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Committee on Subsidies and
Countervailing Measures

MINUTES OF THE MEETING HELD ON 7 APRIL 1982

Chairman: Mr. M. Ikeda (Japan)

US request under Article 17:1 for conciliation with respect to export
subsidies on pasta

1. The Chairman recalled that at its meeting of 24 March 1982 the Committee had proceeded with the conciliation in relation to export subsidies on pasta and had had a general discussion on interpretation of Article 9. No consensus had emerged with respect to any of these two questions but, as the conciliation period had not expired, some delegations had considered that more reflection would be desirable on the substance of the matter and on the best way to proceed with this matter. At the same meeting the US delegation had indicated that it might request a panel in accordance with Article 17:3 of the Agreement (once the conciliation period is over), but that it would take its final decision only after having reflected on the discussion in the Committee. Since the last meeting the delegation of the European Community had circulated a communication (SCM/Spec/13) where it supported a proposal made by a Signatory at the last meeting that the Committee should establish a working group to examine the question of the interpretation of Article 9 in greater detail.

2. The representative of the United States said that his delegation had reflected on various options available and decided that the best way to proceed would be to refer the matter to a panel in accordance with Article 17:3 of the Agreement. As to the proposal to establish a Working Party his delegation would not object if, at a later stage, such a Working Party was established but his position was that a Working Party should not be a substitute for a panel in any dispute settlement procedure, and that it should not be requested to consider factual and legal issues subject to such a procedure. Consequently he requested the Committee to establish a panel to examine the United States complaint that the EC export subsidies on pasta products were contrary to Article 9 of the Agreement.

3. The representative of the European Community said that the objective of conciliation was to find a mutually acceptable solution and the United States should suggest what would constitute, in their view, such a solution. The representative of the United States said that his delegation was prepared to consider any practical solution. A starting point for such a solution could be that the European Community would cease granting export subsidies on pasta, at least on pasta exported to the United States. The representative of the European Community wondered whether such a solution would be consistent with the General Agreement. Furthermore the United States' suggestion indicated

that the main problem for them was that of prejudice. But it should be clearly said whether there was a real prejudice or a theoretical one. The main problem for the United States seemed to be a practical solution not a theoretical violation of Article 9. He was ready to look for a practical solution on this basis.

4. The representative of the United States repeated that his delegation was ready to look for a practical solution if the European Community recognized that its subsidies on pasta were contrary to Article 9, or ceased, or at least phased out such subsidies on exports to the United States. He also said that his request for a panel had not excluded that efforts for a mutually acceptable solution should continue and his delegation was ready to actively participate in such efforts. As to the question of prejudice he said that the failure of a Signatory to carry out its obligations under the Agreement was sufficient to presume the existence of such a prejudice.

5. The representative of the European Community said that such a presumption existed only after the Committee had determined that there was a failure to carry out one's obligations under the Agreement. In this case no such determination had been made and therefore no presumption of a prejudice existed. It was not a normal GATT practice to establish a panel in a case where there was no prejudice and the United States, instead of playing with procedures should join the European Community in seeking a practical solution.

6. The representative of the United States said that in order to determine whether the European Community was observing its obligations under the Agreement the Committee would need a report by a panel which would clarify the issue. If a satisfactory solution was found before the panel completed its work then the Committee could consider the case as terminated.

7. The representative of Japan said that the Committee had already discussed the matter three times and no mutually acceptable solution was forthcoming. This situation could not last for ever and the Committee should act in accordance with the Agreement. An opinion had been expressed that the dispute settlement procedure provided for in the Agreement was too mechanical but the Agreement was an agreed document and everybody was bound by its letter and spirit. Since the United States requested a panel in accordance with the Agreement the Committee was obliged to accept this request and establish a panel. Of course it should not prevent the parties from continuing to seek a mutually acceptable solution but the dispute settlement procedure should not be unduly delayed. As to the proposal to establish a Working Party he thought that it should be considered at a subsequent stage although he did not deny its usefulness. He was concerned that a parallel establishment of a panel and a working party would affect the independence of the panel.

8. The representative of the European Community wished to warn the Committee against too mechanical an approach to the dispute settlement procedure. If the Committee refused its responsibility and hid behind procedural aspects the result could be that finally the most important thing would not be the substance of the matter, nor obligations under the Agreement but the mechanics of the procedure itself. Such an approach would be the best way to destroy the dispute settlement procedure.

9. The representative of Canada said that both parties had expressed their readiness to seek a practical solution and the Committee should encourage this process. However the Committee should also respect the rights of a Signatory

and as the United States representative had requested a panel, such a panel had to be established, but this fact should not prevent the parties from reaching a mutually acceptable solution. As to the question of a working party he considered that it would not, at this stage, produce satisfactory results, however the proposal had some merit and the Committee should give it due consideration at a later stage.

