NOTIFICATIONS UNDER ARTICLE XVI:1

Note by the Secretariat

At the Committee's meeting in October 1985, the Chairman indicated that in order to assist the group of experts and the Committee in their efforts to work out improved guidelines for notifications, the secretariat would circulate a factual note reproducing all decisions taken so far by the CONTRACTING PARTIES on notifications under Article XVI:1 of the General Agreement.

This note is reproduced hereunder.

I. Arrangements for Reporting in Accordance with Article XVI

Decision of 2 March 1950
(BISD, Vol. II, page 19)

Whereas the provisions of Article XVI of the General Agreement on Tariffs and Trade provide that if any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary; and

Whereas certain contracting parties are applying subsidization measures as described in Article XVI but have not as yet submitted the notification required under that Article,

The CONTRACTING PARTIES

Agree:

1. That such notification will be submitted, in accordance with the provisions of Article XVI, to the CONTRACTING PARTIES not later than 1 August 1950, and that any new measure of subsidization or modifications will be similarly notified after that date as soon as possible after they are instituted; and
2. That the secretariat shall transmit to each contracting party all notifications received.

II. Notification of Subsidies
(BISD, Ninth Supplement, pages 193-194)

Reports should be made in writing for individual commodities and under the headings listed below. A suggestion of the type of information which might be included under each heading is shown within brackets:

I. Nature and extent of the subsidy
(a) Background and authority
(The reason for the subsidy and the legislation under which it is granted.)

(b) Incidence
(Whether paid to producers, to exporters, or in some other way; whether a fixed amount per unit, or fluctuating; if the latter, how determined.)

(c) Amount of subsidy
(Total cost estimated or budgeted or, when this is not feasible, cost in preceding year.)

(d) Estimated amount per unit

II. Effect of subsidy
(a) Estimated quantitative trade effects of the subsidy; and the reason why it is considered that the subsidy will have these effects.

(b) Statistics of production, consumption, imports and exports:
(i) for the three most recent years for which statistics are available;

(ii) for a previous representative year, which, where possible and meaningful, should be the latest period preceding the introduction of the subsidy or preceding the last major change in the subsidy.

Recommendations of the Panel on Subsidies, adopted by the CONTRACTING PARTIES on 24 May 1960
(BISD, Ninth Supplement, pages 188-194)

I. Guidelines on notifications (Excerpts)

1 Information on the four sections under paragraph 1 should be given separately under each specific commodity heading.
In cases where countries are not in a position to indicate the subsidy per unit because the measure of the subsidy is related to fluctuating prices or is based not on the product but on some other criterion (e.g., acreage) they should (1) notify the sum, if any, which is budgeted for the purpose, and (2) give detailed figures for the operation of the measure in the previous year, indicating the total amount, the quantity of the product, and the average subsidy per unit.

The Panel considered that the CONTRACTING PARTIES, in drawing up this Section had had it in mind that countries should give some indication of the quantitative effects of subsidy arrangements, i.e. the effects on actual volume of imports and exports. The Panel therefore recommends that all contracting parties should include in any subsequent notification statistical data covering a representative period of domestic production, consumption, imports and exports of the product concerned. These figures should cover the last three years; and, when possible and meaningful, a previous representative period (to be notified only once for that product) preceding the entry into effect of the measure or preceding the latest major change in that measure. It is realized that statistical data would not answer all questions but, as indicated earlier in this paragraph, they would provide the most useful practical guidance to contracting parties in their attempts to estimate the effects of a subsidy. The Panel also recommends that contracting parties should say what they consider to be the trade effects of any subsidies and to explain why they think the subsidies will have these effects.

II. Subsidies notifiable under Article XVI (Excerpts from paragraphs 10-13)

A. In the opinion of the Panel, it is not sufficient to consider increased exports or reduced imports only in an historical sense. In this connection the Panel had in mind the following interpretation of the CONTRACTING PARTIES (BISD, Volume II, page 44), paragraph 29 (a)):

"The phrase, 'increased exports' in line 3 of Article XVI of the General Agreement was intended to include the concept of maintaining exports at a level higher than would otherwise exist in the absence of the subsidy, as made clear in line 3 of Article 25 of the Havana Charter;"

Mutatis mutandis this interpretation must apply to the effect on imports. The criterion is therefore what would happen in the absence of a subsidy. The Panel consider it fair to assume that a subsidy which provides an incentive to increased production will, in the absence of offsetting measures, e.g., a consumption subsidy, either increase exports or reduce imports.

