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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD ON 18 MAY 1983

Chairman: Mr. M. Ikeda (Japan)

1. The Chairman recalled that the purpose of this meeting was to review the matter referred by the EEC to the Committee for conciliation under Article 17:1 of the Agreement, concerning United States subsidies on export of wheat flour to Egypt.

2. The history of this dispute was as follows: at the beginning of February 1983 the Chairman of the Committee was informed by a letter from the EEC Delegation in Geneva that the EEC had requested consultations with the United States under Article 12 of the Agreement. It was his understanding that these consultations had taken place in Geneva on 1 March 1983. On 7 April 1983 the secretariat had circulated a complaint by the EEC against the United States concerning subsidies on the export of wheat flour (SCM/Spec/18). This complaint contained a request that the Committee, in keeping with the letter and spirit of Article 17 of the Code, review the facts of the case and lend its good offices for the development of a mutually satisfactory solution.

3. The representative of the EEC said that the sale of wheat flour by the United States to Egypt had first been announced in the United States on 12 January 1983; it had received considerable press coverage both in the United States and in Europe where the European millers were seriously affected. He recalled that Egypt was the biggest single market for wheat flour, accounting for some 25 per cent of the world export market. The United States and the EEC had traditionally been the principal suppliers, although other suppliers such as Australia and Canada were also active on this market. For some ten years the EEC and the US had operated on the Egyptian market without conflict. Then, for internal reasons, the US had seen fit to eliminate the EEC as a supplier of wheat flour to Egypt for a whole year.

4. He pointed out that there were a number of provisions in the understanding between the US and Egypt that could mean that the EEC would never be able to return as a supplier to this market. This had dramatic consequences for European millers who were unable to compensate for the loss of the Egyptian market by increased sales to other markets; as a consequence a number of European millers have been forced into bankruptcy. The price agreed to in the memorandum of understanding - US$155 c&f per metric ton of flour, compared to a price for lower quality flour of US$169 f.o.b. per metric ton - had been chosen by the US to show the Community that anything could be done if subsidies were used.

5. The representative of the EEC recalled the provisions of Article 10:3 of the Code which provided that Signatories would not grant subsidies in a manner which would result in prices materially below those of other suppliers to the same market. The first question that arose was whether the US price of US$155 c&f was subsidized or not. The US had implicitly recognized this in its Memorandum of Understanding with Egypt; if necessary the EEC could easily bring the proof that this price was subsidized. Proof that this price of US$155 c&f was lower than the price of other suppliers to the same market could easily be made: copies of telexes were available which showed that offers were made at a price of US$169 per ton on the same day.

6. The second relevant question concerned the concept of "equitable share of world export trade". Even if it could be argued that this was an ambiguous provision it was clear that Article 10:1 of the Code applied to any case where subsidized exports had displaced the exports of another Signatory. He stressed that today not one ton of EEC wheat flour could be exported to Egypt; therefore the United States had injured EEC interests.

7. The EEC and the US had held bilateral consultations. The US had not contested the existence of subsidies. It had even recognized that it was the US intention to displace the EEC in the Egyptian market, in order to give it a lesson. To his knowledge, this was the first time that the US had entered into an understanding at governmental level in such detail, including prices and quantities. Furthermore, it would become increasingly difficult for the EEC to continue exporting wheat flour to other markets where it was now confronted with the precedent of US$155 c&f per ton; an example of this was Lebanon, which now eliminated all offers higher than US$155 per ton.

8. The representative of the EEC concluded by saying that the EEC's objective was simple: it asked that the US pay ECU 30 million in damages to compensate European millers for loss of trade. Should this not be acceptable to the US, then the EEC requested that a panel be established to examine the case, and in particular to see whether the United States had respected its GATT obligations under Article XVI and under the provisions of the Code.

