TRADE IN AGRICULTURE

Examination in depth of all measures affecting trade

The Committee on Trade in Agriculture meeting from 4 to 13 October made a detailed examination of all measures affecting access to markets and supplies, including those maintained under exceptions or derogations. It also began to examine the application of the General Agreement in regard to subsidies, in particular export subsidies and other forms of aid. This was the first substantive meeting of the Committee.

The Committee was set up to carry out an extensive work programme covering two years, decided on by Ministers in November 1982. The object of the members of GATT under the terms of paragraph 7 (v) of the Ministerial Declaration is:

- to bring agriculture more fully into the multilateral trading system by improving the effectiveness of GATT rules, provisions and disciplines and through their common interpretation;
- to seek to improve terms of access to markets;
- to bring export competition under greater discipline.

A panoply of restrictions

It was found that all the countries which have furnished information on their agricultural policy (23 countries and the EEC) apply a more or less extensive panoply of restrictive practices affecting both imports and exports: customs duties, sanitary and phytosanitary regulations, various prohibitions, State-trading enterprises, quotas, subsidies, various forms of price support, voluntary restriction agreements, etc.

To justify these measures governments have often invoked articles XI, XVI, XVII, XX and XXIV. "grandfather clauses", and exceptions provided for in protocols of accession or waivers. However, their interpretations of the rights deriving from these provisions differ.

The examination of measures affecting trade was carried out on a contentious basis, each participant being able to supplement the information furnished by other countries. The discussions showed large gaps in the documentation furnished, which the secretariat will endeavour to fill.

Discussions centre on subsidies

The Committee held a detailed legal discussion on the provisions of Article XVI of the General Agreement. Here again, wide differences of interpretation appeared in particular as regards the scope of the obligation laid down in this Article to discuss the possibility of limiting subsidization. It was also pointed out that the concepts of "more than an equal share of world export trade" and "special factors", to which the countries applying subsidies more and more frequently refer, and even the concept of "primary products" were not clearly defined by the General Agreement and thus remained open to different interpretations. The whole discussion on subsidies turned on these concepts.

Although the discussions confirmed that the frequent and extensive use of subsidies has given rise to problems in trade in agriculture, it seems difficult to evaluate their impact.

At the present stage of its work, the Committee considered that all forms of subsidies (including those granted in the form of price or income support) which have the direct or indirect effect of increasing exports or reducing imports, should be more fully notified, and that the notifications should be periodically reviewed.

The Committee on Trade in Agriculture will hold an additional meeting from 28 November to 2 December. It will conclude, if possible, its examination of trade measures taken by countries which have not yet furnished documentation on this subject and will perhaps continue its discussions on the operation of the General Agreement in regard to subsidies.

For the two previous meetings of the Committee see FOCUS Nos. 20 and 23.

First series of consultations on Part IV

On 25 and 26 October, the Committee on Trade and Development held consultations with the Nordic countries, Austria and Hungary, on the way in which those countries have applied the provisions of Part IV of the GATT in their trade policies and commercial measures. The next round of consultations will be held in the spring, with other countries.

This is the first time the Committee has held such broad and, at the same time, specific consultations on this question. They meet the desire to promote more effective application of both the letter and the spirit of Part IV, under difficult economic and commercial conditions. The improvement of access to markets for the benefit of developing countries could help to mitigate the balance-of-payments difficulties and problems of indebtedness which they are now experiencing.

The results of these consultations, which were launched by the Ministerial Declaration of November 1982, will be examined by the Contracting Parties in November 1984.

1 A leading article on this subject appeared in FOCUS No. 21.
THE SUBSIDIES AND COUNTERVAILING MEASURES CODE

The Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement, or subsidies and countervailing measures Code, was probably the most difficult of the Tokyo Round non-tariff agreements to negotiate. Even today, interpretations of some of its provisions still differ widely, particularly as regards the agricultural products sector which it covers. Increased recourse to subsidies has given rise to a relatively large number of trade disputes and has set the international community wondering about possibilities for improving the Agreement's operation.

The provisions of the General Agreement

- Article XVI first lays down, in paragraph 1, two obligations placed on countries which apply subsidies of any kind, if their effect is to increase exports or reduce imports:
  - notification of the subsidies to GATT
  - consultation with the country or countries claiming to be injured, with a view to discussing the possibility of limiting the subsidization.

There is no prohibition of internal subsidies or production subsidies.

On the other hand, export subsidies on products other than primary products are prohibited (paragraph 4). For those (mainly developed) GATT members who have accepted this provision.

