

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/M/16
25 July 1983

Special Distribution

Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON 21 APRIL 1983

Chairman: Mr. M. Ikeda (Japan)

1. The Committee on Subsidies and Countervailing Measures held a special meeting on 21 April 1983. The purpose of this meeting was to examine notifications made by Signatories under Article XVI:1 of the General Agreement.

2. The Chairman said that the procedure for this meeting had been discussed informally with Signatories and subsequently outlined in document SCM/41. Accordingly, the Committee should examine in the first place the situation with respect to notifications which had, or should have, been made, going through the list of Signatories circulated in SCM/41/Add.1 country by country. Each Signatory should make a brief presentation of its subsidies including, where appropriate, replies to specific points raised by other Signatories. Following this brief presentation other Signatories would have an opportunity to ask questions and seek clarifications. It was further suggested in document SCM/41 that once the Committee had completed the examination of the subsidy practices of individual Signatories, it would discuss and draw some conclusions with a view to improving the existing system of notification. This procedural proposal was accepted by the Committee.

I. Notification by Signatories

Australia (L/5102/Add.8 + L/5282/Add.3)

3. The representative of Australia said that in his view his Government had fulfilled its notification obligations under Article XVI:1.

4. The representative of the United States asked whether Australia would notify the following subsidy programmes: (i) Export Market Development Grant Scheme which consisted of grants to exporters based on export performance, and (ii) Export Expansion Grant Scheme.

5. The representative of Australia said that both of these schemes were under review and were subject to the amending legislation. His Government had no intention, at this stage, to notify these schemes.

6. The representative of Canada requested that Australia notify a production bounty provided for the production of refrigerated room air-conditioners. The representative of Australia took note of this request.

Austria (L/5102/Add.13 + L/5449/Add.7 and Suppl.1)

7. No comments.

Brazil (L/5102/Add.21)

8. The representative of Brazil said that the notification, circulated only very recently, did not cover subsidies in the field of agriculture. These subsidies, rather minor in their importance and amount, would be notified at a later stage.

9. The representative of the United States said that Brazil should have notified its export credit financing programme under Resolution No. 68. Two further programmes called PROEX (programme for financing of enterprises conditional upon meeting certain export performance targets) and PROIM (programme for financing of enterprises conditional upon meeting certain import substitution targets) should also have been notified. There was also a programme called green-yellow drawback programme for textiles under which export incentives were available on sales of intermediate imports to enterprises manufacturing for exports.

10. The representative of Canada said that he had a fairly lengthy list of possible subsidies in Brazil which ranged from income tax exemptions for export earnings under Decree Law 1598 to the industrial products tax rebate for capital investments. He wished, however, to clarify certain points bilaterally with the Brazilian delegation and would revert to these subsidies at a later stage.

11. The representative of Brazil took note of these questions and said he would reply at a subsequent meeting.

Canada (L/5102/Add.10 and Suppl.1)

12. The representative of Canada said that further modifications to the Canadian notification would shortly be submitted to the Committee, in particular with respect to agricultural subsidies and subsidies granted by the Export Development Corporation. He further said that his delegation had always been in favour of full transparency with respect to various subsidy practices but given certain developments in the work of the Group of Experts on the calculation of the amount of a subsidy and the difficulties inherent in the criteria of increasing exports or reducing imports, it had been having increasing doubts as to what exactly should be notified under Article XVI:1.

13. The representative of the United States asked whether, in preparing their agricultural subsidy notification, the Canadian authorities would include some programmes involving financial assistance for fruits and vegetables storage construction, seed potatoes services, advance payments for storage crops and certain regional economic expansion programmes. The representative of Canada said that the new agricultural subsidy notification would include several previously unnotified programmes.

Chile (L/5102/Add.7 + L/5282/Add.1 + L/5449/Add.1)

14. The representative of Chile said that his authorities did not grant any subsidies in the meaning of Article XVI:1.

15. The representative of Canada said that a programme existed for the reduction or waiver of tariffs on the import of machinery and equipment which were used for export operations. There was also a drawback on sales tax in that respect. The representative of Chile took note of the comments and said he would give his answer as soon as he got more information on the subject.

