

GENERAL AGREEMENT ON TARIFFS AND TRADE

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PANEL ON SUBSIDIES

REPORT ON THE OPERATION OF THE PROVISIONS OF ARTICLE XVI

I. INTRODUCTION

1. The terms of reference of the Panel on Subsidies state that the Panel is to undertake preparatory work for the review which the CONTRACTING PARTIES will conduct on the operation of the provisions of Article XVI and in particular:

- (a) to examine the range and extent of subsidies maintained by contracting parties, in the light of the notifications submitted by them to the CONTRACTING PARTIES, and of any other relevant information;
- (b) to discuss with the notifying contracting parties any point requiring clarification and any other comment or suggestion put forward by other contracting parties to the Panel concerning the documentation received;
- (c) to make practical suggestions to the CONTRACTING PARTIES with a view to improving the procedure for notifications; and
- (d) to assemble material for the draft report on the operation of the provisions of both sections of Article XVI.

2. At its previous meetings in 1959 and 1960 the Panel examined the range and extent of subsidies maintained by contracting parties, and discussed with the notifying countries certain points concerning their replies. The Panel has considered the kinds of measures which are notifiable under Article XVI. The Panel also commented on the types of arrangements that might be classified as subsidies. (See previous reports of the Panel, L/970 and L/1160.) The Panel also made recommendations to improve the procedure for notifications (see revised questionnaire L/1315). The Panel held two meetings in 1961, one in February and one in April, during which it concentrated on the assembly of material for a draft report on the operation of the provisions of both sections of Article XVI, as provided for in point (d) of its terms of reference. The Panel has not regarded it as part of its function to suggest amendments to Article XVI.

3. The Panel had at its disposal a good deal of information in the form of notifications of contracting parties, but concluded at its February meeting that further analysis of this information would be helpful in the preparation of a report to the CONTRACTING PARTIES. Following this meeting, the secretariat undertook considerable analytical and statistical work, the results of which were available to the Panel at its April meeting, and which form the basis for some of the conclusions and comments in this report.

II. REASONS FOR SUBSIDIES

4. At one point the Panel considered that it might be useful to attempt to analyse the circumstances that have led contracting parties to resort to the use of subsidies and with this in mind suggested that the secretariat undertake to list and classify the purposes of subsidies as indicated in the notifications. It emerged, however, that any logical classification of purposes of subsidies as expressed by the notifying countries was impracticable because of the lack of uniformity in the terminology used and differences of emphasis in describing objectives which were essentially the same. For example, subsidies having very similar trade effects have been variously described by contracting parties as being for the regulation of markets, the maintenance of the standard of living of the population, the improvement of the quality of goods, or any other consideration. The Panel also noted that these reasons were often applied both to export subsidies and production subsidies.

III. THE RANGE AND EFFECTS OF SUBSIDIES IN INTERNATIONAL TRADE

5. In the early post-war years two factors tended to obscure the range and effects of subsidies. In the first place, quantitative restrictions justified for balance-of-payments reasons were widespread and were an obvious and major limitation on the international exchange of goods. Attention was therefore largely concentrated on mitigating the effects of these restrictions and latterly in having them dismantled. Secondly, tariffs under the General Agreement had been made subject to international negotiation and the CONTRACTING PARTIES held a number of conferences directed towards the stabilization and reduction of tariff levels. The substantial removal of quantitative restrictions and the progressive reduction of many tariffs have led to an increasing realization of the importance of subsidies as measures influencing international trade and of the fact that they often closely resemble quantitative restrictions and tariffs in their purpose and effect. Moreover, shortly after the war it was widely assumed that subsidies had a built-in self-limitation because they involved a charge on a country's budget and there were good reasons for believing that they would be temporary and limited in their application. This has not proved such an inhibiting factor, at least in the field of primary products.

