

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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International Dairy Arrangement

INTERNATIONAL DAIRY PRODUCTS COUNCIL  
SPECIAL MEETING

Draft Report

Chairman: Mr. R. Long

1. At the request of the European Economic Community and pursuant to the provisions of Article VII:1(b) of the International Dairy Arrangement, the International Dairy Products Council held a special meeting on 12 September 1983. The meeting had been requested because of concern arising from action taken recently by one participant in the Arrangement, having regard to the situation and outlook in the world market for dairy products.
2. In pursuance of Rule 11 of the Rules of Procedure, the Council invited representatives of Mexico and Panama to follow the discussions at the current special meeting as observers.
3. In accordance with Rule 14 of the Rules of Procedure, the Council invited representatives of OECD, UNCTAD, FAO and the Economic Commission for Europe to follow the discussions at the current special meeting as observers.
4. The Council had before it the note prepared by the secretariat on the world market for dairy products (document DPC/W/30). The Chairman informed the Council that with regard to action taken recently and referred to by the EEC in its request, some tables had been prepared by the secretariat indicating imports of dairy products by Egypt and exports of dairy products to Egypt. These tables had been distributed.
5. The representative of the European Economic Community thanked the Chairman for having convened the special meeting and the delegations which had responded. Giving the background of the action under consideration, he indicated that rumours had circulated since February 1983 concerning a

possible sale of United States dairy products to Egypt. Although not confirmed, those rumours had led his authorities to caution the United States. At the beginning of July 1983, the United States had made it known that a contract for the sale of dairy products was about to be concluded with Egypt. His authorities had thereupon reminded the United States of their earlier admonition. On 3 August 1983, a contract had been concluded between representatives of the Egyptian Government and representatives of the United States Government. He wished to stress the fact that the contract in question was a government-to-government contract. The United States thus appeared to be going in for what could be described as State trading. The contract covered the sale of 10,000 tonnes of cheese, including 4,000 tonnes of processed cheese, 6,000 tonnes of Cheddar cheese and 18,000 tonnes of butter with an option to purchase 6,000 additional tonnes, deliveries to be made over a period of one year. He pointed out that the quantities in question were sufficient to cover almost the totality of the requirements of the Egyptian market for a year. The result of that transaction was to displace the EEC from a traditional market. Under the qualitative specifications stipulated in the contract, the United States would deliver what were almost fresh products to Egypt. Although the United States held considerable stocks, the sale thus involved not the disposal of surplus stocks but production to order. As the United States had not communicated any official information under Article III of the Arrangement, his delegation would try to furnish some indications concerning the prices and terms of the sale contract. The stated price of the butter was said to be US\$1,650 per tonne f.a.s. and that of the cheese US\$1,450 per tonne f.a.s. Moreover, it was a sale on credit over three years at nil interest, payment to be made in non-convertible Egyptian pounds at a fixed exchange rate. He considered the transaction as a subsidized commercial sale. The prices paid for butter and cheese by the Commodity Credit Corporation (CCC) were quite clearly higher than the selling prices to Egypt. The fact that the products were being sold on credit and were to be paid for in non-convertible currency was another element of subsidization. After adjustments for the interest discount and

for the so-called printing cost, the net selling prices were quite significantly lower than those charged by other countries, including Eastern Europe and New Zealand, whose prices were the lowest on the market. Moreover, the net selling prices were also lower than the minimum prices prescribed by the Arrangement. The Community would like to alert the members of the Council to the danger that would result if the United States continued to engage in State trading. The consequences would be suffered not only by the EEC but also by the other exporting and importing countries. In addition, the statistics in the report of the secretariat (DPC/W/30) showed that declining EEC sales were paralleled by increasing United States exports. The ultimate conclusion was that the responsible behaviour of the EEC actually resulted in its displacement in the market by the United States. The United States sales to Egypt caused concern because, in the opinion of his delegation, they were prejudicial both to the European Economic Community and to the stabilization of the world market for dairy products on account of the non-observance by the United States of the minimum-price provisions to be observed under the International Dairy Arrangement and its non-observance of the provisions of Article 10 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

6. The representative of the European Economic Community requested the adoption by the Council of a recommendation containing, on the one hand, a remonstrance or a solemn appeal addressed to the United States to refrain from any repetition of such an action and, on the other, an invitation to all the participants in the Arrangement to reaffirm their commitment to pursue the objectives and strictly observe the provisions of the International Dairy Arrangement as well as all other commitments under the General Agreement on Tariffs and Trade.

