

EEC MEASURES ON ANIMAL FEED PROTEINS

*Report of the Panel adopted on 14 March 1978
(L/4599 - 25S/49)*

I. Introduction

1.1 In April 1976 the Council (C/M/113) was informed by the United States that the United States had entered into consultations with the EEC under Article XXIII:1 as a result of the implementation on 1 April 1976, of a compulsory purchase programme for skimmed milk powder by the EEC. On 15 July 1976 the United States referred this matter to the CONTRACTING PARTIES (C/M/115) in accordance with the provisions of Article XXIII:2, since it had not been possible, in intensive consultations with the Community, to reach a satisfactory solution of the trade issues involved.

1.2 At its meeting of 17 September 1976 (C/M/116), the Council agreed to establish a Panel with the following terms of reference:

"To examine the complaint by the United States that the EEC import deposits and purchasing requirements affecting non-fat dry milk and certain animal feed proteins are not consistent with the EEC's obligations under the GATT, including the provisions of Articles I, II and III, and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII".

1.3 The Chairman of the Council informed the Council of the agreed composition of the Panel on 2 March 1977 (C/M/119, paragraph 19):

Chairman: Mr P. Kaarlehto (Ambassador, Permanent Mission of Finland, Geneva)

Members: Mr. C.G. Barnett (Minister Counsellor, Permanent Mission of Jamaica, Geneva)

Mr. G. Denis (Counsellor, Permanent Mission)

its work, the Panel held consultations with the United States and the European Communities. Background arguments and relevant information submitted by both parties, their replies to questions put by the Panel as well as all relevant GATT documentation served as a basis for the examination of the matter.

II. Factual aspects

2.1 The following is a brief description of factual aspects of the EEC measures as the Panel understood them.

2.2 On 15 March 1976, the Council of the European Communities adopted Council Regulation (EEC) No. 563/76 on the compulsory purchase of skimmed milk powder held by intervention agencies for use in feedingstuffs. Subsequently the Commission adopted, inter alia, the following implementing regulations:

Commission Regulation (EEC) No. 677/76 of 26 March 1976 laying down detailed rules for the application of the system for compulsory purchase of skimmed milk powder provided for in Council Regulation (EEC) No. 563/76.

Commission Regulation (EEC) No. 746/76 of 31 March 1976 amending Regulation (EEC) No. 677/76 laying down detailed rules for the application of the system for compulsory purchase of skimmed milk powder.

Commission Regulation (EEC) 753/76 of 31 March 1976 laying down detailed rules for the sale of skimmed milk powder for use in animal feed pursuant to Regulation (EEC) No. 563/76.

Commission Regulation (EEC) No. 2706/76 of 8 November 1976 amending Regulation (EEC) No. 753/76 laying down detailed rules for the sale of skimmed milk powder for use in animal feed pursuant to Regulation (EEC) No. 563/76.

2.3 The objective of the EEC measures was to allow for increased utilization of denatured skimmed milk powder as a protein source for use in feedingstuffs for animals other than calves, with a view to reducing by 400,000 tons the surplus stocks of skimmed milk powder held by governmental intervention agencies.

2.4 The EEC measures came into force on 19 March 1976 for imported products and on 1 April 1976 for domestically produced products. Their application was expressly intended to be of such a limited duration necessary to achieve the stated objective. They were terminated on 25 October 1976.

2.5 Under these measures, EEC domestic producers or importers of oilseeds, cakes and meals, dehydrated fodder and compound feeds and importers of corn gluten feeds had an obligation to purchase a certain quantity of skimmed milk powder held by intervention agencies and to have it denatured for use as feed for animals other than calves.

2.6 The purchase obligation related to 50 kgs. of skimmed milk powder, at a price of 52.16 UA per 100 kgs. per ton of soya cake and meal. As regards other products subject to the measures, the quantity of skimmed milk powder to be purchased was determined on the basis of: the price relationship between soya cake and other types of oilcakes (50 kgs. for linseed, 45 kgs. for groundnuts, cottonseed and sunflower 11 Tf(As) TjETBT1 0318 Tm/F8 11 Tf(sunflower 11i4BT1 (As) TjETBT1 031F8 11 Tf(and) TjETBT1der)

This security was refunded interest-free upon presentation of that document but forfeited if the obligation of purchase and denaturing of the skimmed milk powder was not carried out.

2.9 The amount of the security to be deposited, either by the domestic producers or importers, was 27 UA/ton for soya cake. As regards other products subject to the measures, the amount of the security was determined, for both imported and domestic products, on the basis of: the price relationship between soya cake and other types of oilcakes, these being classified in three main categories according to their price level (27.0, 24.3 and 21.6 UA/ton); the yields of different oilseeds, flour and meal in terms of oilcakes (multiplying the amount of the security applicable to the corresponding oilcakes by their oilcake yields) and the same type of seed for non-defatted meal (20.3 UA/ton for soybeans, 16.7 UA/ton for linseed, 12.9 UA/ton for cottonseed, 12.4 UA/ton for

2.14 With respect to customs duty treatment, all of the United States exports subject to the measures enter the EEC under GATT bound rates, with the exception of compound feeds, groundnuts, and other flour or meals of oilseeds or oleaginous fruit, non-defatted, (excluding mustard and castor bean flour) than that of soybeans.