9. The representative of the United States recalled that the conciliation procedure involved clarification of the facts. In this context he noted that the EEC's description of the factual working of the US/Egyptian Memorandum of Understanding was basically correct. He pointed out that the US did not regard the ten year situation during which both parties had supplied the Egyptian market without conflict as reflecting an understanding between the EEC and the United States. He added that some relevant facts which were not contained in the EEC paper (SCM/Spec/18) could be found in the report of the Panel on EEC Subsidies on Export of Wheat Flour (SCM/42), which related to a US complaint against the EEC. Over a period of 17 years the EEC's share of the world market for wheat flour had moved from 24 per cent to 62 per cent. This was an increase of 158 per cent for the EEC, against an average decrease of 50 per cent for all other suppliers. The EEC was not in a position to export without subsidies, but with subsidies it had become the largest wheat flour exporter. The latest International Wheat Council data showed that the EEC held a share of more than 85 per cent of the world market for wheat flour, while the US share had declined to 4.4 per cent. The EEC was in fact asking the Committee to protect its share of the market acquired by subsidies.

10. With respect to the price situation he also referred to the Wheat Flour Panel report (SCM/42) and pointed out that the EEC had a dominant influence on prices. The US unsubsidized price of US$245 per ton as opposed to the EEC's subsidized price of US$169-170 per ton in January 1983 meant that the EEC with its subsidies was underselling the US price by US$75 per ton. If that were acceptable, why was it not acceptable that the United States undersell the EEC price by US$15 per ton? He also pointed out that the EEC price of US$169-170 per ton for flour was below the price for wheat, which was US$180 c.i.f. per ton Rotterdam. The US was obliged to subsidize its exports in order to effect sales to Egypt. The US did not like to subsidize but it had no choice. He also pointed out that the US had made one specific sale; it had not set up a long-term programme.

11. The representative of the US said that he was encouraged by the fact that, because of this complaint, the EEC had recognized that subsidies can cause problems to competitors. He hoped that the EEC could also recognize that EEC subsidies caused huge problems to others.

12. Regarding the EEC suggestion that the US pay damages of ECU 30 million, he said that the US had lost some US$2.8 billion over time through EEC subsidies. He did not consider the EEC request for damages as a serious proposal.

13. As to the EEC request for a panel, he proposed that a practical solution could be found if the two sides agreed to discontinue subsidies on exports of wheat flour. The US, for its part, was prepared to compete in a market free of subsidies. In an unsubsidized market the United States would probably have the largest share; but in a market dominated by subsidies one could not say that the US could not subsidize in order to recoup a small share of its lost market.

14. The representative of Australia recalled his statement made in the Committee on 22 April 1983 on the US complaint about EEC export subsidies on wheat flour. His delegation also had a special interest in the complaint made against US subsidies by the EEC, in document SCM/Spec/18. Australia shared some of the EEC's concern with US export subsidies of wheat flour to the world's major market for that product, particularly with their effects on prices of both wheat flour and wheat. His delegation was concerned that these subsidies might become entrenched in US policy and extended to other products or markets in which Australia had a direct trade interest in wheat flour. He agreed entirely with the EEC's presentation in section 2 of its complaint on the GATT and Code rules relating to subsidies on exports of primary products. He welcomed its clear statement on how market displacement in a single market that is caused by subsidized exports shall be considered to be a way in which such exports may result in a country achieving a "more than equitable share of world export trade". He also welcomed the acknowledgement in the EEC complaint that export subsidies could damage the trade of other countries through both market displacement and price depression and recognition that although it was difficult to quantify injury caused by the price depressing effects of such subsidization, this injury was nevertheless "very real and very onerous". He agreed with the EEC's complaint that export subsidies on wheat flour exerted a powerful depressing effect, not only on the world prices for flour, but also for wheat.

15. He noted, however, that, in the Australian view, the EEC had based its case on the incorrect assumption that wheat flour was, in terms of the Code, a primary product rather than a non-primary product and that accordingly, the rules of Article 9 rather than Article 10 should apply to this case. The reason for the EEC basing its case on Article 10 were, of course, obvious. However, as the EEC had brought its complaint on wheat flour to the Committee under the Code's dispute settlement procedures, the members of the Committee had an obligation to ensure that the relevant obligations of the Code and the GATT were recognized and observed. In his delegation's view the Committee could make a positive and immediate contribution to the settlement of both the US and EEC disputes on wheat flour by determining that the export subsidies of both Signatories were in prima facie breach of their respective obligations under Article 9 of the Code and should be terminated forthwith.