As to export subsidies on primary products (paragraph 3), they should be avoided and should not be applied in such a way as to obtain "more than an equitable share of world export trade" in the product concerned.

- Article VI, which also deals with anti-dumping duties, lays down the conditions under which a countervailing duty may be introduced, and its amount. In particular, the subsidy must be such as "to cause or threaten material injury to an established domestic industry" or "to retard materially the establishment of a domestic industry".

The general procedures for dispute settlement set out in Article XXIII are applicable. This recourse is explained by the fact that the levying of a countervailing duty cannot cover all cases of prejudice (prejudice on third markets or resulting from internal subsidies); Article XXIII can also be applied in the case of non-compliance with the conditions laid down in Article VI for the levying of a countervailing duty.

Subsidies and Countervailing Duties Code

The Code, which is supervised by a Committee consisting of its signatories, is intended "to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to this Agreement, and that countervailing measures do not unjustifiably impede international trade", and to make relief available "to producers adversely affected by the use of subsidies".

The Code develops in more specific detail the provisions of the General Agreement which already deal with these questions. What innovations does it introduce?

1) Internal subsidies: these are expressly mentioned in the Code. It recognizes the social and economic need for such subsidies, but, on the other hand, it emphasizes that they may adversely affect normal competition and cause injury to other countries. It therefore recommends that signatories should endeavour to avoid such effects. The Code also gives examples of internal subsidies which the signatories must not use in such a way as to cause serious prejudice. Thus it goes further than the General Agreement in this matter.

2) Export subsidies on products other than primary products: the Code reaffirms the illicit nature of the subsidies. The illustrative, non-exhaustive list of such subsidies which was annexed to the 1960 Declaration, is amplified: the injurious effect of these subsidies is henceforth presumed.

In addition, minerals are now subject to the same rules as industrial products and the Code replaces the French term "produits de base" by "produits primaires" (English unchanged: "primary products").

3) Export subsidies on primary products

The Code reaffirms the difference in treatment between primary products as non-primary products, and adds some particulars regarding the meaning of the expression "more than an equitable share of world export trade": it introduces the concept of displacement of the exports of another signatory and fixes as a representative period "the three most recent calendar years in which normal market conditions existed". The Code also introduces a new concept in Article 10 paragraph 3: signatories must not "grant export subsidies on exports of certain primary products to a particular market in a manner which results in prices materially below those of other suppliers to the same market".

4) Countervailing duties: the Code reaffirms the rules of Article VI, in particular as regards the need for injurious effect between the subsidy and the injury. In addition, the Code provides that the determination of injury must involve an objective examination of the volume of subsidized imports and their effect on domestic prices, and of the impact of those imports on the domestic producers. Countries not applying Article VI by reason of derogations connected with their prior legislation, but which have signed the Code, are henceforth bound by these obligations.

See Article on page 1, on the work of the Committee on Trade in Agriculture.

This is "a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacturer, production or export of any merchandise".

Primary products include products of agriculture, forestry and fisheries.

(continued on page 3)
5) The Code contains provisions which signatories may use to obtain authorization to apply countervailing measures (for example the withdrawal of concessions). Only the Committee is competent to take such a decision.

Consultations, conciliation and dispute settlement

Like the other non-tariff agreements, the Code provides that in case of difficulties the signatories shall hold consultations and, if necessary, ask the Committee to act as conciliator. If the effort at conciliation fails the Committee may establish a panel and authorize the injured party to apply counter-measures (see preceding paragraph).

Transparency

In addition to the obligation to notify subsidies, which is reaffirmed, the Code establishes greater transparency (provision of information at the request of a signatory investigation procedures relating to countervailing duties, etc.).

Special and differential treatment

The Code confirms that the prohibition of export subsidies on industrial products does not apply to developing countries, in so far as their specific needs regarding exports and trade so require. Nevertheless, if their subsidies cause serious injury to another signatory, it is entitled to take countervailing measures.

The signatories to the Code (November 1983)

Austria, Australia, Brazil, Canada, Chile, EEC (for its member States), Egypt, Finland, India, Japan, Korea, New Zealand, Norway, Pakistan, Spain, Sweden, Switzerland, United Kingdom (on behalf of Hong Kong), United States, Uruguay, Yugoslavia.

Operation of the subsidies code

As in the case of all the non-tariff agreements, the Committee supervising the application of the subsidies and countervailing measures Code has examined the conformity of the national laws and regulations of the signatories with the provisions of the Code. Cases of non-conformity of national legislation have been reported to the Committee, which has urged the countries concerned to take these findings into consideration.