6. The Panel has made an attempt to assess the effects of subsidies. As mentioned in Section II above in connexion with the reasons given by contracting parties for the measures they maintain, many subsidies are employed for social or other purposes not directly related to trade, but the Panel felt that it was not within its terms of reference to attempt to measure the degree to which these purposes have been achieved and limited its study to the effects of subsidies on international trade.

7. At the time of its April meeting, sixteen contracting parties had submitted answers to the revised questionnaire, and an examination of these notifications indicates that, insofar as these countries are concerned, no major changes have occurred in recent years in government subsidization policies, although some adjustments have been made in the products subject to these policies and in the amounts of subsidies granted. At the same time, the Panel believed, although from the information available it was not possible to quantify this judgment, that subsidies as a whole had increased during the last few years.

8. From an analysis of the notifications it appears that, although some subsidies exist on non-primary products, the great bulk of the subsidization measures relate to primary products. Some forty groups of primary products are granted direct production subsidies or are affected by other forms of governmental financial support affecting production. The commodities which are most commonly subject to such measures are cereals (in approximately twenty out of thirty-four countries)¹, dairy products (in approximately seventeen countries), meat (in some ten countries), and sugar and vegetable oilseeds and oils (in some nine countries). Other important primary products, including cotton, eggs, potatoes and tobacco, are subject to similar subsidies in several countries.

9. In contrast with the situation for primary products, an examination of the notifications indicates that non-primary products are subject to direct production subsidies or other forms of governmental financial support in a very limited number of products in a small number of countries. Some eleven non-primary products have been notified as benefiting from such measures in one or two countries in each case. In these cases, the share of these products in and the effect of the subsidy arrangements on international trade would appear to be insignificant. The Panel noted, however, that, in only one case was any reference made to a subsidy to a domestic ship-building industry, despite the fact that subsidization measures of this nature were common.

¹In view of the relatively few countries on which detailed information has been available from the recent notifications, earlier notifications and the background documentation for Committee II were also consulted. The thirty-four countries referred to are: Australia, Austria, Belgium, Brazil, Burma, Cambodia, Canada, Ceylon, Czechoslovakia, Denmark, Finland, France, Germany, Ghana, Greece, India, Indonesia, Israel, Italy, Japan, Luxemburg, Malaya, the Netherlands, New Zealand, Norway, Rhodesia and Nyasaland, Sweden, Switzerland, Tunisia, Turkey, South Africa, United Kingdom, United States and Yugoslavia.

10. Some fourteen groups of primary products were notified as enjoying direct export subsidies or other forms of export aid. The commodities which receive such supports are most commonly dairy products (in approximately ten countries), cereals (in some seven countries), and meat (in some eight countries). Other important commodities which were notified as receiving such support in a smaller number of countries include sugar, eggs and vegetable oilseeds. At least in one country export subsidies are paid in respect of certain primary products when they were included in processed goods. In sharp contrast with the situation for primary products, no direct export subsidies have been notified to the CONTRACTING PARTIES by any contracting party with respect to non-primary products as such. An examination of subsidy notifications indicates that no information is available as to other forms of governmental financial aids to exports of non-primary products, except in extremely few cases such as the Danish "Dollar Export Incentive Scheme" which, however, is expected to be abolished by the end of 1961.

11. The secretariat had provided for the use of the Panel a preliminary table of selected primary products showing the number of countries which have production and export subsidies and other forms of government financial support affecting production and exports. The Panel suggested that the secretariat's table should be expanded in the light of further notifications and, subject to comments by individual contracting parties, be circulated as an addendum to this report.

