

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/4813

5 July 1979

Limited Distribution

PANEL ON EXPORT INFLATION INSURANCE SCHEMES

Report of the Panel

1. The Panel was established by the Council on 6 June 1978 with the following terms of reference:

"To examine, pursuant to Article XVI:5 and taking into account the Report of the Working Party on Export Inflation Insurance Schemes (L/4552), whether and under what conditions export inflation insurance schemes are export subsidies within the meaning of Article XVI:4, and to report its findings to the Council" (C/M/126).

2. The composition of the Panel was as follows:

Chairman: Ambassador H. Kröyer (Iceland)

Members: Mr. C. Rodrigues Mourao (Brazil)
Mr. V. Segalla (Austria)

3. The Panel met on 24 October 1978 and 23 January, 8 February, 2 and 14 March, 8 May, 6, 25, 27 and 29 June 1979.

4. In the course of its work the Panel took into account the Report of the Working Party on Export Inflation Insurance Schemes (L/4552) and the documentation which had been made available to the Working Party.¹

5. The Panel also took into account information contained in written submissions by contracting parties in response to the Panel's invitation² to contracting parties to submit their views on the matter before it. In addition, the Panel further took into account the answers which those contracting parties had given to several questions subsequently addressed to them by the Panel in relation to some of the issues raised in their written submissions.

¹L/4464, L/4467 and Adds. 1-3, L/4491, L/4493 and L/4506

²GATT/AIR/1506

General considerations

6. The Panel noted that it was not called upon to investigate specific programmes operated by particular governments, but rather to examine whether and under what conditions export inflation insurance schemes (hereinafter "schemes") were export subsidies within the meaning of Article XVI:4.

7. The Panel acknowledged that two elements would have to be taken into account in determining the extent to which a scheme fell within the ambit of Article XVI:4, namely (a) whether it resulted in a subsidy on the export of any product other than a primary product, and if so, (b) whether that subsidy resulted in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market (dual pricing).

Existence of an export subsidy

8. The Panel noted at the outset the Report of the 1960 Working Party on the Provisions of Article XVI:4¹, particularly in respect of government export credit guarantees. For such guarantees, the 1960 Working Party had noted that the charging of premiums at rates which were "manifestly inadequate to cover the long-term operating costs and losses of the credit insurance institutions" was considered to be a subsidy by the governments prepared to accept the Declaration giving effect to the provisions of Article XVI:4. It was the view of the Panel that these criteria were essentially similar to those which could be applied to export inflation insurance schemes, provided that an "insurance" theory, including the concept of risk, could be used in analyzing such schemes. In taking this view, the Panel saw no reason why schemes could not in principle be self-financing, i.e. operate so as to cover their long-term operating costs and losses. Consequently, the apparent absence of non-governmental schemes was not, in itself, evidence that the schemes were inherently non-self-financing.

9. In judging whether a scheme had resulted in an export subsidy, the Panel was of the opinion that account would have to be taken not only of present and past financial results in the operation of a scheme but of future expectations as well, including general economic policy measures and adjustments to the scheme. In this context, the Panel held the view that the setting of the threshold level of a scheme in relation to the expected inflation rate of the country in question was the main element in judging whether a scheme could be self-financing or not. An "insurance" theory would imply that the threshold level should not be substantially lower than the relevant expected inflation rate, unless the difference was offset by an adequate level in premium payments. The Panel considered that the name or designation given to a scheme might indicate an intention as to its purpose, but would not necessarily be relevant in a determination of how the scheme actually operated in practice.

¹L/1381, BISD 9 S.185

10. The Panel considered the contention that losses in the operation of a scheme could not be expected to be compensated during periods of low inflation because in such circumstances, exporters would face little risk of increased costs, and the scheme would be less likely to be used. The Panel found certain weaknesses in this argument but considered that it was not necessary for it to take a stand on this issue.

11. In the view of the Panel, it was irrelevant, ceteris paribus, whether a scheme that was financially in balance or in surplus, resulted in the payment of a claim in excess of the amount of the premium paid by the exporter for a particular export transaction. It was also considered that payments to an exporter should be related to an actual loss caused by inflationary cost increases in a particular transaction. It could not be excluded, however, that for reasons of efficient administration, a government might relate such payments to an upward movement of a relevant inflation index.

Dual pricing

12. The Panel noted the conclusions of the Panels on United States Tax Legislation (DISC)¹, on Income Tax Practices Maintained by France², by Belgium³ and by the Netherlands⁴, as presented to the CONTRACTING PARTIES, according to which the contracting parties which had accepted the 1960 Declaration "considered that, in general, the practices contained in the illustrative list could be presumed to result in bi-level pricing, and considered that this presumption could therefore be applied to" the DISC legislation and to the French, Belgian and Netherlands' practices, while concluding, however, that those contracting parties did not consider that the presumption was absolute. The Panel held the view that the presumption mentioned above applied equally to practices which were not contained in the 1960 list but which had clearly been identified as export subsidies.

13. It was also observed by the Panel that for schemes covering only export sales of capital goods of a large magnitude (such as turn-key projects or installations) and orders for large specialized products (such as advanced technology ocean vessels) there were rarely, if ever, like products sold to buyers in the domestic market at or even about the same time. The Panel recognized that in such cases it would be virtually impossible in practice to establish dual pricing.

¹BISD 23 S.98

²BISD 23 S.114

³BISD 23 S.127

⁴BISD 23 S.137

Conclusions

14. On the basis of the foregoing considerations, the Panel agreed that a scheme charging premiums at rates which were "manifestly inadequate to cover its long-term operating costs and losses" would be a subsidy within the terms of Article XVI:4.
15. Having analyzed these criteria, the Panel concluded that a scheme would not be self-financing, and accordingly could be considered as having resulted in an export subsidy, when the total expenditures (operating costs and losses) manifestly exceeded the total income (premiums) over such a period of time and to such an extent that the shortfall could not be covered except by significant and recurrent net capital transfers from the national budget, unless there were a sufficient basis to expect that within the foreseeable future the scheme would regain financial equilibrium.
16. When it became apparent that a scheme could be considered as having resulted in an export subsidy, this would be an indication either of the true nature of the scheme, or of how the scheme had evolved. The first instance would imply that the scheme had from its inception been inherently non-self-financing and therefore a subsidy. The length of time it had been operating could not in itself have changed its character. In the second instance, it would be presumed that a scheme might have been started as a self-financing insurance scheme, but that due to subsequent developments it had changed its character and had become a subsidy. It would remain to be determined in a particular case at what point in time the scheme had started to operate as an export subsidy.
17. The Panel recognized the difficulty in formulating a precise definition of the notion "long-term" that would apply to all schemes. It was agreed that in arriving at an operative definition, useful guidance would be provided by taking into consideration such general factors as the duration of contracts covered by schemes, the impact of particular contracts on the financing of schemes, and the delay involved in gathering and analyzing statistical information related to their operation. Furthermore, such a definition would have to take account of particular factors present in specific schemes.