* Transparency in regard to subsidies and countervailing duties is one of the objectives of the Code. The notification of all subsidies, agricultural and industrial, shows a distinct improvement over the past, but is still far from being entirely satisfactory in quality.

Signatories have also had to submit half-yearly reports on all decisions taken concerning countervailing duties in the previous six months, and on all preliminary investigations or decisions. Thus in July 1982, for example, the Committee examined the preliminary determination of the United States concerning the imposition of countervailing duties on the subsidized steel exports of certain member countries of the EEC.

* In 1982 the members of the Committee made wide use of the possibilities of conciliation and dispute settlement offered by the Code: of the twenty five meetings held by the Committee since its establishment in January 1980, nine have been held under the dispute settlement procedure.

In 1983, two panels examined the subsidies granted by the European Community on exports of wheat flour and pasta products. The experts consulted, as well as the Committee, met with certain difficulties and were unable to reach a unanimous opinion on the proper interpretation of the expression "more than an equitable share" and on the field of application of Article 9 (products other than certain primary products) and Article 10 (certain primary products) of the Code. Several members of the Committee took the view that the relevant rules of the Code were not sufficiently clear and should be made the subject of an agreed interpretation. This question will be discussed again at forthcoming meetings of the Committee.

Last May the Committee also established a panel to examine the subsidies paid by the United States on exports of wheat flour. Conciliation procedure has been or soon will be applied to three cases: subsidies on exports of sugar by the EEC to the United States; the refusal of the United States to apply the injury criterion to industrial fasteners exported by India; and the subsidies granted by Brazil and the EEC on exports and production of poultry.

The Committee has also been informed of several cases of consultations between signatories.

* The Committee has instructed a panel to draw up precise rules for calculating the amount of subsidies.

* The Committee has adopted a procedure relating to the commitment of signatory developing countries to endeavour to reduce or eliminate export subsidies when they are inconsistent with their competitive and development needs.

The Code provides, in Article 19, paragraph 7 that "signatories may amend" the Code "having regard, inter alia, to the experience gained in its implementation"; and paragraph 8 provides that any signatory may withdraw from the Code. These provisions have never been applied. The Committee has urged non-member countries, particularly developing countries, to accede to the Code. As in the case of the other non-tariff agreements, the Contracting Parties will proceed, at the end of November, to make an overall review of the operation of the Code and of any obstacles to the accession of other countries.

4) See FOCUS No. 22

GROUP OF EIGHTEEN

on trade-finance linkage

Meeting in Geneva on 19 and 20 October in the GATT Consultative Group of Eighteen, senior trade officials carried forward a discussion of how GATT can best recognize and respond to the linkages between international trade and financial problems. The Consultative Group of Eighteen reviewed the scope for closer cooperation in this area between GATT and other international institutions. The officials also reviewed progress in the two-year work programme established by Ministers at the annual Session of the GATT Contracting Parties in 1982.

GATT publications

International Trade 1982/83

This report, extracts from the first chapter of which were published in FOCUS No. 24, has just appeared in English and French; it will be shortly available in Spanish. It is available from the GATT secretariat or from booksellers, price Sw. fr 30–

In the United Kingdom, orders should be placed with HMSO, P.O. Box 276, London SW8 5DT, and in the United States with UNIPUB, 345 Park Ave. South, New York, N.Y. 10010.

Coming GATT Activities

Provisional Calendar of Meetings, as from mid-November

15-16 Sub-Committee on Trade of Least-Developed Countries

15-16 Committee on Anti-Dumping Practices

16-18 Textiles Surveillance Body

17-18 Committee on Subsidies and Countervailing Measures

21-24 Thirty-Ninth Session of the CONTRACTING PARTIES

28 Sub-Committee on Structural Adjustment (Textiles)

29-30 Textiles Surveillance Body

28-30 Committee on Trade in Agriculture

In December

1-2 Committee on Trade in Agriculture

1-2 Textiles Surveillance Body

5-6 Meat Market Analysis Group

5-9 Group on Quantitative Restrictions and Other Non-Tariff Measures

6-9 Committee on Balance-of-Payments Restrictions

8-9 International Meat Council

12-13 Textiles Surveillance Body

15 Textiles Committee

15-16 Committees on Milk Powders, Milk Fat and Cheeses.