12. The Panel continued to find difficulty in assessing from the replies to the revised questionnaire, the effect of subsidies, since contracting parties had rarely described the effects in quantitative terms. Nor did the Panel find any way of measuring precisely the effects of subsidies. The Panel asked the secretariat to summarize the types of subsidies notified. In an effort to assist the CONTRACTING PARTIES to gauge the effects of subsidies, the Panel also asked the secretariat to prepare a statistical summary showing the total amount and level of subsidization measures. At the request of the Panel, the secretariat also prepared a statistical analysis of the subsidies which had been notified, and from these notifications, where this was possible on the information given, to estimate the average ad valorem incidence of subsidies on each product. The Panel has suggested to the secretariat that it revise and make as complete as possible these statistical surveys in the light of further notifications and of any further information which they may see fit to request from contracting parties and that after checking their accuracy with the individual contracting parties concerned they make them available to the CONTRACTING PARTIES.

13. While the results of the surveys available to the Panel in April did not enable it to reach any final conclusions on the effect of subsidies, it emerged that the ad valorem incidence of direct subsidies varied considerably from product to product and from country to country, from less than 1 per cent in some cases to over 200 per cent in the case of an export subsidy on butter.

IV. NOTIFICATION OF SUBSIDIES

14. A major requirement of Article XVI is that countries which maintain subsidies having the effects described in paragraph 1 of the Article shall notify them in writing. At the ninth session the CONTRACTING PARTIES decided that notification should be made annually and a questionnaire was adopted to facilitate this. The CONTRACTING PARTIES at their sixteenth session approved a recommendation by the Panel for a revised questionnaire (L/1315).

15. The notifications, in the Panel's view, have improved in recent years, both as to the number of countries submitting notifications and the material contained in them. In this latter connexion there has been real improvement since the CONTRACTING PARTIES revised the questionnaire. Nevertheless, the Panel is concerned that less than one half of the contracting parties have submitted notifications on this basis. In a number of cases the replies to the new questionnaire still do not provide the kind of material which meets the intentions of the CONTRACTING PARTIES when they decided on the form of the notification; particularly is this the case with the information requested as to the effects of subsidies. While the Panel recognized the difficulty in some cases of any precise measurement of the effects of a subsidy, it urges that contracting parties provide to the CONTRACTING PARTIES the pertinent information required by them in reaching the best judgment possible. The countries which have not replied to the questionnaire are listed in Annex I to this report. The Panel was aware from previous notifications that certain of these countries maintain subsidies. In cases where these countries do not maintain subsidies covered by Article XVI, the Panel recommends that they submit statements to that effect. The Panel requested the secretariat to ask those contracting parties which have not replied to the revised questionnaire to do so by the eighteenth session of the CONTRACTING PARTIES.

16. In its earlier meetings the Panel concluded that there was some genuine misunderstanding by contracting parties as to what subsidies were notifiable under paragraph 1 of Article XVI. Accordingly, in its second report, paragraphs 9 and 10, the Panel drew attention to the kinds of subsidy which, on the basis of the interpretation by the CONTRACTING PARTIES found in BISD, Volume II (page 44, paragraph 29(a)), were in fact notifiable.

17. To assist the work of the Panel the Chairman of the CONTRACTING PARTIES at the thirteenth session invited all contracting parties to provide information on subsidies irrespective of whether in the view of individual contracting parties they were notifiable under Article XVI. The Panel believes that there would be advantage in continuing this invitation for the time being. At the sixteenth and seventeenth sessions certain contracting parties stated that it was not feasible for them to comply with such an invitation, but the Panel hopes that in cases of any doubt as to whether a subsidy is notifiable, individual contracting parties will nevertheless decide to notify it.

18. Under the present procedures, notifications are required annually. The Panel believes that for the time being these arrangements should continue. However, the CONTRACTING PARTIES may wish to review these arrangements for such notifications, say in 1962, when the notifications on State trading will be reviewed. If the notifications by that date are reasonably comprehensive the CONTRACTING PARTIES may consider an arrangement under which only changes will be notified annually, e.g. changes in the amount and level of subsidies and the effects of subsidies.

