanente
auprès des organisations internationales
à Genève

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Dear Mr. Smith

I refer to your request for consultations under Article 12 of the Agreement on Subsidies and Countervailing Measures (your letter of 2 December 1981).

As we understand the basis of your request for Article 12 consultations, you consider that export restitutions paid on pasta products are an infringement of Article 9 of the Code. The Community wishes to make it clear that Article 9 is not in its view applicable to this case.

We are willing to have informal consultations with your delegation on this matter in order to clarify the issues. Should disagreement continue on the interpretation of Article 9, the Community considers that this is such a fundamental issue to the future operation of the Code that the Committee should urgently be convened to discuss the matter and seek a consensus. This appears to be a more appropriate means of resolving problems of interpretation of the Code compared with recourse to its dispute settlement provisions.



Tran Van Thinh

H.E. Honourable M.B. Smith
The United States Trade Representative
1-3, avenue de la Paix
1202 Geneva

ANNEX III



UNITED STATES TRADE REPRESENTATIVE
1-3 AVENUE DE LA PAIX
1202 GENEVA, SWITZERLAND
Telephone: 320970

February 2, 1982

Mr. Tran Van-Thinh
Chief of Delegation
Commission of the European
Economic Communities
37-39, rue de Vermont
CH-1211 Geneva

Dear Paul:

I have received your letter of January 25, in reply to the United States' request for consultations under Article 12.1 of the subsidies code concerning EC export subsidies on pasta.

You state in your letter that the EC does not agree that Article 9 of the subsidies code applies to this case, and that you are willing to have informal consultations to clarify the issues. Should disagreement continue on the interpretation of Article 9, you suggest the Committee should be convened to discuss the matter and seek consensus.

We, too, wish to clarify the issues in this case, and would like to be able to reach a mutually acceptable solution. In our view, this is the major purpose of consultations under Article 12 for any case. Certainly it is normal that there be disagreements over facts or interpretations of obligations concerning matters on which consultations are requested under the GATT or any of the GATT codes. It has never been considered, of course, that agreement to enter into consultations in itself applies prior agreement with any facts or interpretations stated by the requesting party, whether or not a specific reservation is stated to this effect in response to the request for consultations.

We would note, as well, that if we are unable to resolve this case in bilateral consultations, we may then under the subsidy code provisions refer the matter to the Committee in accordance with Article 17.

As you are well aware, Article 12.5 of the subsidies code provides that upon a request for consultations, a signatory must enter into consultations as quickly as possible. The code provides a thirty-day period for consultations in the case of a request under Article 12.1, unless that period is extended "by mutual agreement."

Given these obligations of the code, we are deeply disturbed that we received no reply whatsoever to our request under Article 12.1 for nearly two months, and that your letter of January 25 then suggested only informal consultations. You will understand that, particularly after such a lengthy delay by the Community, we cannot accept a suggestion that would only further delay consideration of this specific case.

We therefore urge that we hold the bilateral consultations we requested as quickly as possible, and suggest the consultations be scheduled for the week of February 15 in Geneva, for this purpose. If, however, your authorities prefer to move directly to conciliation, the United States will inform the Committee that the Community has declined to hold consultations under Article 12, and we will refer the matter to the Committee for conciliation in accordance with Article 13.1.

My authorities look forward to your expeditious reply.

Sincerely,


Warren A. Lavorel
Deputy Chief of Mission