III. Main arguments

3.1 In the course of its examination of the EEC measures, the Panel heard arguments from the representatives of the United States and of the European Communities with respect to the following provisions of the General Agreement: Article III:5; Article III:1; Article III:4; Article III:2; Article II:1(b); Article II:2(a); Article I:1 and Article XXIII.

Like product

3.2 The representatives of the European Communities expressed their views on the need to determine whether the products in question are like products within the meaning of Article III:2 of the General Agreement.

3.3 The representatives of the United States argued that the products in question are like products within the meaning of Article III:2 of the General Agreement. They suggested that, in the case of the products in question, the duty should be

Article III:5

3.5 The representative of the United States argued that the purchase of denatured skimmed milk powder required by the EEC measures clearly worked as a mixing regulation prohibited under Article III:5.* The purchase requirement had the effect of: (a) raising the price of substitutable vegetable protein products and feeds in order to make skimmed milk powder price competitive, particularly with soybean cakes and meal; and (b) cutting down imports of the vegetable protein products by an amount almost equivalent to 365,000 tons of denatured skimmed milk powder actually disposed of under the measures.

3.6 He said that Article III:5 prohibits regulations which require, directly or indirectly, that any specified amount or proportion of a domestic product be mixed, processed or used and that this provision was reinforced by the language in Article III:6 which exempted mixing schemes already in effect. He maintained that the purpose and effect of the Council Regulation (EEC) No. 563/76 was to require that a specified amount of skimmed milk powder from domestic intervention agencies stocks, which held only domestically produced products, be purchased and denatured and thereby used as a source of proteins in feedingstuffs, replacing imported vegetable proteins. In addition, Article III:5 also prohibits mixing regulations to protect domestic production by its reference to the fact that such regulations cannot be applied in a manner contrary to Article III:1.

3.7 The representative of the United States held the view that even though the security deposit or the purchase requirement applied to both domestic and imported vegetable proteins, the mixing regulation was not exempted from Article III:5 because: (a) the alternative of losing the deposit was a penalty for not following the requirement of the regulation and made it economically unprofitable not to purchase a certain amount of skimmed milk powder. In fact, if the importer had ceased to import, the measures would not have applied to imports but would still have affected trade in violation of the General Agreement; (b) the purchase requirement mandated purchase from EEC intervention stocks of substitutable domestic denatured skimmed milk powder; and (c) the EEC did not produce a substantial amount of its own domestic needs of vegetable proteins. In his view, the EEC measures had only one clear effect and intent, that of encouraging domestic use of domestic skimmed milk powder and penalizing the use of directly substitutable vegetable protein imports.

3.8 He said that an additional argument could also be made that the denaturing process itself constituted a mixing or processing requirement in that, in order to denature skimmed milk powder under applicable EEC regulations, other elements had to be mixed with domestic skimmed milk powder in specific quantities.

*Article III:5 reads: "No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1."

Ad. Article III:5: "Regulations consistent with the provisions of the first sentence of paragraph 5 shall not be considered to be contrary to the provisions of the second sentence in any case in which all the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the provisions of the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products."

3.9 The representative of the European Communities argued that Article III:5 was not applicable to

3.14 Furthermore, although skimmed milk powder could be used in animal feed, it could not be genera

3.22 He argued that the compulsory purchase requirement, the security deposit and the protei

3.26 He argued that, while the security deposit

3.32 He was of the opinion that, taking into account the external trade régime of the EEC at the time the measures were introduced, domestic producers of vegetable proteins would not have been able to produce without production aids, which were not granted to them if they did not comply with the measures. With respect to soybeans and linseed specifically, period of applicability of the measures and the granting of aid did not coincide, as the production season began in the autumn in the EEC and the amount of aid was normally fixed thereafter; howe1 0 0 1 237.6 680.88 Tmlr17.2 732.72 Tm/F8 11 Tter;

3.39 The representative of the United States took the view that the measures focused the impact more directly on imported vegetable proteins, particularly soybeans, because they did not apply to animal, marine and synthetic proteins even though such proteins were, with vegetable proteins, substitutable for use in feeds. He maintained that animal, marine and synthetic proteins were excluded from the measures because there was substantial domestic production in the EEC and not because these products were not like products, taking account of their generally higher protein content and certain technical advantages.

3.40 He also maintained that the requirement of a protein certificate and other specific administrative requirements applied only to imported vegetable proteins, placing a heavier burden on imported than on domestic products in purchase, sale and distribution of the products in the EEC. In his view, the protein certificate was a condition placed upon imports not related in any way to normal customs procedures.

3.41 The representative of the European Communities stated that the United States complaint regarding the exclusion of domestic corn gluten from the measures had no economic justification. Taking into account the economic situation of this product in the EEC and its very limited production, it was considered superfluous to subject domestic production to the measures.