GATT FOCUS

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The Council devoted its November meeting mainly to preparing for the session of the Contracting Parties; it examined and adopted the reports submitted to it by various organs of GATT, in particular the committees managing the Tokyo Round agreements, concerning their activities in 1983. The Chairman informed the Council about consultations on the negotiation of a comprehensive understanding on Safeguards as envisaged by the Ministers. An informal examination of specific measures of a safeguard nature had produced a better appreciation of the problems involved, though not yet agreement on all the elements of such an understanding. While it might not be possible to reach a comprehensive understanding before the Annual Session, he intended to continue consultations so that the Contracting Parties could consider whether any immediate action could be taken that would make it easier to negotiate the understanding.

The European Community informed the Council of the measures France intended to adopt in pursuance of the report of the experts who had examined the quantitative restrictions applied by that country to imports of certain products from Hong Kong. The restrictions applied to three of the eight categories of products concerned are to be lifted: the EEC and France are considering what they can do about the restrictions on the other five categories. Hong Kong emphasized on 1 November that the restrictions lifted covered only a small percentage of the value of the trade in question.

The Council also discussed the request submitted by Japan for the establishment of a panel to examine the application by the EEC of Article XXVIII of GATT to new products, in this case digital audio-disc players. Most of the members of the Council considered that the Committee on Tariff Concessions could usefully study this question and report to the Council.

The Council was informed of the composition and terms of reference of the panel which is to examine the complaint of Nicaragua concerning the restrictions applied by the United States on imports of sugar from that country. The representative of the United States asked the Contracting Parties of GATT to grant his country a waiver enabling it to derogate from the most-favoured-nation principle, by applying, as from 1 January 1984, a law granting duty-free entry to imports from several countries in the Caribbean Basin. This law is part of a scheme intended to promote the economic and commercial development of these countries by granting them certain trade and fiscal advantages. The Council requested the United States to communicate the text of the law to it as soon as possible, and in view of the early date of its application, agreed to ask the Contracting Parties to take appropriate action during their session at the end of November. Consultations will be held on this matter in the meantime.

Review of developments in the international trading system

The Council held a special meeting on 1 November to carry out its regular review of developments in the international trading system, with particular reference to commitments under paragraph 7 (i) of the Ministerial Declaration of November 1982 relating to protectionism. The Director-General informed the Council of the establishment of a new Trade Policies Division in the secretariat. Its first and fundamental task would be to help the Council in its half-yearly special reviews. Its aim would be to raise the knowledge of non-tariff measures as nearly as possible to the level already achieved for tariffs. The new division should also improve the ability of GATT to assess the impact of restrictive measures on trade flows and to co-operate effectively with the International Monetary Fund, the World Bank and other organizations.

Consultations are to be held with delegations in order to orient the work of the new division, particularly in regard to the improvement of existing notification procedures.

39th session of the CONTRACTING PARTIES

The thirty-ninth session of the CONTRACTING PARTIES will open at Geneva on 21 November and last about three days. The members of GATT will review recent events in world trade and activities of the organisation; they will also take stock of the implementation of the Ministerial decisions of 1982.

Committee on Tariff Concessions

Article XXVIII and new products

The Committee on Tariff Concessions held a first exchange of views on the application of Article XXVIII of the General Agreement to new products, at its meeting on 20 October. This Committee, established on the conclusion of the Tokyo Round, supervises the staging of the tariff reductions decided on during the negotiations, and provides a forum for the discussion of questions relating to tariffs.

Japan, concerned at the draft decision of the European Community to raise temporarily the level of its customs duties on digital audio-disc players, a product considered to have a very promising future, drew the attention of the Council to this matter in July and October 1983. The Council decided the matter had a bearing on the interpretation of Article XXVIII and came within the competence of the Committee on Tariff Concessions.

The question raised before the Committee was whether recourse to Article XXVIII was justified in the case of newly marketed products, for which trade flows were practically non-existent, and if so, what rules should be applied in calculating the amount of compensation provided for by Article XXVIII.

The Committee invited all interested countries to take part in consultations on this subject under the direction of its Chairman and requested the secretariat to prepare a study on previous applications of Article XXVIII in similar cases.

Further liberalization of trade in civil aircraft

On 6 October 1983, the members of the Committee on Trade in Civil Aircraft agreed to recommend their respective governments the addition of thirty-two new categories of civil aviation products to the lists of products already admitted duty free, and to make this new duty-free regime applicable as from 1 January 1985. A sectoral agreement which emerged from the Tokyo Round, the Agreement on Trade in Civil Aircraft, facilitates world trade in these products; the Committee administering the Agreement enables the countries which are major producers of aircraft to discuss the problems raised by trade in these products.

1. See FOCUS No. 23 and article opposite.

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