10. The representative of Australia said that the Committee had been engaged in a process of conciliation and that this process had not produced satisfactory results. Consequently, and taking into account the United States request, establishment of a panel was unavoidable. A working party would not be effective in resolving the matter and therefore the Committee could revert to the EC proposal at an appropriate moment in the future.

11. The representative of Switzerland said that the conciliation stage could be followed by a panel or by a working party. However this stage had not been, as yet, completed. Certain proposals had only been made at the beginning of this meeting and the Committee should encourage the parties to fully explore them and should help, through its good offices, to work out a mutually acceptable solution. The matter referred to the Committee was, from the economic point of view, a marginal one but legal questions involved were of great importance. If a panel was established it would examine the facts of this particular matter and, in the light of such facts, it should present to the Committee its findings. However it was not up to a panel to take any decision on the matter but it was up to the Committee to do so and to decide on the follow-up. In other words nothing could be resolved by the panel itself but the final decision remained with the Committee. The Committee would have to resolve a fundamental legal question and in order to do so it would need a working party which would prepare an agreed interpretation of the relevant provisions of the Agreement, independently of a particular case. Consequently a solution consisting of a parallel continuation of the conciliation, including a panel if necessary, and the establishment of a working party to deal with a fundamental legal question would neither delay the whole procedure nor would it be prejudicial to the settlement of the concrete case.

12. The representative of New Zealand said that if there was room for conciliation the Committee should encourage the parties to continue their best efforts. On the other hand the Committee was requested to establish a panel. He shared some of the preoccupations expressed by the representative of Switzerland but he considered that the concrete case referred to the Committee by the United States had raised a number of specific problems which could only be meaningfully examined by a panel. A working party could not deal with such specific problems and therefore the panel should be set up first. Subsequently a working party could deal with the general question of interpretation.

13. The representative of Finland said that the Committee was faced with a concrete case and with a very important question of general interpretation. The general interpretation could be given only by the Committee itself, and a working party, although not necessarily effective, would be helpful in preparing this interpretative process. As to the concrete case he considered that if a party insisted on having a panel, there was no way to prevent it from having a panel but this panel would have to address the specific issue only and it could not give a general interpretation of the Agreement.

14. The representative of Brazil said that there were two problems for the Committee to deal with. The first one was a specific matter referred to it by the United States and as a request for a panel had been made, the Committee, in accordance with Article 18:1 of the Code, should comply with this request, it being understood that the parties would continue their efforts to find a mutually acceptable solution. The second problem was a question of general interpretation. If one of the parties so wished the Committee could establish a working party to consider this question. The Brazilian delegation, which is also very much interested in the question of general interpretation of Article 9 could support a proposal to establish the Working Party. However it should not prevent or delay the resolution of the specific issue. Consequently a panel should be established and it should submit its findings to the Committee, which should then make a statement on this specific matter. If the Committee decide to establish a working party to consider the question of general interpretation of Article 9, then the findings of the panel could also be useful for the task of the working party.

15. The representative of Pakistan said that as the Committee was unable to arrive at an agreement he did not think that a panel would be any more successful. The appropriate solution, at this stage, would be to have a working party to examine the important question of interpretation.

16. The Chairman said that the dialogue between the parties to the dispute would continue and that statements made by them and by other members of the Committee had contributed to further clarify the matter. In particular he wished to stress the importance of the fact that the parties had expressed their willingness to continue their best efforts to find a practical solution. However for the moment the situation was that the United States had made a formal request for the establishment of a panel and, acting in accordance with Article 18:1 of the Agreement, the Committee had to accept this request. He also noted that a number of Signatories had supported the proposal to establish a working party but there was no unanimity as to the best timing for such a decision. Some members favoured an immediate establishment while others considered that it should be established only after the panel had considered the specific issue. Taking into account the views expressed and the obligations resulting from the Agreement, he proposed that the Committee establish a panel and authorize the Chairman to decide, after securing the agreement of the Signatories concerned, on its terms of reference and composition. He also proposed that once the Committee received the panel's report it could establish a working party to discuss the question of the general interpretation of Article 9 of the Agreement.

17. The representative of the European Community said that although he did not want to object to the decision to establish a panel, he considered that the most important problem was that of interpretation of Article 9 and therefore he could not accept the Chairman's proposal with respect to the working party. He considered that such a party should be established immediately and not only after the Committee received the panel's report. As to the question of the panel he said that its terms of reference should be drafted in a very precise manner and in no case should they include the question of general interpretation of the Agreement. He also considered that the panel should be composed of five persons.

18. The representative of the United States said that he could agree with the representative of the European Community that the panel should not give an interpretation of the Agreement. Nor could it be done by a working party, and therefore a working party was not a substitute for a panel. He would not object to having a working party, at an appropriate time, to look at the general interpretation of Article 9. He would, however, object to the establishment of a working party in the context of the specific pasta case. As to the panel it was an undeniable right of the United States to have it established now.

