

GENERAL AGREEMENT ON TARIFFS AND TRADE

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PANEL ON SUBSIDIES AND STATE TRADINGReport on Subsidies

1. The Panel held two meetings on 6-11 April 1959 and on 22-25 February 1960 in the course of which it pursued its task in accordance with its terms of reference (L/925).
2. At its first meeting the Panel prepared a report (L/970) which was discussed at the fourteenth session. The CONTRACTING PARTIES on that occasion "took note of the conclusions and recommendations in the report and authorized the Panel to continue its work on the same lines as before, but taking into consideration the views expressed during the debate." (SR.14/2). The present report takes into account some of the points raised in the Panel's first report.
3. At both its meetings the Panel carried out detailed examinations of the notifications submitted pursuant to the Decision of 2 March 1950; the questionnaire established by the CONTRACTING PARTIES at their ninth session (BISD, Third Supplement, page 225); and the invitation of the Chairman at the thirteenth session (SR.13/17). It wishes to place on record that it found a distinct improvement in most of the notifications which had been drawn up after its first meeting and which had taken into account the Panel's recommendations.
4. Annex A to this report lists (i) the notifications considered by the Panel including those which were submitted since the Panel's first meeting; (ii) the governments which have at some time or other indicated that they do not grant or maintain subsidies falling under the scope of Article XVI; and (iii) the governments which up to the time of this report have made no notification.
5. The Panel agreed at its first meeting that the type of information requested (as set out in BISD, Third Supplement, page 225) would in general meet the requirements of the CONTRACTING PARTIES, but that in certain respects it would be advisable to specify more clearly the type of information required on specific points in order to meet more fully the intentions of the CONTRACTING PARTIES when they drew up the form of notification at their ninth session. In their examination of the country submissions, the Panel noted that it was frequently the case that countries were not in a position to indicate the subsidy per unit because the measure of the subsidy was related to fluctuating prices or was based not on the product but on some other criterion (e.g. acreage). In such cases, the Panel recommended that governments should (1) notify the sum, if any, which is budgeted for the purpose, and (2) give detailed figures for the operation of the measure in the previous year, indicating the total amount, the quantity of the product, and the average subsidy per unit. The Panel observed that where countries had in their

notifications adopted the practice of giving itemized information on the four sections under paragraph 1 of the questionnaire in L/809 (i.e., background and authority, incidence, amount of subsidy and estimated amount of unit) separately under each specific commodity heading, the task of absorbing and analysing the information provided was rendered much easier than where countries had adopted the practice of grouping commodities together and had given information on all commodities under each section of the questionnaire. In this connexion, the Panel recommended that countries conform so far as possible to the headings and sequence in the agreed form of notification.

6. The Panel noted the views expressed by several contracting parties at the fourteenth session that, following the recommendation of the Panel, Section II of the questionnaire should be revised to obtain information about the effects of subsidies. The Panel had detailed discussion on Section II of the questionnaire (BISD, Third Supplement, page 225) which requires countries to notify the effects of subsidy.

7. The Panel noted that little or no attempt had been made by countries, particularly in the notifications which preceded its first meeting, to give information on this Section, and that, where information had been given, it was doubtful whether this reflected fully the intentions of the CONTRACTING PARTIES when they drafted this Section of the questionnaire. The Panel considered that the CONTRACTING PARTIES, in drawing up this Section had had it in mind that countries should give some indication of the quantitative effects of subsidy arrangements, i.e. the effects on actual volume of imports and exports, and noted that where countries had responded to the request for information on this Section they had not supplied a quantitative assessment of the effects in relation to imports and exports but had instead confined their information to the philosophies on which their internal policies were based and justification for their subsidy arrangements. The Panel therefore recommends that all contracting parties should include in any subsequent notification statistical data covering a representative period of domestic production, consumption, imports and exports of the product concerned¹. These figures should cover the last three years; and, when possible and meaningful, a previous representative period (to be notified only once for that product) preceding the entry into effect of the measure or preceding the latest major change in that measure. It is realized that statistical data would not answer all questions but, as indicated earlier in this paragraph, they would provide the most useful practical guidance to contracting parties in their attempts to estimate the effects of a subsidy. The Panel also recommends that contracting parties should say what they consider to be the trade effects of any subsidies and to explain why they think the subsidies will have these effects. Such statistics and analysis would also be an essential element in facilitating the review by the CONTRACTING PARTIES of the operation of Article XVI.