16. The representative of the EEC recalled that both Article XVI of the GATT and the Code recognized that export subsidies may have harmful effects. The EEC for its part had never denied this. However, according to Article XVI:3 export subsidies on primary products were not forbidden. Subsidies granted on the export of primary products were subject to two rules: (a) they should not be applied in a manner which results in a country having more than an equitable share of the world export trade in that product; and (b) subsidies should not result in prices materially below those of other suppliers to the same market. The Community was asking the Committee to examine the facts and to determine whether these two provisions had been respected by the United States in this particular case. With regard to price undercutting, the US recognized that its price of US$155 c&f was subsidized and below that of other suppliers. As to the provision concerning more than an equitable share of the market, the US could not deny that it had displaced the Community on a market in which it used to sell regularly. The facts were clear. It was up to the Committee to draw the conclusion that the US had not respected the GATT rules. The Committee could then examine whether the United States had injured EEC interests and whether it was prepared to compensate for that injury.

17. Turning to the Australian suggestion that the Community discontinue its export refunds, he pointed out that there was not a single country in the world that did not subsidize its agriculture. It was utopic to ask that subsidies be stopped overnight. The suggestion by Australia that wheat flour was not a primary product was not serious. He also recalled that when Australia complained against French export subsidies of wheat flour in 1958, it had then considered that wheat flour was a primary product.

18. He suggested that the solution to this dispute could be simple: as the United States did not contest the facts, it could recognize its violation of GATT provisions with respect to having attained more than an equitable share of world export trade and with respect to price undercutting. If the United States agreed, and paid the damages asked for, the dispute would be resolved. If the United States did not agree, then the dispute should go before a panel to determine whether the United States had violated its GATT and Code obligations.

19. The representative of the United States said that his delegation did not accept that the US had violated its obligations. He had not suggested that conciliation should result in both parties refraining from subsidizing primary products. Quoting from Article XVI:3 to the effect that "contracting parties

should seek to avoid the use of subsidies on the export of primary products", he pointed out that the US had tried this over a long period. He found it bizarre that the EEC would accuse the US of having more than an equitable share of the market, bearing in mind that the EEC had moved from a 28 per cent share of the market to over 60 per cent. Concerning the question of price undercutting, he referred to the fact that the EEC subsidized price of US$175 per ton compared with a non-subsidized price of US$250 per ton.

20. The representative of India said that his delegation's understanding of the task of the contracting parties in GATT and of the Signatories under the Code in a conciliation procedure was to facilitate the process through accepted norms. In his view it was not possible to justify an export subsidy on the grounds of the existence of export subsidies being extended by another supplier without seriously undermining the disciplines of the Agreement. He noted that the United States had not disputed the facts contained in the EEC paper, and he urged the United States to consider the consequences of large scale subsidization.

21. The representative of Australia said that the question of whether wheat flour was a primary product or not was central to the issue. If flour were not a primary product, then both parties were in breach of their GATT obligations. In his view this was an issue that the Committee needed to address.

22. The representative of the EEC said that wheat flour was the same product as wheat. However, he did not feel that this was the issue at stake at this stage. He noted that the United States denied having violated its GATT obligations, a view which the EEC did not share. The legal question of whether the United States had violated its obligations needed to be put before a panel.

23. The representative of Chile noted that the paper and the position of the EEC were well founded and that the facts of the problem had been recognized by the United States. The Committees was in the phase of conciliation, and if that process failed it would have to appoint a panel, since the EEC had so requested, as it was entitled to do. On a more general plane, however, his delegation was concerned that the matter was no more than a reflection of a virtual trade war that was threatening to flare up. Obviously, a solution was not to be found through confrontation. It was the Committee's rôle to consider the specific problem in terms of the Code provisions and the disciplines provided therein, but it must also avoid further conflict; accordingly, it was necessary in addition to address without delay a problem that was essentially political and general, that of export subsidies in the agricultural sector.

