

TREATMENT BY GERMANY OF IMPORTS OF SARDINES

*Report adopted by the CONTRACTING PARTIES
on 31 October 1952
G/26 - 1S/53*

I. *Introduction*

1. The Panel on Complaints examined with the delegations of the German Federal Republic and Nor

on preparations of *clupea pilchardus* while these restrictions were maintained on the preparations of the other varieties. It then considered whether the aforementioned measures taken by the German Federal Republic constituted, within the terms of Article XXIII:1

or of Article XIII:1

and Norway within the framework of the General Agreement, canned products of *clupea sprattus* and *clupea harengus* enjoyed the same customs treatment in Germany as the canned products of *clupea pilchardus*. This equality of treatment had been guaranteed by notes exchanged between the two Governments in 1925 and 1927.

3. The Torquay negotiations were conducted on the basis of the draft of a new German Customs Tariff, following the nomenclature elaborated in 1949 by the European Customs Union Study Group. The canned products of *clupea pilchardus*, *clupea sprattus* and *clupea harengus* were classified under separate sub-items

The German delegation was not prepared to negotiate on sub-item (b), as the main supplier was not a contracting party, but agreed to enter into negotiations with Norway as regards the duties on "sprats" and "herrings". As a result of the Torquay negotiations, the duty on sardines remained unbound at 30 per cent and was not included in the German Schedule, whereas the duties on "sprats" were bound at 25 per cent and those on "herrings" at 25 per cent and 20 per cent.

4. The German Schedule and the Notes annexed to it do not contain any written commitment on the part of the German Government regarding the granting or continuance of equality of treatment as between the preparations of the various clupeae. Although no agreed minutes were kept in the course of the bilateral negotiations, the Panel was satisfied, on the basis of the evidence submitted, that the

its negotiations, i.e., that the Norwegian "Brisling" and "Silde" sardines would continue to be granted full customs equality with preparations of *clupea pilchardus*.

5.

exports of fish products to Germany. Nor did the Panel feel that it was necessary for a finding of nullification or impairment under Article XXIII first to establish statistical evidence of damage.

III. *Consistency of the German Measures with the Provisions of Article I:1 and Article XIII:1*

10. The Panel considered whether, by failing to extend to particular preparations of the clupeoid family, of interest to Norway, the advantages, favours and privileges granted by Germany to other preparations of the same family, which are of interest to Portugal, Germany had acted inconsistently with the provisions of paragraph 1 of Article I and of paragraph 1 of Article XIII of the General Agreement.

11. The Panel noted that the difference of treatment was not based on the origin of the goods but on the assumption that preparations of *clupea pilchardus*, *clupea sprattus* and *clupea harengus* are not "like products" within the terms of Article I and Article XIII.

12. The Panel noted also that the General Agreement made a distinction between "like products" and "directly competitive or substitutable products" and that the most-favoured-nation treatment clause in the General Agreement was limited to "like products". The Panel did not feel that it was called upon to give a definition of "like products" or that it was necessary for the consideration of the Norwegian complaint to decide whether the preparations of *clupea pilchardus*, *clupea sprattus* and *clupea harengus* had to be generally treated as "like products". Although the Norwegian complaint rested to a large extent on the concept of "like products" as set out in the Agreement and the German reply addressed itself also to that concept, the Panel was satisfied that it would be sufficient to consider whether in the conduct of the negotiations at Torquay the two parties agreed expressly or tacitly to treat these preparations as if they were "like products" for the purposes of the General Agreement.

13. The evidence produced before the Panel shows that in the course of the Torquay negotiations the German delegation has consistently treated the preparation of the various types of clupeae as if they were separate products; the wording of item 1604 and its sub-items was not objected to by other delegations and separate negotiations were in effect conducted on the various sub-items. The Norwegian delegation tried without success to obtain that preparations of sprats and herrings should be treated as sardines for marketing purposes and, failing that, was content with assurances that equalit n

IV. *Nullification or Impairment of the Concessions Granted
to Norway on Preparations of Clupea
Sprattus and Clupea Harengus*

16. The Panel next considered whether the injury which the Government of Norway claimed it had suffered represented a nullification or an impairment of a benefit accruing to Norway directly or indirectly under the General Agreement and was therefore subject to the provisions of Article XXIII. It agreed that such impairment would exist if the action of the German Government, which resulted in upsetting the competitive relationship between preparations of *clupea pilchardus* and preparations of the other varieties of the clupeoid family could not reasonably have been anticipated by the Norwegian Government at the time it negotiated for tariff reductions on preparations of *clupea sprattus* and *clupea harengus*.
The Panel