19. The role of Article XVI in providing the CONTRACTING PARTIES with accurate information about the nature and extent of subsidies in individual countries has been partly frustrated by the failure of some contracting parties to notify the subsidies they maintain. To the extent that this is based on the reluctance of contracting parties to expose themselves to charges of non-conformity with the Agreement, it reflects a misinterpretation of Article XVI. Moreover, a contracting party can be required to consult concerning a subsidy, whether or not it has been notified. There seems, therefore, to be no advantage to a contracting party in refraining from notifying its subsidies; on the contrary, notifications may dispel undue suspicions concerning those subsidies not previously notified.

V. CONSULTATIONS ON SUBSIDIES

20. If a contracting party decides that it wishes to consult with another concerning a subsidy it may, depending on the circumstances, have recourse to the specific consultation procedures of Article XVI:1 or the provisions of Article XXII or Article XXIII. At the Review Session it was made clear that consultations under Article XVI:1 can be initiated by a contracting party which considers that serious prejudice is being caused or threatened without necessity for prior action by the CONTRACTING PARTIES (see paragraph 15, page 225, BISD, Third Supplement).

21. A number of cases of complaint or consultation concerning subsidies have taken place and may be briefly summarized as follows:

- (a) An agreement was reached in 1950 between the Governments of Australia and Chile regarding an Australian import subsidy on ammonium sulphate after a Working Party had concluded that "the Australian action should be considered as relating to a benefit accruing to Chile under the General Agreement, and that it was therefore subject to the provisions of Article XXIII" (BISD, Vol. II, page 193).

- (b) In 1952, the Greek Government requested a discussion of the question of United States export subsidies on sultanas. The United States Government agreed to consult under Article XVI. The rate of the United States subsidy was subsequently slightly reduced, but the Greek Government indicated that the reduction was unsatisfactory. The United States Government stated it would "according to the normal procedures under Article XVI of the Agreement, submit a progress report on the matter" (SR.7/8 and 14 and SR.8/12).
- (c) An item concerning a United States export subsidy on oranges was placed on the agenda during the tenth session of the CONTRACTING PARTIES in 1955, but was later withdrawn in view of bilateral talks which had taken place between the Government of the United States and the Governments of Italy and the Union of South Africa. As a result of these talks the United States export payment on oranges was reduced from 75 United States cents to 50 United States cents per box (SR.10/1 and SR.10/3).
- (d) In 1956, the Government of Denmark gave notice (L/586) that it proposed to consult with the United States Government under the provisions of Article XVI regarding a United States export subsidy on poultry. Further information on this case was not transmitted to the CONTRACTING PARTIES.
- (e) In 1957, the Government of Denmark, supported by the Governments of the Netherlands, Belgium, Sweden and the Federal Republic of Germany complained that the export of eggs from the United Kingdom, the production of which enjoyed Government support by way of deficiency payments, had serious consequences on Danish exports. The Intersessional Committee which heard the complaint recommended that discussion should take place pursuant to Article XVI, but decided to appoint a panel to examine this complaint if at any time it was reported to the Executive Secretary that the discussions had not led to a satisfactory solution. The discussions which followed, however, were successfully concluded and the United Kingdom authorities took measures to prevent exports of subsidized eggs from the United Kingdom to traditional markets of Denmark and the Netherlands (IC/SR.31 and L/627).
- (f) In 1958, the Government of Australia complained that "as a result of subsidies being granted by the French Government on exports of wheat and wheat flour, inconsistently with the provisions of Article XVI, French exports had displaced Australian trade in these products in its traditional wheat flour markets in Ceylon, Indonesia and Malaya, and had thus impaired the benefits which accrued to Australia under the General Agreement". The Panel for Conciliation (see document L/924) examined the complaint and

decided to suspend consideration pending the outcome of bilateral discussions. However, bilateral discussions led to no satisfactory outcome and the Panel was re-convened. The Panel agreed on a text of a recommendation which, in its opinion, would assist the two Governments in arriving at a satisfactory solution. As a result of subsequent discussion between the two Governments an agreement was reached (L/1323).