Egypt (no notification)

16. The representative of Egypt said that although his authorities had not, as yet, submitted a notification he thought that Egypt did not grant subsidies in the sense of Article XVI:1.

17. The representative of the United States said that Egypt had a Cotton Textiles Compensation Programme which had been notified in SCM/16 and which should also be notified under Article XVI:1. The representative of Egypt said his Government had stated very clearly in SCM/16 that it did not consider this programme as a subsidy in the meaning of Article XVI:1.

Finland (L/5102/Add.3 and Suppl.1)

18. No comments.

India (L/5102/Add.18 + L/5449/Add.3)

19. No comments.

Japan (L/5102/Add.16)

20. The representative of Japan said that its notification included several measures which did not fall within the purview of Article XVI:1 but had been notified for better transparency.

21. The representative of Chile said that the Japanese notification covered subsidies in the agricultural sector only. However, in the semi-annual report of countervailing duty action the United States had notified a countervailing duty action against Japan in the industrial field. It seemed therefore that Japan granted subsidies in the industrial sector which had not been notified under Article XVI:1. The representative of Japan said that Japan did not grant or maintain any subsidy in the industrial sector which would be notifiable under Article XVI:1.

22. The representative of the United States noted that the Overseas Market Development Reserve (OMDR) under the Special Taxation Measure Law should have been notified because it resulted in a five-year tax deferral on funds placed in tax-free reserves. The representative of Japan said he did not consider this programme as a subsidy.

23. The representative of Canada said that his authorities were aware of several programmes in Japan which could be considered as subsidies, such as tax holidays of up to three years on sales of certain new export products or special tax deduction allowances for certain overseas transactions. He further noted that Japanese companies were making up the loss in sales revenues involved in pricing products at lower than normal prices by receipt of government-backed low cost loans and that such loans, to the extent they

were below the cost to the government, constituted a subsidy. He also wondered about the operation of Japanese external trade organizations which were supported by MITI and involved in a number of export programmes including some export insurance programmes. He finally wished to know whether Japan would notify operations of the Export/Import Bank of Japan. The representative of Japan said that although his position on the need to notify these programmes remained unchanged, he would like to have the US and Canadian questions in writing in order to transmit them to his Government for more detailed replies.

Korea (L/5102/Add.17)

24. The representative of Korea said that although the preferential rate for export credits had recently been eliminated, the export credit system itself was still being maintained and the current interest rate could be adjusted if special economic conditions led the Korean Government to reconsider its export policy. The revised notification including all changes in credit rates would be submitted shortly. He further said that under relevant laws concerning price stabilization the governmental agencies were regulating the supply and demand situation to prevent a drastic fluctuation of domestic market prices of certain agricultural products. The products subjected to these programmes were essentially consumer goods such as pepper, onions, garlic, rice, barley, wheat, beef and chicken. The programmes in question were operated in accordance with the provisions of Article VI:7 of the General Agreement and did not have adverse effects on imports of similar products into Korea.

New Zealand (L/5102/Add.19)

25. The representative of New Zealand said that one of the problems in preparing its notification was to conform with the questionnaire on subsidies. Several of the notified programmes had already expired.

26. The representative of Canada said that, for example, in 1981/82 there had been such programmes as: fertilizer price subsidy, supplementary minimum price scheme, price stabilization programme for the fishing industry, forestry grants, interest concessions in rural banking, bank overdraft concessions, etc. As it seemed that at least some of these programmes had not been included in the New Zealand notification he needed more time to study this notification and possibly suggest certain additions at a later date. The representative of New Zealand said that he would like to reflect on these comments but wished to make it clear that his authorities had notified measures which they considered as being subsidies in terms of Article XVI:1. It was quite possible that some of the measures mentioned by the representative of Canada did not fall within this category.