8. The Panel has, therefore, in the light of opinions expressed in the preceding paragraph, revised Section II of the questionnaire drawn up initially by the CONTRACTING PARTIES at the ninth session. The revised questionnaire is attached in Annex B to this report and the Panel recommends it to the CONTRACTING PARTIES for their adoption.

¹ See also paragraph 10 of this report.

9. The Panel considered the extent to which subsidies and price support measures directly or indirectly affect exports or imports and are therefore notifiable under Article XVI. Article XVI:1 does not forbid subsidies as such. Contracting parties are required to notify measures which have the effect specified in paragraph 1 of the Article; and if the subsidy leads to serious prejudice to the interests of other contracting parties, additional provisions, such as consultation, may apply. The Panel directed its attention only to the question of notification.

10. In the opinion of the Panel, it is not sufficient to consider increased exports or reduced imports only in an historical sense. In this connexion the Panel had in mind the following interpretation of the CONTRACTING PARTIES (BISD, Volume II, page 44, paragraph 29(a)):

"The phrase 'increased exports' in line 3 of Article XVI of the General Agreement was intended to include the concept of maintaining exports at a level higher than would otherwise exist in the absence of the subsidy, as made clear in line 3 of Article 25 of the Havana Charter;"

Mutatis mutandis this interpretation must apply to the effect on imports. The criterion is therefore what would happen in the absence of a subsidy. While the Panel agreed that in most cases such a judgement cannot be reached only by reference to statistics, nevertheless, a statistical analysis helps to discern the trend of imports and exports and may assist in determining the effects of a subsidy. The Panel considers it fair to assume that a subsidy which provides an incentive to increased production will, in the absence of offsetting measures, e.g., a consumption subsidy, either increase exports or reduce imports.

11. The Panel discussed the circumstances under which a system which fixes domestic prices to producers at above the world price level might be considered a subsidy in the meaning of Article XVI. It was generally agreed that a system under which a government, by direct or indirect methods, maintains such a price by purchases and resale at a loss is a subsidy. Such purchases would need only to cover part of the production to involve a subsidy and, in determining loss on resale, such expenses as holding stocks should be taken into account. The Panel considered, however, that there could be other cases in which a government maintained a fixed price above the world price without resort to a subsidy. One such case might be that in which a government fixes by law a minimum price to producers which is maintained by quantitative restrictions or a flexible tariff or similar charges. In such a case there would be no loss to the government, and the measure would be governed not by Article XVI, but by the other relevant Articles of the General Agreement. The Panel recognized that there might be other variations of price stabilization where the existence or non-existence of a subsidy would be more difficult to determine. This should be judged by examination of the circumstances of each case. The Panel feels that, in order to permit such an examination, the CONTRACTING PARTIES should consider asking contracting parties to notify all cases of price support, regardless of the precise method used.

12. The Panel examined the question whether subsidies financed by a non-governmental levy were notifiable under Article XVI. The GATT does not concern itself with such action by private persons acting independently of their governments except insofar as it allows importing countries to take action.

under other provisions of the Agreement. In general there was no obligation to notify schemes in which a group of producers voluntarily taxed themselves in order to subsidize exports of a product. The Panel felt that in view of the many forms which action of this kind could take, it would not be possible to draw a clear line between types of action which were and those which were not notifiable. On the other hand, there was no doubt that there was an obligation to notify all schemes of levy/subsidy affecting imports or exports in which the government took a part either by making payments into the common fund or by entrusting to a private body the functions of taxation and subsidization with the result that the practice would in no real sense differ from those normally followed by governments. In view of these considerations the Panel feels that the question of notifying levy/subsidy arrangements depends upon the source of the funds and the extent of government action, if any, in their collection. Therefore, rather than attempt to formulate a precisely worded recommendation designed to cover all contingencies, the Panel feels that the CONTRACTING PARTIES should ask governments to notify all levy/subsidy schemes affecting imports or exports which are dependent for their enforcement on some form of government action.

13. In the course of its examination of notifications, the Panel noted at its first meeting that some contracting parties had interpreted approval by the International Monetary Fund of multiple exchange arrangements as absolving them from the obligation to notify such arrangements under Article XVI. The Panel wished to record its view that interpretative note 1 to Section B of Article XVI was intended not to preclude the use by a country of multiple exchange rates which were approved by the International Monetary Fund, but that there was a clear obligation to notify to the CONTRACTING PARTIES multiple exchange rates which have the effect of a subsidy. In this connexion the Panel noted paragraph 21 of the Report of Working Party III at the Review Session (BISD, Third Supplement, page 226).