22. The Panel considers that the present widespread use of subsidies may contribute to the reluctance of certain governments to initiate consultations regarding subsidies since they themselves employ similar measures. Nevertheless, the number of cases of consultation or complaint is of little help in determining the effectiveness of Article XVI. The best test of the effectiveness of the Article is the extent to which it has restrained contracting parties from adopting or increasing subsidies which would violate the objectives of the Agreement. This restraining effect, however, is impossible to measure, and the Article has clearly not resulted in any general abandonment of subsidies which affect imports and exports.

VI. WHAT CONSTITUTES A SUBSIDY

23. The Panel considered that it was neither necessary nor feasible to seek an agreed interpretation of what constituted a subsidy. It would probably be impossible to arrive at a definition which would at the same time include all measures that fall within the intended meaning of the term in Article XVI without including others not so intended. The Panel did, however, in its second report attempt to clarify certain aspects of this problem during its enquiry into the notification of certain measures (L/1160, paragraphs 11 and 12). In any event the Panel felt that the lack of a precise definition had not, in practice, interfered with the operation of Article XVI.

VII. SUBSIDIES IN NEGOTIATIONS

24. For the convenience of the CONTRACTING PARTIES the Panel draws attention to the discussion on the negotiability of subsidies which has taken place in recent years.

25. At the Review Session, the Working Party on Other Barriers to Trade agreed that "there was nothing to prevent contracting parties, when they negotiate for the binding or reduction of tariffs, from negotiating on matters such as subsidies which might affect the practical effects of tariffs and for incorporating in the appropriate schedule annexed to the Agreement, the results of such negotiations" (BISD, Third Supplement, page 225).

26. The rules and procedures for the current Tariff Conference provide that "participating countries may ... enter into negotiations ... in respect of ... the level of a subsidy which operates directly or indirectly to reduce imports".

27. At the Review Session the CONTRACTING PARTIES recorded that "so far as domestic subsidies are concerned it was agreed that a contracting party which has negotiated a concession under Article II may be assumed for the purpose of Article XXIII to have a reasonable expectation, failing evidence to the contrary, that the value of the concession will not be nullified or impaired by the contracting party which granted the concession by the subsequent introduction or increase¹ of domestic subsidy on the product concerned".

28. In this connexion it was noted that the expression "reasonable expectation" was qualified by the words "failing evidence to the contrary". By this the Panel understands that the presumption is that unless such pertinent facts were available at the time the tariff concession was negotiated, it was then reasonably to be expected that the concession would not be nullified or impaired by the introduction or increase¹ of a domestic subsidy.

29. The Panel presents this report for the purpose of assisting in the review which the CONTRACTING PARTIES will conduct on the operation of Article XVI. The Panel also recommends that the CONTRACTING PARTIES, in their review, refer to the previous reports of the Panel (L/970 and L/1160); the report of the Working Party on Subsidies which met during the seventeenth session (L/1381); the position regarding the acceptance of the Declaration giving effect to the provisions of Article XVI:4; and the position regarding the acceptance of the Declaration extending the standstill provisions of Article XVI:4.

¹The words "or increase" appear in the English text of the BISD, Third Supplement, page 224, paragraph 13, but not in the French text. The Panel requests the secretariat to undertake a research as to why this difference occurred.

ANNEX I

The following countries have not replied to the questionnaire outlined in document L/1315:

Argentina*	Italy
Belgium	Luxemburg
Brazil	Federation of Malaya
Burma	Nicaragua
Cambodia*	Federation of Nigeria
Chile	Norway
Cuba	Pakistan
Czechoslovakia	Peru
Dominican Republic	Portugal*
France	Federation of Rhodesia and Nyasaland
Ghana	Spain*
Greece	Tunisia*
Haiti	Union of South Africa
Indonesia	Uruguay
Israel*	

* Provisionally acceded or special relationship.

