

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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International Dairy Arrangement

**MONITORING PROCEDURES IN THE
INTERNATIONAL DAIRY ARRANGEMENT
CONCERNING COMPLIANCE WITH THE MINIMUM PRICES**

Note by the Secretariat

1. At its session of 28 September 1993, the International Dairy Products Council requested the Secretariat to undertake a review of procedures for monitoring compliance with the minimum prices of the International Dairy Arrangement (see document L/7295). The present review primarily focuses on the relevant provisions contained in the Arrangement, but also covers control measures taken by those participants who have notified them to the Council.

2. Monitoring procedures normally take one of two forms: for normal commercial sales without invoking a derogation, monitoring is based on price statistics exchanged among participants in the course of the Dairy Protocol Committee meetings. For sales under derogation, notification procedures apply. Notifications are available to all participants and observers to the Arrangement as restricted documents in the DPC/PTL/W/- series or, for food aid, in the DPC/W/- series.

3. The commitment by all participants (exporters as well as importers) to observe the minimum prices is laid down in the Protocols annexed to the Arrangement, i.e. the Protocol Regarding Certain Milk Powders, the Protocol Regarding Milk Fat and the Protocol Regarding Certain Cheeses. Articles 3:1 of each of the Protocols stipulates that:

"Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Article 2 of this Protocol shall not be less than the minimum prices applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol."

Nothing in the Arrangement provides *how* participants are to ensure that exports do not take place below the minimum prices.

Normal commercial sales

4. Article 4:1 of the respective Protocols expresses the Committees' intention to *monitor and verify* the participants' compliance with the minimum prices when market prices approach the minimum prices. The provision explicitly mentions certain practices which could lead to undercutting of the minimum prices, such as twinning sales with other products and certain credit arrangements, and stresses the need to have access to information concerning such transactions. Articles 4:1 of the Protocols states:

"In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum prices ..., participants shall notify to the

Committee all the relevant elements for evaluating their own market situation and, in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification."

5. In November 1984, the IDPC adopted, for the first time, a Resolution which, *inter alia*, attempted to implement Article 4 of the Protocols (see document DPC/13). The IDP noted that:

"..... in the present situation, close co-operation among participants is more than ever necessary, and, to that end, considers that detailed information should be furnished in pursuance of Article 4 of each of the Protocols annexed to the Arrangement".

6. Currently most participants confine themselves to price reporting, i.e. the exchange of price information on a plurilateral basis. Article III:3 of the Arrangement and Rule 23(a) of the Rules of Procedure stipulate that participants shall provide information on, *inter alia*, prices, domestic policies and trade measures. Most commonly, participants submit price information, which is contained in Questionnaires 1 to 3 of the Protocols, in the form of quarterly export values (f.o.b.) for the products subject to minimum prices. In conjunction with the export volumes, a weighted average export price of all sales can be calculated. In addition, some participants submit average quarterly export prices (f.o.b.) by destination (country-by-country), for the products subject to minimum prices. A few participants also disclose *price ranges* for exports and imports. Some participants do not submit any price information.

7. With respect to *trade measures*, certain participants do supply information to the Council with respect to measures taken at the national level in order to avoid breaches with the minimum export price commitment. Australia, in the latest policy inventory submitted in June 1992, stated that under the Dairy Produce Amendment Act of 1987:

"..... exporters who breach IDA minimum prices will be required to pay the Australian Dairy Corporation the difference between the price for which they sold their dairy products and the current IDA minimum price for the particular dairy product. Failure to do so may lead to the Australian Dairy Corporation suspending or cancelling the exporters' licence. The amendments brought Australia into line with the other major IDA members who impose economic penalties on breaching exporters." (DPC/INV/5/Add.3/Suppl.1)

According to South Africa's policy questionnaire of April 1993, the functions of the Dairy Board will be significantly reduced. It was stated nonetheless, that:

"..... the Government has instituted measures that ensure that exports of dairy products will not take place under the minimum prices set by the International Dairy Arrangement." (DPC/INV/5/Add.4/Suppl.1)

Moreover, Poland informed the Protocol Committees in March 1991 that its Government had introduced export licensing on 7 November 1990, enabling Poland to monitor exporters (see DPC/PTL/17).