19. The representative of New Zealand said that the Chairman's proposal reflected the feeling of the Committee. His position was that a working party would be useful but only after the panel had reported on the specific issue. The representative of Switzerland said that there was no doubt that the United States had a right to request and to obtain a panel. A panel and a working party were not mutually exclusive, but they should not work in parallel. He thought that from the logical point of view the best order would be to have a working party first to consider the general question of interpretation and then the panel would have a better legal basis for its work. Another reason to delay the establishment of a panel was that the conciliation process seemed to be still under way. Such a delay would not be prejudicial to the interests of the United States and in addition the Committee could fix a time-period within which the working party should complete its work. After such a dead-line the panel would be automatically set up. The representative of Japan said that he agreed with the Chairman's proposal and that he considered that a working party would be useful, but at a later stage. The representative of Australia said that it would be inappropriate to establish a working party in the middle of a dispute to examine that dispute and, therefore, he supported the Chairman's proposal. The representative of Canada said that as a Signatory was requesting a panel the Committee could not act otherwise but to establish such a panel. For this reason he could agree with the Chairman's proposal.

20. The representative of the European Community said that he did not object to the establishment of the panel but he could not accept the Chairman's proposal that the working party be established only after the panel had submitted its report.

21. The Committee agreed to establish a panel and authorized the Chairman to decide, after receiving the agreement of the Signatories concerned, on its composition and terms of reference.

US request under Article 17:1 for conciliation with respect to export subsidies on sugar

22. The Chairman said that he had received a letter, dated 6 April 1982, from the United States Trade Representative in which he had referred to the Committee for conciliation under Article 17:1, the US complaint concerning subsidies maintained by the European Community on the export of sugar. The US statement of basic facts and issues in this dispute had been circulated to the Committee (SCM/Spec/14).

23. The representative of the United States said that as the reasons for the conciliation process was to arrive at a mutually acceptable solution the Committee should reflect on how to make this process work. If the discussion

in the Committee focussed on legal issues it would be more difficult to find a practical solution. The Committee should know in what direction a conciliation could go and to what extent parties were prepared to accept a practical solution. An open discussion in the Committee might not reveal all possibilities and therefore some informal mechanism would be of use. For example the Chairman might have informal consultations with parties to a dispute in order to seek a basis for a practical solution. The Committee should reflect on how to make the conciliation process work efficiently and it should reach an understanding on appropriate procedures.

24. The representative of the United States presented basic facts and issues in the dispute concerning subsidies maintained by the European Community on the export of sugar. The full text of the US communication has been circulated in SCM/Spec/14.

25. The representative of the European Community said that the representative of the United States had repeated his complaint but he had not proposed any practical solution nor had he suggested what the European Community should do. It was a very peculiar approach to conciliation and he wondered how the Committee could conciliate if the complaining party did not know what it really wanted. It was not up to him to propose any solution but he could, for example, make a commitment not to export sugar to the United States.

26. The representative of the United States said that during the bilateral consultation his delegation had asked whether the European Community would be prepared to consider any modification to their sugar exports régime and the reply had been negative. He was ready to look for a practical solution but he had the impression that the only solution acceptable to the European Community was that the United States withdrew its complaint. If the European Community had other proposals he was ready to consider them but he thought that at this stage the most appropriate way to proceed would be to consider the methodology of the conciliation process by which a practical solution could best be found.

27. The representative of the European Community said that again the US representative had not made any concrete suggestion except requesting that the European Community change its policy. But even in this respect he did not say what specifically should be changed. The only proposal he had made was that the framework for conciliation provided for in the Agreement was not good and therefore it should be changed. In other words he was suggesting that the Agreement itself was not good and should be changed.

28. The representative of the United States said that he had not proposed to change the Agreement but simply suggested that in the framework of the Agreement there should be informal channels to explore the possibilities of finding a practical solution.

29. The representative of Australia recalled that the United States had reported that during the consultations the EC delegation had denied that export restitutions on sugar were an export subsidy. He wished to record the position of his Government that the payment of restitutions did constitute a subsidization of the export of sugar. He also said that he had not heard any reply from the European Community to the US claim during the consultations that the European Community had stated that they were not willing to change their sugar policies.

30. The representative of the European Community said that the US representative's response had shown that neither during consultations nor at present was the US delegation ready to make any concrete proposal. It was not up to the defendant to make any proposal, in particular in a situation when the complainant had never proposed anything.

31. The Chairman proposed that if the two parties to the dispute agreed, the Chairman, assisted by the secretariat, would hold informal discussions with them to explore the possibility of finding a practical solution. The Committee would then revert to the matter at its following meeting in order to continue the conciliation process. It was so agreed.

Contribution to the preparation of the Ministerial Meeting

32. The Chairman said that as the members of this Committee were certainly aware, the Chairman of the Preparatory Committee had invited other Committees to make any contributions to the preparations for the Ministerial Meeting which they considered useful. These contributions should be presented, at the latest, in the course of May. The Committee would discuss this matter at its April 1982 session.