7. The representative of the United States said the contract terms communicated by the representative of the European Economic Community were basically accurate. The United States represented by the Commodity Credit

Corporation (CCC) had sold 18,000 tonnes of butter in one-pound packs, 4,000 tonnes of processed cheese and 6,000 tons of Cheddar cheese to Egypt. There was also an option to provide an additional quantity of 6,000 metric tonnes of butter. The price of butter was US\$1,650 per ton f.a.s. and that of cheese US\$1,450 per ton f.a.s. The CCC will send Egypt an instalment notice for one third of the f.a.s. invoice value at one, two and three years from the invoice dates. Payment will be in Egyptian pounds at a fixed exchange rate. While the interest would be nil, the United States had an agreement with Egypt that 50 per cent of the total tonnage would be carried in United States bottoms which would increase the shipping costs quite substantially.

8. The representative of the United States emphasized that this transaction was a commercial sale made at world market prices. Even after adjustments, particularly regarding the terms of sale, the prices were still above the minimum prices fixed in the Arrangement. He reiterated that the prices at which the sales were effected to Egypt were within the range of recent price quotes and were the best obtainable in a declining market burdened by large stocks, which were the real source of the problem. With regard to the statement that the United States had taken more than an equitable share of world export trade, he noted that the sales represented respectively 2.5 per cent of the world butter trade based on the 18,000 metric tonnes and 1.1 per cent of the world cheese trade, both of those figures excluding intra-EEC trade, while the EEC subsidized trade was significantly larger. With regard to the statement that the United States had displaced the exports of the EEC, he noted that the EEC had sold mainly butter oil to Egypt and not butter. He stated that the United States had not violated its obligations either to the International Dairy Arrangement or the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade or any other GATT obligations.

9. The representative of New Zealand thanked the delegation of the EEC for placing the facts before the Council. He recalled that Article V of

the Arrangement clearly pointed out participants' obligations to abide by the FAO "Principles of Surplus Disposal and Consultative Obligations" and to exchange views in the Council. The United States had not notified its transaction to the Consultative Sub-Committee on Surplus Disposal (CSD) of the FAO. He pointed out that in examining the potential impact of that particular transaction on international trade one must put it in its true context. The size of the transaction was indeed significant: 18,000 tonnes, and perhaps 24,000 tonnes, of butter and 10,000 tonnes of cheese out of total accessible international markets of approximately 200,000 tonnes for butter and 70,000 tonnes for cheese. For that reason, it was clearly essential that the United States abide by normal procedures of the CSD and established realistic Usual Marketing Requirements (UMR) that would fully protect normal commercial trade. However, it was the understanding of his delegation that the United States had chosen to interpret the principles of the CSD in such a way as to come up with the meaningless UMRs of 100 tonnes for butter and 575 tonnes for cheese. In doing so, the United States had chosen to disregard exports of the EEC to Egypt which they regarded as concessional or subsidized and not therefore commercial exports. There was no evidence to suggest that EEC exports could be classified as aid; therefore they must be considered as commercial exports, and must therefore be taken into account when establishing the UMR. His authorities regarded the transaction as having a potentially serious impact on world dairy market stability, as it could be taken by importing countries as a signal that the United States was now prepared to enter the commercial market with subsidized products on concessional terms. The effect of that uncertainty was as yet unclear, but all parties were aware of the large stocks of surplus dairy products held by both the United States and the EEC. There was no evidence that either party was as yet prepared to take the measures necessary to bring domestic supply and demand back into balance by curtailing milk production and boosting domestic consumption. The threat that increasing amounts of surplus product would be released onto the market was clearly influential in depressing prices.

10. The representative of New Zealand recalled that his country had repeatedly warned of the dangerous effects to efficient agricultural producers created by the policy of subsidized agricultural exports. The effect of instability in international markets was to shift the burden of structural adjustment away from those inefficient producers creating those surpluses onto the efficient agricultural producers whose very livelihood relied on the export of agricultural commodities at realistic returns. The decision by the United States to export dairy products to Egypt would seem to be motivated by both a desire to find an outlet for increasingly burdensome stocks and by the expressed desire to issue a tangible warning to the EEC for its agricultural export policies, by displacing it from a traditional marketplace. His delegation would seriously doubt that the limited effect that the United States export would have, both on dairy stocks held by the United States or on EEC's agricultural export policy, would be worth the possible heavy costs in terms of instability and disharmony in international dairy markets. The representative of New Zealand urged both the EEC and the United States to act with restraint. He recalled that the international dairy market was too small and too delicately balanced. His delegation would hope that the outcome of the meeting would be for the United States to acknowledge and heed the genuine expressions of other participants and to confirm that the sale in question was a one-off transaction, and for the EEC to accept the resulting market displacement philosophically and to refrain from trying to recoup its sales in other markets at the expense of New Zealand. His delegation would also hope that all the participants would confirm their commitment to the Arrangement and to its objectives, in particular to stable market conditions.

11. The representative of Australia asked the representative of the United States whether the United States regarded the sale to Egypt as a commercial transaction or as a concessional transaction. If the United States regarded it as a concessional transaction he asked what further action would be taken by the United States in respect of consultation procedures,

including those in the CSD. His delegation would have thought that the transaction merited some discussion in that forum.