27. The representative of Chile said that several subsidization programmes notified by New Zealand had to be terminated by 31 March 1983 and others by 31 March 1985. There were, however, some programmes where no specific date for their termination had been established. He wished to know whether this implied that these programmes would be continued after 31 March 1985. The representative of New Zealand said that under the existing legislation the final date was 31 March 1985. He would, however, confirm with his authorities whether there would be some alterations.

Norway (L/5102/Add.11 + Suppl.1)

28. The representative of Norway said that his authorities had notified certain programmes although they had doubts as to whether these programmes fell within the scope of Article XVI:1. The fact that they were notified should therefore be without prejudice as to whether they constituted subsidies in terms of Article XVI:1.

Pakistan (no notification)

29. The representative of Pakistan said that his authorities would submit the notification within a very short period of time.

Spain (L/5102/Add.20)

30. The representative of Chile said that a comparison between the total amount of agricultural subsidies in 1980 and in 1981 (pages 16 and 17) showed that there was about a 100 per cent increase of agricultural refunds; he wished to know the reason for this increase. The representative of Spain said that the intention of the refund was to attenuate seasonal effects, and the amounts involved depended on the crop in a given year. The necessity of taking these and other factors into account should explain the increase.

Sweden (L/5102/Add.14 and Suppl.1)

31. No comments.

Switzerland (L/5102/Add.9)

32. The representative of Switzerland said that his authorities had also had some doubts whether certain measures were within the scope of Article XVI:1. Their general policy was to notify these measures on the basis of reciprocity. He expected that, as the need for improved transparency had been generally recognized, other Signatories would adopt the same policy.

Hong Kong (L/5102/Add.)

33. No comments.

United States (L/5102/Add.15 + L/5449/Add.8)

34. The representative of Canada mentioned three programmes operated by the United States: Industrial Revenue Bonds, the Surface Transportation Assistance Act and the Rural Electrification Act. He wished to know whether these programmes involved grants or other elements of subsidization that would make them notifiable under Article XVI:1.

35. The representative of Australia wished to know when the United States would notify the DISC programme. The representative of Chile associated himself with this question but noted that the DISC programme had already been notified by Canada (SCM/..). He asked whether the credit export subsidies notified by the United States were granted in accordance with the OECD Arrangement.

36. The representative of the United States said that the US position on the DISC programme had been explained in SCM/19; subsequently, this question had been discussed on several occasions by the Council. With respect to export credits she confirmed that they were granted in accordance with the OECD Arrangement.

Uruguay (no notification)

37. The representative of Uruguay said that because of serious economic problems, important changes were under way in his country's economic policy, including measures which would be notifiable under Article XVI:1. Once these changes had been completed, his authorities would submit an appropriate notification.

Yugoslavia (no notification)

38. The representative of Yugoslavia said that a comprehensive notification was being prepared by his authorities and should be submitted shortly.

EEC (L/5102/Add.6 + Suppl.1)

39. The representative of the EEC said that the process of updating the EEC notification should be completed very soon, particularly with respect to agricultural subsidies. The most important problem encountered in this process was the scope of notification under Article XVI:1. Realizing that other countries had the same problem, the EEC had refrained from asking questions or commenting on other notifications although it was concerned about the qualitative aspects of some of them. He further said that the EEC had not notified export credits granted in accordance with the OECD Arrangement because it was of the opinion that such export credits did not constitute an export subsidy prohibited by the Code and therefore were not notifiable.

40. The representative of Canada said that his authorities had notified various different types of programmes for the sake of transparency. He further noted that subsidies were a legitimate instrument as long as they were not causing injury or serious prejudice to the economic interests of another country. The discussion in the Committee was intended to improve the transparency and not to criticize or remove otherwise legitimate subsidies. From this perspective, Canada had notified its export credits programme which was consistent with the OECD Arrangement and expected that the EEC would approach this question in the same way. He further said that he was surprised to read in the EEC notification that Ireland, for example, was not granting any subsidy on industrial products. He noted that it had programmes like tax exemption for profits derived from export business, market research grants, exchange risk guarantees, preferential export financing, etc.