3.42 He explained that corn gluten consisted of residues of maize starch with a protein content less than or equal to 40 per cent. This product was imported into the EEC free of duty and was supplied at fairly competitive prices in relation to the product of domestic origin. From the point of

Article I:1

3.45 The representative of the United States argued that the impact of the EEC measures was affording products of other countries better treatment than like products originating in the United States, because they focused on specific vegetable proteins and excluded other like protein products, such as animal, marine and synthetic proteins. They thus resulted in discrimination between countries in violation of Article I:1.*

3.46 The representative of the United States also argued that the EEC measures had a discriminatory impact on United States products because the levels of securities on the vegetable proteins did not correspond to the levels of protein contents in those products. He considered that the result of the graduations of the levels of securities for different products afforded more favourable treatment to products of certain countries than to the like products imported from other countries.

3.47 The representative of the European Communities stated that the most-favoured-nation treatment concept implied, inter alia, that any advantage granted to any product originating in any other country shall be extended to the like product originating in the territories of all other contracting parties. He maintained that all like products covered by the measures were accorded non-discriminatory treatment regardless of their origin in full conformity with the principles of Article I:1.

3.48 The representative of the European Communities further

Article XXIII *

3.49 The representative of the United States argued that the EEC measures had adversely affected its exports of vegetable proteins by amounts almost equivalent to the amount of domestic denatured skimmed milk powder disposed of under these measures. He took the view that the increase of imports into the EEC during the period of application of the measures was due to, inter alia, the heavy drought conditions then prevailing and better economic conditions. He maintained that United States exports of vegetable proteins would have been still larger in the absence of the EEC measures.

3.50 The representative of the United States did not ask the Panel to examine whether, or did

IV. Conclusions

Like product

4.1 The Panel began by examining whether all products used for the same purpose of adding protein to animal feeds should be considered as "like products" within the meaning of Articles I and III. Having noted that the General Agreement gave no definition of the concept of "like product" the Panel reviewed how it had been applied by Contracting Parties in previous cases.*

4.2 The Panel noted, in this case, such factors as the number of products and tariff items carrying different duty rates and tariff bindings, the varying protein contents and the different vegetable, animal and synthetic origins of the protein products before the Panel - not all of which were subject to the EEC measures. Therefore, the Panel concluded that these various protein products could not be considered as "like products" within the meaning of Articles I and III.

Substitutable products

4.3 The Panel noted that the General Agreement made a distinction between "like products" and "directly competitive and substitutable" products. The Panel therefore also examined whether these products should be considered as directly competitive and substitutable within the meaning of Article III. In this regard the Panel noted that both the United States and the EEC considered most of these products to be substitutable under certain conditions. The Panel also noted that the objective of the EEC Regulation during the period of its application, in its own terms, was to allow for increased utilization of denatured skimmed milk powder as a protein source for use in feedingstuffs for animals other than calves. Furthermore, the Panel noted that the

4.6 The Panel noted that the Council Regulation (EEC) No. 563/76 referred, in its stated considerations, to the considerable stocks of skimmed milk powder held by intervention agencies and to the objective of increasing the utilization of skimmed milk powder for animal protein in feedingstuffs for animals other than calves. In other words, the Regulation was intended to dispose on the internal market ("utilization") of a given quantity ("stocks") of skimmed milk powder in a particular form ("denatured" i.e. utilizable only for the intended purposes). The Panel therefore considered that the EEC Regulation was an "internal quantitative regulation" in the sense of Article III:5. However, the Panel found that this "internal quantitative regulation" as such was not related to "the mixture, processing or use ... in specified amounts or proportions within the meaning of Article III:5 because, at the level of its application, the EEC Regulation introduced basically an obligation to purchase a certain quantity of skimmed milk powder and the purchase obligation falls under Article III:1.

4.7 Given the reference in Article III:5, second sentence, to Article III:1, the Panel then examined the consistency of the EEC Regulation as an "internal quantitative regulation" with provisions of Article III:1, particularly as to whether the Regulation afforded protection to domestic production. The Panel noted that the EEC Regulation considered, in its own terms, that denatured skimmed milk powder was an important source of protein which could be used in feedingstuffs. The Panel also noted that surplus stocks could originate either from domestic production or imports, but that the intervention agencies from which the buyers of vegetable proteins had to purchase a certain quantity of denatured skimmed milk powder only held domestically produced products. The Panel further noted that, although globally about 15 per cent of the EEC apparent consumption of vegetable protein was supplied from domestic sources, not all the individual products subject to the EEC measures were produced domestically in substantial quantities.

4.8 The Panel concluded that the measures provided for by the Regulation with a view to ensuring the sale of

(d) The Panel established to consider charges imposed by Belgium on certain imported products (IS/60, paragraph 2) found as follows: "after examining the legal provisions regarding the methods of collection of that charge, the panel came to the conclusion that the ... levy was collected only on products purchased by public bodies for their own use and not on imports as such, and that the levy was charged, not at the time of importation, but when the purchase price was paid by the public body. In those circumstances, it would appear that the levy was to be treated as an 'internal charge' within the meaning of paragraph 2 of Article III of the General Agreement", and not as an import charge within the meaning of paragraph 2 of Article II.

4.17 The Panel also recalled its findings (only) (me-ning)