

GENERAL AGREEMENT ON TARIFFS AND TRADE

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GATT/CP.4/23
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CONTRACTING PARTIES
Fourth Session

DECLARATION OF THE CHILEAN DELEGATE REGARDING THE APPLICATION OF THE AUSTRALIAN SUBSIDY ON AMMONIUM SULPHATE (GATT/CP.3/61)

Item 8 of the Agenda

In order that the Contracting Parties may study the causes of the claim made by Chile against the measure taken by the Australian Government regarding Chilean Nitrate, we submit for their consideration the following memorandum :

The Facts:

1. For some years the Australian Government has been subsidising imports of Chilean Nitrate and of Ammonium Sulphate in order that Australian farmers could obtain their nitrogenous fertilizers at the lowest possible price.
2. From 1st July 1949 Australia withdrew the subsidy on Chilean Nitrate, maintaining it with regard to Sulphate of Ammonia.
3. Chilean Nitrate is one of the basic products of Chilean economy and is second in importance as a source of foreign currency.
4. While the subsidy was in force for both products, Chile and Australia agreed in Geneva mutual tariff concessions during the Second Meeting of the Preparatory Committee of the United Nations Conference on Trade and Employment. Among other concessions, Australia conceded to Chile freedom from customs duties on Chilean Nitrate.
5. Both countries are signatories to the Protocol of Provisional Application of GATT.

Chile's Claim:

6. When the facts in Point 2 above became apparent, Chile formally protested against this attitude as per the terms indicated in document GATT/CP.3/61, requesting the continuation of the payment of the subsidy on Chilean Nitrate in the same manner as for Ammonium Sulphate.
7. As a consequence of our claim, friendly discussions took place in Annecy between the Delegations of both countries. Unfortunately, no solution was reached, and both Governments agreed that conversations should be reinitiated in London.

8. During the London discussions, the representatives of the Australian Government were Mr. McCarthy, Deputy High Commissioner, and Mr. Clark, the latter being a Delegate at this Conference.
9. After protracted negotiations, these Delegates recommended to their Government the re-establishment of the subsidy in the same manner as existed before. The Government rejected this suggestion on the part of their representatives, proposing the following one which we herewith comment upon :

Australia's Counter-Proposal:

10. Australia offered to give Chilean Nitrate a subsidy which would be based on the nitrogen content.
11. Chile rejected this proposal, basing her refusal on the following reasons:
 - (a) Sulphate of Ammonia has a content of 21% nitrogen, and Chilean Nitrate 16% nitrogen.
 - (b) In accordance with point (a), the Australian proposition signified that Sulphate of Ammonia should have a subsidy of £6.10.0 per ton, against £4.19.0 per ton for Chilean Nitrate. On the other hand, the subsidy which previously existed was the same for both products.
 - (c) Because by accepting the Australian counter-proposal it would have meant the acceptance of the appreciation that both products are not competitive on the same footing in the circumstance that it is a world-wide fact that both products compete in all world markets on the basis of a ton of Chilean Nitrate against a ton of Sulphate of Ammonia.
 - (d) Because in the conditions indicated, the Australian offer having tacitly implied the statement that Sulphate of Ammonia has a greater fertilizer value than Chilean Nitrate, this offer not only meant the leaving in force of the discriminatory act objected to by Chile, but also aggravated it with a further act, even yet more discriminatory and prejudicial to the Chilean product.
 - (e) In order to understand the lack of equity of the Australian proposition, it must be taken into account that Chilean Nitrate has not only been valued by agriculture throughout the world for more than a century of uninterrupted usage, but also owing to its special physical properties, derived from the fact that it is a natural product (not synthetic), it possesses conditions of greater stability. For this reason its storage and distribution is easier and safer. Furthermore, on account of its chemical properties it is more regularly absorbed by plants, therefore obtaining a better yield.

- (f) Because apart from its nitrogen content, the Chilean product contains several sub-products (minor elements) such as iodine, boron, among others, which singularize it as a fertiliser of undisputable universal qualities, and without rival for certain applications.

Other Objections made by Australia:

12. During the course of the London conversations, the representatives of the Australian Government also made further objections which merit brief comment:

- (a) Australia stated that the farmers of the country preferred Sulphate of Ammonia, this being the reason why the Government had resolved to maintain the subsidy only for this product.

Chile replied that she could make no objection to a preference which consumers showed in a market in which both products could compete on an equal basis, and that if this preference was totally true it meant that Chilean Nitrate would not be sold, even with the subsidy. We further stated that by accepting as true Australia's argument, it would mean that the measure objected to would not only be discriminatory, but also useless and inoperative as, according to this declaration, Chilean Nitrate would not be sold in Australia even after the re-establishment of the subsidy.

- (b) The Australian Delegates also stated that their Government, by withdrawing the subsidy, did not have, nor has the intention of effecting a discriminatory act. To this we replied that we were not interested in finding or qualifying intentions, but we protested against a fact which was in itself discriminatory, effected without any reason against a basic product of Chilean economy, and in flagrant violation of the letter and spirit of the agreements signed by the Governments of Chile and Australia.

Conclusions:

Sales of Chilean nitrate in Australia represent a very reduced volume within total world sales effected by Chile, for which reason the Chilean Government, in putting forward this problem, only does so bearing in mind that it involves a question of principle of great importance, which cannot be overlooked by the Contracting Parties.

Even though the clear exposition of the fact stated above makes it unnecessary to give in full the violations to the GATT dispositions, which are involved by the discriminatory measure taken by the Australian Government, we must point out that our claim was made in accordance with Article XXIII, paragraph 1, of the GATT, that the act of the Australian Government contravenes the dispositions of Article I, in relation to paragraphs 2 and 4 of Article III, which define the principle of the Most Favoured Nation Treatment, which is the fundamental principle infringed by Australia and on which is based the organization which forms the GATT. The same act is also related to Article XVI of the GATT,

which grants the right to a Contracting Party which may consider itself prejudiced by a discriminatory subsidy to discuss the matter with the Contracting Party which gives the subsidy.

The memorandum shows that the consultative procedure indicated in Articles XVI and XXII has failed, for which reason the Contracting Party should proceed in accordance with Article XXII, paragraph 2 of the GATT.