

GENERAL AGREEMENT ON TARIFFS AND TRADE

International Dairy Arrangement
Committee of the Protocol Regarding
Certain Milk Powders
Committee of the Protocol Regarding
Milk Fat
Committee of the Protocol Regarding
Certain Cheeses

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COMMUNICATION FROM THE AUSTRALIAN PERMANENT MISSION

The following communication, dated 12 September 1984, has been received from the Australian Permanent Mission.

OBSERVANCE OF MINIMUM PRICES - DAIRY TENDERS

A Note by Australia

1. Australia wishes to raise for consideration by the Protocol Committees Regarding Certain Milk Powders, Milk Fat and Certain Cheeses an aspect of observance of the arrangement's minimum price provisions with respect to tenders requiring quotations other than in United States dollars.
2. Purchases of dairy products by tendering procedures are carried out in many countries, e.g. the following countries are believed to source all their commercial milk powder imports by tender - Algeria, Iran, Peru, Sri Lanka, Malta and Venezuela (whole milk powder only). These tenders cover a significant level of trade and this is becoming more and more attractive to suppliers because of the supply pressures faced by most significant exporting countries. In other words, competition for tenders is becoming more and more intense and it is in this area of trade where, given transparency factors quotation/offer practices are likely to be subject to closest scrutiny in relation to the International Dairy Arrangement provisions.
3. The current International Dairy Arrangement arrangements require the conversion of an export price to its US dollar equivalent (to ensure compliance with the appropriate minimum price) to be made on the basis of the exchange rate on the day of actual sale. As world prices for a number of products covered by the protocols are now very close to the minimum levels, there could be difficulties and disputes about compliance if exchange rates moved between the closing of a tender (offer) and the conclusion of the contract (sale) - typically four weeks but at times up to

six. In these circumstances, a tenderer has the options of (a) risking an unintentional breach of the minimum price or (b) submitting a qualified bid - a practice which may not be acceptable to some purchasing authorities.

4. Consideration of this question was prompted by a recent tender for milk powder by Sri Lanka which specified that tenderers should quote in the currency of their country. Tender procedures adopted in various countries are by no means uniform. In some cases, there are mandatory requirements specified in the relevant tender documents and in some cases, a good deal is left to the discretion of the tenderer in relation to the way he prepares his bid. Nevertheless, mandatory requirements are often encountered. An important aspect of purchasing by tender is that in many cases tenders must be submitted in sealed envelopes by a certain date, which usually precedes by around four weeks the formal opening of bids and awarding contracts. There are also, usually, stipulations which prevent or control the withdrawal of tenders. The risks of substantial exchange rate movements during the period of the tendering procedures can be considerable.

5. Australian exporters have been made well aware by the Government that breaches of the Arrangement's minimum price or other provisions are to be avoided and that certain statutory penalties by way of the revocation of their licences to trade in dairy products and in some circumstances, fine, may be imposed in relation to breaches by them of the Arrangement.

6. It is therefore obvious that Australian dairy exporters and the Australian authorities have particular concerns to ensure that the implications of the International Dairy Arrangement minimum prices provisions are made as clear as possible. It is also important that equity considerations be satisfied in respect of the level of observance of the International Dairy Arrangement provisions and, in this case, in relation to participation in tenders. Inability to submit a fixed price quote for fear of breaching the International Dairy Arrangement would further impair the competitive ability of exporters in affected member countries of the International Dairy Arrangement and would be unsatisfactory in terms of equity considerations as between participants if some members adopted a flexible, more liberal interpretation of the provision than did others, in order to secure a competitive trading advantage. It would also be unsatisfactory if members found they could not compete with non-member exporters in such trade. Moreover, it is not desirable from the point of view of the viability of the Arrangement that traders be encouraged to risk a breach of the minimum prices in order to sell.

7. Australia suggests, therefore, that the Protocol Committees agree, whether as an interpretation of the intent of Article 3 of each of the respective Protocols or by a general derogation, that an exporter be

required to observe International Dairy Arrangement minimum prices on the basis of the United States dollar exchange rate (from the currency of the tender) applying in the exporter's country (customs territory) on the day of the submission of the final offer for a tender. This course should minimize the restraints on traders while still maintaining the integrity of the minimum price provisions of the Arrangement. It would not, however, cover situations where the successful tender price is subsequently reduced by post-tender negotiations as has occurred from time to time and in such situations, Australia considers that compliance with the International Dairy Arrangement should be assessed on the basis of the factors applying in the customs territory of the exporters' country on the day on which the price is finally settled, i.e. a contract awarded. Accordingly, there may be a need for additional reporting requirements to be introduced by the Protocol Committees in respect of traders' business.

8. Australia notes that there may be other classes of transactions which may also raise questions of interpretation of the Arrangement and as such may warrant particular consideration in parallel with that for tenders.