24. The representative of the United States said that his delegation was not trying to justify its subsidies on the grounds that the EEC subsidized its exports. Recalling that the EEC had increased its share of world trade in wheat flour from 25 to over 80 per cent through the use of subsidies, it could not now complain that its share was declining because of a single subsidized sale by the US, and say that the US had taken more than an equitable share of the market. The United States had had no choice but to subsidize in order to effect a sale. The provisions concerning subsidies surely did not mean that the EEC could do certain things which the US was prevented from doing.

Concerning price undercutting he pointed out that the EEC had been undercutting prices by US$75 per ton through subsidies; the EEC could not now complain in a case in which the US had undersold the EEC price by US$15 per ton.

25. The representative of Canada said that his authorities were concerned with the distortion of trade caused by the use of export subsidies in wheat flour. It was regrettable that both parties were using such subsidies. He fully agreed with the representative of India that these developments should be of concern to all members of the Committee. It was necessary to find a solution; a negotiated solution would be preferable to a panel finding. However, a panel should be established if there was no other way to resolve the issue. He was not sure that all possibilities of bilateral consultation had been exhausted and urged the two parties to pursue these consultations.

26. The representative of Chile said that it was preferable that this matter be resolved through bilateral consultations and in the Committee; whereas there was a right to a panel, it would be preferable to resolve the issue before getting to that stage. He said that his statement could not be construed as taking sides in this matter. There was a real possibility of a trade war if force were used. He hoped that the problem would be resolved without omitting the broader aspect of subsidies in agricultural products.

27. The representative of the EEC, referring to the Canadian statement, said that bilateral consultations between the EEC and the US on all the differences between them in agriculture were going on. However, as the matter of wheat flour had been referred to GATT, it was no longer discussed in a context of bilateral contacts. His delegation had tried to resolve the issue bilaterally but this avenue was now exhausted. He could understand the Canadian concerns regarding United States export subsidies, especially with regard to grains. He reminded the Canadian delegation that not only did the US and the EEC grant export subsidies for cereals, but Canada extended these subsidies to transportation costs.

28. He noted that not one Signatory had said that the EEC complaint was invalid. The EEC had brought this complaint to the GATT in order to apply the GATT rules so as to prevent a trade war. He reiterated his request for the appointment of a panel.

29. The representative of the United States said that there was a difference of view between his delegation and the EEC representative as to the contents of the EEC-US bilateral discussions.

30. The Chairman asked the Signatories whether the Committee had exhausted its task under Article 17:1, i.e. "review the facts involved and through its good offices encourage the Signatories involved to develop a mutually acceptable solution". He enquired whether any Signatory wanted more time to reflect and to examine the documents further.

31. The representative of the United States suggested that time should be left for reflection, at least until other Signatories had heard the debate which would take place in the Committee the next day on the same product. This debate would be relevant in connection with the provisions of Article 10 which had been referred to by the EEC, especially the concepts of "displacement" and

"more than an equitable share of world export trade". It was also relevant that Article 10:2(a) provided that "developments on world markets" were to be borne in mind in assessing the issue of displacement.

32. The representative of the EEC stressed that the two issues should not be linked; however, he was not opposed to a delay for reflection. Should any of the Signatories have practical solutions to offer, the EEC would forego its request for a panel. In the meantime he reminded Signatories that EEC millers were shutting down and that the problem was of some urgency to them.

33. The representative of Australia said that he had already proposed a practical solution to the matter which was to have the Committee declare that wheat flour was not a primary product and that the subsidies were therefore illegal.

34. The representative of the EEC repeated that this was not a practical solution.

35. The representative of New Zealand noted that the Committee had completed its task under Article 17:1 and had reviewed the facts. For his part he thought some time for reflection was in order as he wished to report to his capital. He fully supported the remarks made by the representative of Canada.

36. The Chairman noted that the EEC had a right to request a panel and that this was not challenged. He therefore suggested that the Committee agree to establish a panel. The task of drawing up terms of reference and the selection of the members of the panel should be entrusted to the Chairman, in consultation with the two parties to the dispute. During this time the process of conciliation should be pursued. He said that the Committee encouraged the two parties to work out a mutually satisfactory solution on a bilateral basis. At the same time he did not preclude the possibility of holding a further conciliation meeting. The Committee agreed to this procedure.