41. The representative of Australia said that in his view the EEC had not fulfilled in a satisfactory manner its obligations under Article XVI:1. In particular, it had not assessed the impact of export subsidies on trade flows and no effort had been made to describe the effects of subsidies. On a particular point he noted that the United Kingdom had not notified the coal subsidies.

42. The representative of Chile shared the views of the two previous speakers. He said that the EEC notification did not address many of the points listed in the questionnaire on subsidies. There was nothing on the effects of subsidies, amount per unit, incidence on exports, export refunds on particular products, etc. He further said that notifications of measures maintained by EEC member States were very general and should be significantly improved in the future. For example, the notification made by France mentioned an exceptional tax on paper but it did not specify in what sense this tax was exceptional, whether it was temporary and what its amount and its effect on trade were. All such details should be provided in future notifications.

43. The representative of the United States said that she looked forward with interest to the updated agricultural notification and hoped that it would contain subsidies on dried grapes. She also noted that France, Italy and the United Kingdom maintained export credits and export credit insurance programmes which should be notified.

44. The representative of the EEC said that questions as the amount per unit or effects of subsidies arose from the present structure of the questionnaire which, in many respects, was not adequate. He noted that the Committee would discuss this problem in detail and, pending the outcome of such discussion, he wanted to reserve his position on these questions. Referring to the specific question on the UK subsidy on coal he said that this measure had been notified under Article XVII as a state trading measure. He said that all comments had been taken note of and would be given due consideration. The representative of Canada said that a notification under Article XVII did not obviate the obligations under Article XVI:1.

II. Improvement in the existing system of notifications

45. The representative of the EEC said that the statement made by his delegation at a previous meeting (SCM/23) identified the issues which the Committee should address at this meeting. The main divergence of views between Signatories seemed to be on what was notifiable. The fact that some notifications were considered by some Signatories as too general or that some other Signatories thought that they had nothing to notify, resulted mainly from different perceptions of what should be notified. For example one might question whether or not in the case of the United States the programmes at state level, or in the case of Canada and Australia the programmes at provincial level, should be notified. In his view these programmes should have been notified but he did not want to make a definite judgement at this stage; he only wished to demonstrate that all delegations were faced with the same problem. He thought that it would be difficult, if not impossible, to establish criteria which would give clear guidance on what was notifiable and which would eliminate any element of subjectivity. Any procedure requiring the notification of all measures which could possibly constitute a subsidy would only detract from transparency and would produce an enormous number of documents which nobody would be able to read. It was also questionable whether certain subsidies which had social objectives, especially some of those referred to in Article 11 of the Code, had any trade effects, and any judgement on this matter would by necessity be subjective. There was, however, a way of solving this problem, namely the procedure under Article 7. He further said that as work was going on in the Group of Experts

on establishing criteria for what constituted a subsidy, it seemed that would not be appropriate at the present time to try to restructure the questionnaire.

46. The representative of Chile said that the examination of individual notifications showed that, in general, Signatories had met the requirements of Article XVI:1 only to a limited extent. The only comprehensive notification was the one made by Switzerland which should constitute a model. He considered that the purpose of the discussion in the Committee should not be to reformulate the existing obligations in the sense of accepting lesser obligations than provided for in Article XVI:1 but to achieve better transparency. For this reason the Committee should establish criteria for practices for which a notification would not be necessary. At the same time, and with a view to achieving the greatest possible transparency, it should be made clear that notifications did not have any effect of self-accusation in regard to the legality of the measures applied by the notifying country. The questionnaire should be reviewed in such a way as to simplify the task of national administrations in preparing notifications but, at the same time, to reduce the margin for subjectivity. The question to be considered in the context of rationalizing the work of the Committee was the frequency of notifications. The period between full notifications as well as the period for updating could be extended. He agreed that any quantification of subsidy programmes was quite often very difficult. However, in cases where this was possible it should be clearly stated. The Committee should consider all these questions, perhaps after having gone through some informal consultations among Signatories.