B. The Panel discussed the circumstances under which a system which fixes domestic prices to producers at above the world price level might be considered a subsidy in the meaning of Article XVI. It was generally agreed that a system under which a government, by direct or indirect methods, maintains such a price by purchases and resale at a loss is a subsidy. Such purchases would need only to cover part of the production to involve a subsidy and, in determining loss on resale, such expenses as holding stocks should be taken into account ... The Panel recognized that there might be other variations of price stabilization where the existence or non-existence
of a subsidy would be more difficult to determine. This should be judged by examination of the circumstances of each case. The Panel feels that, in order to permit such an examination, the CONTRACTING PARTIES should consider asking contracting parties to notify all cases of price support, regardless of the precise method used.

C. The Panel examined the question whether subsidies financed by a non-governmental levy were notifiable under Article XVI. The GATT does not concern itself with such action by private persons acting independently of their governments except insofar as it allows importing countries to take action under other provisions of the Agreement. In general there was no obligation to notify schemes in which a group of producers voluntarily taxed themselves in order to subsidize exports of a product. The Panel felt that in view of the many forms which action of this kind could take, it would not be possible to draw a clear line between types of action which were and those which were not notifiable. On the other hand, there was no doubt that there was an obligation to notify all schemes of levy/subsidy affecting imports of exports in which the government took a part either by making payments into the common fund or by entrusting to a private body the functions of taxation and subsidization with the result that the practice would in no real sense differ from those normally followed by governments. In view of these considerations the Panel feels that the question of notifying levy/subsidy arrangements depends upon the source of the funds and the extent of government action, if any, in their collection. Therefore, rather than attempt to formulate a precisely worded recommendation designed to cover all contingencies, the Panel feels that the CONTRACTING PARTIES should ask governments to notify all levy/subsidy schemes affecting imports or exports which are dependent for their enforcement on some form of government action.

D. In the course of its examination of notifications, the Panel noted at its first meeting that some contracting parties had interpreted approval by the International Monetary Fund of multiple exchange arrangements as absolving them from the obligation to notify such arrangements under Article XVI. The Panel wished to record its view that interpretative note 1 to Section B of Article XVI was intended not to preclude the use by a country of multiple exchange rates which were approved by the International Monetary Fund, but that there was a clear obligation to notify to the CONTRACTING PARTIES multiple exchange rates which have the effect of a subsidy.

E. In order that the CONTRACTING PARTIES should have the most complete information possible the Panel recommends that governments which consider that there are no measures or schemes in their countries requiring notification under Article XVI should so inform the Executive Secretary in writing.

III. Rôle of Article XVI:

Report adopted on 21 November 1961, paragraph 19
(BISD, Tenth Supplement, page 206)

"The rôle of Article XVI in providing the CONTRACTING PARTIES with accurate information about the nature and extent of subsidies in individual countries has been partly frustrated by the failure of some contracting parties to notify the subsidies they maintain. To the extent that this is
based on the reluctance of contracting parties to expose themselves to charges of non-conformity with the Agreement, it reflects a misinterpretation of Article XVI. Moreover, a contracting party can be required to consult concerning a subsidy, whether or not it has been notified. There seems, therefore, to be no advantage to a contracting party in refraining from notifying its subsidies; on the contrary, notifications may dispel undue suspicions concerning those subsidies not previously notified."

IV. Procedures for Notifications and Reviews

Adopted on 9 November 1962

(BISD, Eleventh Supplement, page 58)

Article XVI requires that contracting parties which maintain subsidies having the effects described in paragraph 1 of the Article, are to notify in writing the nature and extent of the subsidization. At their fourth session the CONTRACTING PARTIES established procedures for such notifications and at their ninth session adopted a questionnaire with a view to achieving a standardized reporting system. Subsequently, the CONTRACTING PARTIES, at their sixteenth session, adopted a revised questionnaire (BISD, Ninth Supplement, pages 193-194).

In the light of discussions at their twentieth session, on the procedures for notifications on subsidies and State trading, the CONTRACTING PARTIES adopted the following procedures:

1. Contracting parties are invited to submit by the end of January 1963, and subsequently every third year, new and full responses to the questionnaires.

2. During 1963 the Council of Representatives will take whatever steps it considers necessary to examine the adequacy of the notifications received, re-establishing the Panel or setting up a working party, if necessary, to conduct these examinations.

3. Contracting parties will be invited, at the end of January 1964 and in each subsequent year until the next three-yearly review, to submit notifications of the changes which have occurred in their subsidy and State-trading measures since their notifications in 1963.

4. All notifications will be circulated by the secretariat to all contracting parties.

V. Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance

Adopted on 28 November 1979

(BISD, Twenty-Sixth Supplement, page 210)

Paragraph 2

Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.