

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Subsidies and
Countervailing Measures

EUROPEAN COMMUNITY STATEMENT ON THE ISSUE
OF SUBSIDY NOTIFICATIONS UNDER ARTICLE XVI:1
(Meeting of 29 April 1982)

Mr. Chairman, you reminded us in your introduction of the Committee's last discussion on this subject. We have studied this very carefully, and I think it is a discussion which we should pursue. The fact that the situation as regards notifications is still what it is after nearly eighteen months shows that something is not altogether well.

My delegation had submitted before the last meeting on 3 March a short note (SCM/17) trying to contribute to the general discussion. I think that our efforts then were perhaps misunderstood or just misinterpreted. What we had suggested was that we should reassess the purpose of this exercise. It is twenty years since the questionnaire was drawn up, and it is twenty years since that procedure has not been working effectively. The majority of contracting parties have never notified anything, and where they have, the quality of notifications is quite inadequate for any real follow-up. So my delegation had simply said we should take the opportunity to reflect and to review the situation; and if the result of our reflection is that there should be some reorientation, why not?

Now, I would like to make some comments on the conclusions of the discussion last time, because I think there is quite a lot that could be said.

First of all, the Chairman at the last meeting reminded us of the obligations of Article 16:1, and he said, I think quite correctly, that the Code had not changed those obligations. We agree with that. We were also reminded of what had been said by the Chairman of the CONTRACTING PARTIES at the Thirteenth Session. Now, a distinction is to be made between what the Chairman said and what the CONTRACTING PARTIES decided. The Chairman had invited the CONTRACTING PARTIES to do something, and this, in our view, is not the same thing as the obligation which is in Article 16:1.

The Thirteenth Session, Mr. Chairman, was quite a long time ago, 1960 I think, if my memory is correct. And quite a lot has happened in the intervening years. The presence of aids in the domestic policies of the member governments of GATT has grown, and what might have been appropriate for the Chairman of the CONTRACTING PARTIES to invite us to do in 1960 is not necessarily going to be practical in 1982 and adapted to present circumstances.

The conclusion that I draw from this is that the Code has not changed the obligations of Article 16:1. I think it follows from that that it has not reinforced those obligations either, and I would like to ask the question

whether the Signatories of the Code felt that they were laying down the framework for substantial changes in practice. The Signatories of the Code when they took this language from Article 16:1 and wrote it into Article 7 of the Code, were well aware of what the practice had been over twenty years, and no-one has demonstrated that they had in mind changes, rather they intended to complement existing procedures by providing other ways to secure relevant information.

The second part of the conclusions, Mr. Chairman, related to transparency, and for the time being, I will leave that and come back to it.

The third part of the conclusions pinpointed an important factor which is that notification has often been regarded as the first step to self-incrimination, and I don't think that there was any real answer to that point. Now, I think that this is, and has been in the past, a real difficulty. Especially in 1982, when some of the Signatories are making public statements about the aggressive pursuit of their rights, the dangers of self-incrimination or the hesitation that countries have in this area are very evident. I would like just to mention two examples: the absence of a notification by one very important Signatory on the DISC system - a subject which we shall no doubt come back to - is, I think, a sign of the desire to avoid self-incrimination. We, in our Note, SCM/17, mentioned that we would not be notifying anything in the field of export credit, because we did not consider that such practices constitute subsidies in certain conditions which we mentioned. I think this is a real difficulty, and I think that the Signatories have to address it. It's not enough just to say that this should not prevent the Signatories from fulfilling their obligations. We have to look a bit further than that, and find out what's involved.

The fourth element of the conclusions, Mr. Chairman, was about the questionnaire. It was recognized, I think, that it had some shortcomings, and I must say that after twenty years, that is the only conclusion you could draw, and it was thought that maybe we should get around this by a more flexible approach. Now that really is entirely what my delegation was after. If you examine the various notifications that have been made, you will find that in almost every case - and I would here give credit to the notification by Switzerland - there is virtually no attempt to quantify the trade effects. Now since the questionnaire requires this to be done, it means that the questionnaire is just not being observed, and I think that we have to consider whether it would ever be observed. Flexibility is fine, and I think we have to continue our work to try to find out what this means.

I come back, Mr. Chairman, to the question of transparency, and I must say that my delegation is somewhat disquieted and disturbed by a chorus of voices which say that the maximum transparency is by definition a good thing. Yes and no, because the proof of the experience of twenty years is that a lot of information has been provided, and the CONTRACTING PARTIES have never even looked at it, and I wonder, in those circumstances, what useful purpose all that information had in fact served.