47. The representative of the United States said that she fully agreed with the previous statement of the Swiss representative that, in case of doubt, the measures should be notified. She also thought that the questionnaire should be improved, in particular to ensure greater uniformity of notifications. If the Committee could agree on how to improve the questionnaire, then it could propose to the CONTRACTING PARTIES a revised questionnaire. The Committee should also consider preparing an inventory of all the issues that had emerged, such as the relationship between countervailable subsidies, and notifiable subsidies, general or specific content of a notification; whether subsidies granted at provincial level should be notified; whether the unit amount of a subsidy should be indicated and whether it should always be explained why a specific question had not been answered; timing and frequency of notifications. Once these issues had been examined the Committee should proceed with the questionnaire with a view towards improving transparency and making notifications more useful.

48. The representative of Canada said that the aim of the Committee's activities with respect to notifications should be to further improve transparency. He could agree that this task and the task of reducing the element of subjectivity in deciding which programmes should be notified were very difficult ones. Any subsidy was countervailable, irrespective of how legitimate it was, if it caused injury; no relationship with the question of notification existed in this respect. The problem of subjectivity existed because there was no definition of what constituted a subsidy, i.e. there were many grey areas and because many programmes were perceived by governments as neutral in their effect while countries affected might have different views. In such cases the best procedure was to notify such measures.

49. The representative of Sweden, speaking on behalf of the Nordic countries, said that he did not think the Committee would be in a position to give a clear answer on what constituted a subsidy and therefore should be notified. The Code recognized this difficulty and established a special procedure under Article 7. On the other hand the fact that subjectivity could not be completely eliminated should not be used in such a way as to limit the scope of notifications. Increased transparency was important as a means to draw the attention of governments to the risk of proliferation of subsidy practices. In order to encourage this increased transparency the Committee should address the question of self-incrimination and the fear resulting therefrom. The Committee should make it clear that notifications could not have a self-incriminating effect.

50. For the representative of Switzerland, one of the problems was the definition of a subsidy and he recognized that the work of the Group of Experts proceeded very slowly. As to what was notifiable he noted that Article XVI:1 made a reference to the trade effects and this criterion should be kept in mind in any decision in this respect. Referring to the questionnaire he noted that it was drafted over twenty years ago and certainly lent itself to some improvements which were certainly helpful but probably not decisive for improving disciplines on notifications.

51. The representative of the EEC said that part of the problem in this field was that notifications were made from a different basis. The basis in the case of countries with a very strong private sector was different than that for countries where the state-owned sector was more important. Given this fact and bearing in mind the actual work of the Group of Experts he doubted whether the Committee had reached the stage of being able to make recommendations to the CONTRACTING PARTIES. He further said that the existence of Article 7 of the Code was a recognition of the problems which Signatories had raised. Article 7 was there to ensure that all such problems could be dealt with through its procedures.

52. The Chairman said that the examination of individual notifications had shown that some progress had been made both in the number and quality of notifications. However, further progress had to be made and all Signatories should co-operate to this end. Progress meant more uniformity, less subjectivity, better criteria for estimating trade effects and better guarantees against self-incriminating effects of notifications. In this context the Committee could consider some improvements to the questionnaire. As to further procedures the Committee was in agreement that the Group of Experts should intensify its efforts with the view of arriving at a definition of a subsidy. However, no Signatory had said that the Committee should wait until this definition has been worked out. The Committee should, therefore, make parallel efforts to improve the quality and quantity of notifications. A first step would be to ask the secretariat to prepare a list of points raised on the basis of the discussion at this meeting and such written submissions the Signatories may wish to make. Subsequently, this list would be discussed in informal consultations with a view to improving it and preparing for the discussion in the Committee. It was so agreed.