14. The Panel has collected a good deal of information in the form of notifications of contracting parties and has set out in this report some of the general points thrown up in the examination of these notifications. It expresses the hope that further information will be provided in the periodical notifications which it is expected will be received during the course of this year. In order that the CONTRACTING PARTIES should have the most complete information possible the Panel recommends that governments which consider that there are no measures or schemes in their countries requiring notification under Article XVI should so inform the Executive Secretary in writing. In this connexion, the Panel refers to the appeal for notifications made by the Chairman at the thirteenth session and recalls the suggestion that this appeal should stand while the Panel continues to have this matter under consideration.

15. The Panel felt that in examining the individual notifications it had looked at the range and extent of subsidies in individual cases. However, it wished to point out that to date it had made no attempt to examine the effects of subsidies in any general way. Moreover, the Panel had only preliminary discussions about the preparation of a draft report on the operation of Article XVI. If it were to proceed with this task, the Panel felt that it would be necessary for it to examine further the notifications especially in the light of the information which it was requesting on the effects of subsidies. In view of the fact that revised notifications would only be available later in 1960, it did not seem possible, should the CONTRACTING PARTIES desire it,

for the Panel to meet again until early 1961. The Panel tentatively concluded that, in the preparation of the draft report on the operation of the provisions of both sections of Article XVI (see Terms of Reference, paragraph 1, d), it would, in addition to examining the further information (especially on the effects of subsidies), also wish to look at how the various provisions of Article XVI had operated in practice, e.g. consultation procedure, the concept of serious prejudice, etc. When considering the report of the Panel, the CONTRACTING PARTIES might care to comment about what additional matters, if any, they considered should be dealt with in the draft report.

ANNEX A1. Notifications considered by the Panel:

Australia	L/964/Add.2
Austria	L/1014/Add.14 and COM.II/2(a)
Belgium	L/964/Add.7 and L/1131
Brazil	L/964
Canada	L/964/Add.6
Cuba ¹	L/880
Denmark	L/964/Add.3 and L/1131
Finland	L/964 and L/1131
France	L/880 and L/1131/Add.1
Germany	L/880 and L/1131/Add.1
India	L/880 and L/1131
Indonesia	L/880
Italy	L/880 and L/1131
Japan	L/880 and L/1131
Luxemburg	L/964/Add.10 and L/1131
Malaya	L/1131
Netherlands	L/964/Add.9 and L/1131/Add.1
New Zealand	L/964/Add.1
Norway	L/964/Add.1 and L/1131/Add.2
Rhodesia and Nyasaland	L/964/Add.8 and L/964/Add.8/Corr.1
Sweden	L/964/Add.5
Turkey	L/880 and L/1131/Add.3
Union of South Africa	L/964/Add.1 and L/1131
United Kingdom	L/964 and L/1131
United States	L/964/Add.4 and L/1131

2. Notification by governments which have at some stage indicated that they have no subsidies falling under Article XVI:

Burma	L/880 (16 October 1958)
Ceylon	" " "
Czechoslovakia	" " "
Dominican Republic	" " "
Ghana	L/1131 (21 December 1959)
Greece	L/880 (16 October 1958)
Haiti	" " "
Pakistan ¹	L/964/Add.2 (6 April 1959)

3. No notifications have been received from the following:

Chile
Nicaragua
Peru
Switzerland
Uruguay

¹ Replies to certain questions put by the Panel at its first meeting are still outstanding.

ANNEX B

Notification of Subsidies

Reports should be made in writing for individual commodities and under the headings listed below. A suggestion of the type of information which might be included under each heading is shown within brackets:

- I. Nature and extent of the subsidy
 - (a) Background and authority
(The reason for the subsidy and the legislation under which it is granted.)
 - (b) Incidence
(Whether paid to producers, to exporters, or in some other way; whether a fixed amount per unit, or fluctuating; if the latter, how determined.)
 - (c) Amount of subsidy
(Total cost estimated or budgeted or, when this is not feasible, cost in preceding year.)
 - (d) Estimated amount per unit

- II. Effect of subsidy
 - (a) Estimated quantitative trade effects of the subsidy; and the reason why it is considered that the subsidy will have these effects.
 - (b) Statistics of production, consumption, imports and exports:
 - (i) for the three most recent years for which statistics are available;
 - (ii) for a previous representative year, which, where possible and meaningful, should be the latest period preceding the introduction of the subsidy or preceding the last major change in the subsidy.