8. *Importers* participating in the Arrangement are requested in Article 6 of the respective Protocols to co-operate in implementing the minimum price objective and ensure that Protocol-type dairy products are not imported "at less than the appropriate customs valuation equivalent to the prescribed minimum prices". Moreover, these countries have agreed to undertake to supply information concerning these imports, and to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum prices threaten the operation of the Protocols.

Sales under derogation

9. Price monitoring of sales under derogation from the minimum price provisions of the Arrangement are based on notifications. There are two types of derogations from the minimum price disciplines: "automatic" and granted derogations. Automatic derogations are special exemptions contained in the Protocol Regarding Certain Milk Powders and the Protocol Regarding Certain Cheeses. They can be invoked unilaterally, provided certain conditions are met, without having to seek the approval of participants. Thus Article 3:5 of the Protocol Regarding Certain Milk Powders permits participants to export or import skimmed milk powder and buttermilk powder as animal feed at prices below the minimum prices, under the condition that the products qualify under approved processes and control measures. Monitoring of these transactions is normally confined to advance notifications of the participants. The same procedure applies to sales under derogation in accordance with Article 7:2 of the Protocol Regarding Certain Cheeses. Participants may, in exceptional circumstances, export small quantities of natural unprocessed cheese which would be below normal export quality as a result of deterioration or production faults. In addition to advance notification, participants are requested to notify to the Committee, on a quarterly basis, all cheese sales under this derogation. These ex-post notifications must include quantities, destinations and prices.

10. A further automatic derogation is applicable to transactions, which are not normal commercial transactions, such as food aid. The relevant provisions are contained in Article 3:8 of the Protocol Regarding Certain Milk Powders, and in the respective Article 3:7 of the Protocols Regarding Milk Fat and Certain Cheeses. According to Article V:2 of the Arrangement, these transactions shall be effected in accordance with the FAO "Principles of Surplus Disposal and Consultative Obligations". Article V:1(b) of the Arrangement and Rule 24 of the Rules of Procedure provide, furthermore, that participants should notify the Council in advance each year, as far as practicable, of the scale, quantities, and destinations of their proposed contributions of such food aid as well of any proposed amendments to the notified programme. In practice, the Council receives only limited ex-post notification of food-aid transactions.

11. In accordance with Article 7:1 of the respective Protocols, a derogation may be granted by the Committee upon request by a participant. Monitoring is based on the information and (negotiated) notification requirements stipulated in the derogation. In the case of the June 1993 derogation for butterfat sales to countries of the former Soviet Union, participants agreed, *inter alia*, to disclose (ex-post) the sales prices of all transactions under this derogation.

ANNEX

<u>Situation</u>	<u>Relevant Articles/Rules of Procedure</u>	<u>Contents</u>
Normal commercial sales		
All participants	Art. 3:1 of the Protocols	Commitment to comply with minimum prices
	Art. 4:1 of the Protocols	Verification of sales prices by Protocol Committees
	Art. III:3 of the Arrangement; Rule 23(a)	Provision to supply information concerning prices, trade measures, etc.
Importers	Art. 6 of the Protocols	Commitment to comply with minimum prices
Sales under derogation		
Granted derogation	Art. 7:1 of the Protocols	Ex-post notification
Certain sales of milk powders (animal feed)	Art. 3:5 of the Protocol Regarding Certain Milk Powders	Advance notification
Certain cheese sales	Art. 7:2 of the Protocol Regarding Certain Cheeses	Advance notification and quarterly ex-post notification
Transactions other than normal commercial transactions (food aid)	Art. 3:7 (Art. 3:8) of the Protocols	General derogation for this type of transaction
	Art. V, notably Art. V:1(b), of the IDA Rule 24 and Rule 25	Advance information; in practice, ex-post notification