It has been argued that publication in national publications such as official journals or in other ways is not enough. I think that we have to ask ourselves the question whether that doesn't achieve a good deal. We have had at a guess eighty or ninety cases against the European Community in the steel sector, both anti-dumping and anti-subsidies, and Mr. Chairman, I can assure

you that amongst the truckloads of documents delivered to the Department of Commerce there were many thousands of pages detailing alleged subsidies in the European Community in great detail. Now if that didn't come from published material I don't know where it did come from and I think that it shows that there is in practice a very large amount of transparency. I really wonder whether this Committee realises what it is saying when it says that all of that material should be notified in the GATT.

I think we have to have a balance here between a mass of data which is not required, because it is very doubtful whether it has any trade effects, and a procedure which gives us the possibility in a sensible way to exploit the data in order to draw conclusions. I think we have to address that question seriously and not simply start from the general principle that everything, everywhere in every country in the world has to be notified in the GATT.

A further element in the conclusion, Mr. Chairman, dealt with the idea that information provided should not be bilateralized but should be submitted to GATT or to this Committee. I would just make the point that Article 7 does seem to me, in the first instance, to deal with the provision of information on a bilateral basis; if you look at Article 7, paragraphs 1 and 2 it does seem to be providing a bilateral procedure with a provision to go to the Committee if that doesn't work satisfactorily. The sort of approach that my delegation thinks is right is that we should concentrate on trade effects and the real impact of subsidization on trade. Now if you follow the GATT tradition, that means that you work through the test of complaints by a country which considers it has a problem and that sort of procedure essentially starts bilaterally. We should be careful if we don't want to overload the system not to abandon that sort of approach which has a lot of merit; and it means that the GATT works in a pragmatic way of addressing what are real or perceived problems and not just theoretical cases.

Lastly, Mr. Chairman, in the conclusion there was a reference to the problem of subjectivity - whether or not countries should unilaterally decide whether to notify or not and whether subsidies fell within 16.1 or not. If you look at 16.1 or if you look at the Code it does seem to be essentially that there is a very large subjective element. A country which submits a notification that it has no practices to notify is clearly making a subjective judgement. A country that does notify is also making a subjective judgement that there are indirect or direct trade effects as mentioned in Article 16.1. There is no alternative to saying that this is subjective and unilateral. The other Signatories have the right, laid down in Article 7, when a notification is not made, to either draw it to the attention of the Committee or to seek information; but it has to start with a subjective judgement by the government concerned and I believe that this point is to some extent irrelevant.

Mr. Chairman, so far I have made comments on the conclusions of our last meeting simply to indicate that I wouldn't like those conclusions to stand as anything definitive - I think we have a lot more to consider and reflect upon and discuss in this meeting and in future meetings.

I'd like to say a few words about what we might aim to get out of this discussion and where we might go. If we are looking at subsidies in a macro-economic sense and saying that any subsidy is a distortion to

competition, this proposition is no doubt true but the GATT does not explicitly address itself to distortion of competition in this broad sense. There are other fora where one can discuss such distortions in economic terms but that is not what the GATT has been doing and we should concentrate on practical trade effects, with a view possibly to drawing conclusions for disciplines in the future.

We have to bear in mind that the CONTRACTING PARTIES in the past have never actually succeeded in doing any evaluation of subsidy effects. There has not been either the forum in GATT nor the capacity among delegations to discuss notifications that have been made in detail nor to know what is going on in other countries and to draw any conclusions from it. Before we overload ourselves with any new procedure we should be aware of what has been possible in the past and of the limitations that each of our delegations inevitably have. I have suggested that one approach which filters out some of the unnecessary information is indeed the complaint procedure, and this is a very good filter which I think we should not abandon.

We would suggest that the Committee should reflect on at least some limitations as to the sorts of subsidy which the notification procedures should reach, and I think it might be instructive to think in the direction of saying that there are at least some types of subsidization with which prima facie the GATT and this Committee does not really need to bother itself. One example would be measures which do not directly relate to production, manufacture or export of goods. This includes a number of measures which are obviously social both in intent and in result - things like retraining to encourage labour mobility, to facilitate redundancy and adjustment. These sorts of measures to our mind have very little trade effect or if they do, they are so indirect that it should be left for complaints to be made in specific cases. There are also other types of measure which we should reflect about - broadly speaking subsidy measures which are not countervailable - just how far is it our wish to be inundated with notifications on, for example, regional policy measures.

Mr. Chairman, I apologize for being long but it's a contribution to the discussion which I think is only at its very beginning.