12. The representative of the United States replied that his authorities did not regard the transaction as food aid. With regard to the statement made by the representative of New Zealand he noted that there had been bilateral consultations with New Zealand and with other interested parties.

13. The representative of Australia said that when the question of the transaction had been raised in bilateral discussions at an earlier stage, his authorities had understood that it was a "Type 8" transaction of the "Catalogue of Transactions" subject to notification, consultation and reporting obligations under the FAO "Principles of Surplus Disposal and Consultative Obligations". After examining the transaction very carefully his authorities had concluded that the concessional element was its dominant characteristic and that the obvious forum to discuss it was the CSD where the issue could be determined. He emphasised that by that particular procedure the interests of other supplying countries could be protected. He hoped that the United States would go through the consultation procedure in the CSD and establish an adequate UMR calculated in a manner that normal commercial trade would not be displaced by the transaction in question. He added that if the United States persisted in presenting the transaction as a commercial sale, there would be a signal to importers that soft new commercial terms were now available. There was an implication therefore that the United States was prepared to enter into competition with the EEC on the basis of subsidized, concessional terms and this development could only harm traditional non-subsidizing exporters. Despite United States claims to the contrary, the fact remained that Australia could not consider the United States sale to have been made on commercial terms.

14. The representative of New Zealand said that his delegation also had some difficulties in understanding how the United States regarded the

transaction. His delegation did not regard the issue of commercial versus aid transaction as being relevant to the discussion. In 1969, after a working group had fully examined the rôle and terms of reference of CSD it had been decided to adopt a catalogue of the various types of transactions which existed in international trade in agricultural commodities and to sub-categorize those that fell under the FAO principles. The effect of that internationally accepted list of transactions had been to render the distinction between commercial and concessional transactions obsolete for establishing whether a transaction should be notified to CSD. In the view of his delegation, if a transaction fell within the list of transactions subject to notification, then the supplying country was obliged to take the transaction to the CSD regardless of whether it considered the transaction as concessional or not.

15. The representative of the European Economic Community, referring to the statements just made by the representatives of Australia and New Zealand, pointed out that the United States delegation did not consider the transaction under discussion as a food aid operation. He said that the transaction should be regarded as a subsidized commercial sale and that the CSD was not the appropriate forum for discussing the transaction.

16. The representative of the United States re-emphasized that the United States did not regard the transaction as food aid. He noted that the Commodity Credit Corporation did not have the authority to effect a food aid sale. He reiterated his previous statement that the prices of the sales were above the minimum prices fixed in the Arrangement and within the range of prices currently being quoted on the market.

17. The representative of the United States provided the Council with calculations in support of its contention that it had not violated the minimum prices even when the quoted prices in the contract were discounted for printing or processing costs and the zero interest rate (after upward adjustment for stowage and the additional costs of shipping in

United States vessels). Taking into account those adjustments, the selling prices were significantly above the minimum prices for butter and cheddar cheese and at the minimum price for processed cheese which was hardly comparable with the products defined in Article 1 of the Protocol Regarding Certain Cheeses. A text containing the United States calculations will be circulated as document DPC/W/32.

18. The representative of the European Economic Community reiterated his statement that after adjustments the butter and cheese selling prices were significantly lower than the prices charged by the best suppliers on the world market and were lower than the minimum prices established in the Arrangement. His delegation would send the secretariat a note, for distribution to participants, on the calculation of the prices charged Egypt by the United States.

19. The representative of New Zealand reiterated his concern over the possible effects of the United States transaction in terms of instability and disharmony in international dairy markets. He expressed again his hope that the United States would confirm that it was a one-off transaction.

20. The representative of the United States recalled that at previous meetings his delegation had indicated that the United States would be exporting dairy products. She stressed that the bulk of the efforts made in order to reduce stocks was on the domestic market. Given the current domestic price levels, the United States was not considering itself as a major permanent exporter of dairy products. However, as the occasion arose and while respecting its obligations, his country could continue to export certain quantities of dairy products.

21. The representative of the European Economic Community reiterated his request that the Council should address a solemn appeal to the United States to refrain from any repetition of such an action and should invite all the participants in the Arrangement to reaffirm their commitment to

pursue the objectives and strictly observe the provisions of the Arrangement as well as all other commitments under the General Agreement on Tariffs and Trade. He suggested that discussion of the item should be resumed at the next regular session of the Council. In the meantime, the Community and the United States would no doubt supply additional evidence, with figures, for consideration.

22. It was agreed that the discussion would be continued at the next regular session.

ANNEX/ANNEXE/ANEXO

International Dairy Products Council  
Conseil international des produits laitiers  
Consejo Internacional de Productos Lacteos

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