

EEC RESTRICTIONS ON IMPORTS OF APPLES FROM CHILE

*Report of the Panel adopted on 10 November 1980
(L/5047 - 27S/98)*

I. Introduction

1.1 In a communication dated 4 May 1979 and circulated to contracting parties, the Commission of the European Communities informed that it had taken protective measures limiting imports of apples under Regulation No. 687/79 of 5 April 1979 and that it was prepared to enter into consultation with any contracting party having a substantial exporting interest which wished to examine these measures with the Commission (L/4807).

1.2 In a communication dated 7 June 1979 and circulated to contracting parties the Government of

urther communication dated 13 July 1979 and circulated to contracting parties, the Government of Chile stated that in its view the EEC measure contravened the provisions of the General Agreement in that the measure, inter alia, had been applied retroactively, was discriminatory and concerned a product the tariff on which was bound in the EEC Schedule. Chile also expressed its hope that, by the date of the next council meeting, there would be a mutually satisfactory agreement reached in its consultations with the EEC under Article XXIII:1 and that Chile would report on this at that time (L/4816).

1.4 Since these bilateral consultations did not lead to agreement, the representative of Chile requested the GATT Council, at its meeting of 25 July 1979, to establish under Article XXIII:2 a panel to examine the compatibility of the EEC measures with GATT provisions. The GATT Council agreed to establish, in principle, a panel to examine the complaint by Chile relating to EEC restrictions on imports of apples from Chile. The Council, however, deferred until its next meeting a decision on the terms of reference and membership for the panel, inviting the parties concerned to continue their bilateral efforts to find a solution on this matter (C/M/134).

1.5 These bilateral consultations having failed to reach a mutually satisfactory solution, the Council agreed at its next meeting on 6 November 1979 (C/M/135) to the following terms of reference for the panel:

"To examine in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Chile, relating to restrictions which were applied by the EEC on imports of apples from Chile (L/4816), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2."

1.6 At the same meeting, the Council also authorized the Chair to nominate the chairman and the members of the Panel in consultation with the two parties concerned. Accordingly, the Chairman of the Council informed the Council at its meeting of 29 January 1980 of the following composition of the Panel (C/M/138):

Chairman: Dr. A. El Gowhari (Egypt)
Members: Mr. M. Lemmel (Sweden)
Mr. R. Wright (Canada)

1.7 In the course of its work, the Panel held consultations with the European Economic Community and Chile. Background arguments and relevant information submitted by both parties, their replies to questions put by the Panel, as well as 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 the factual aspects of the EEC measures as the Panel understood them.

2.2 The European Economic Community has a common organization for the marketing of apples which includes common quality standards, an internal price support and intervention system, and a levy system on imports. When market prices fall below a certain minimum in representative markets, for three successive marketing days, Member States are authorized to buy up at a certain price apples offered for intervention. Producer groups may also be compensated for effecting market withdrawals. Offer prices of apples from third countries are compared daily to a fixed minimum price, called a reference price which is based, inter alia, on EEC average

2.6 The following tables give statistics relative to the EEC situation on apples. In addition, it should be noted that the EEC financed the grubbing-up of 54,876 hectares of apples orchards in 1969 and 8,852 hectares in 1976.

TABLE 2.6.1

EEC PRODUCTION OF APPLES
(in '000 metric tons)

| | Productions | |
|---------|-------------|----------------------|
| 1969/70 | 7,793 | (7,211) ¹ |
| 1970/71 | 7,098 | (6,415) ¹ |
| 1971/72 | 6,971 | (6,331) ¹ |
| 1972/73 | 6,022 | (5,530) ¹ |
| 1973/74 | 7,481 | (6,857) ¹ |
| 1974/75 | 5,896 | |
| 1975/76 | 7,551 | |
| 1976/77 | 6,497 | |
| 1977/78 | 5,136 | |
| 1978/79 | 6,888 | |
| 1979/80 | 6,869 | |

¹EEC production in the six original Member States.

TABLE 2.6.2

EEC MONTHLY STOCKS OF APPLES
(in '000 metric tons)

| | 1973/74 | 1974/75 | 1975/76 | 1976/77 | 1977/78 | 1978/79 | 1979/80 |
|-----------|---------|---------|---------|---------|---------|---------|---------|
| 1 January | 2,065 | 1,707 | 2,116 | 1,952 | 1,653 | 2,162 | 2,167 |
| 1 April | 956 | 727 | 1,082 | 872 | 750 | 1,152 | 970 |

TABLE 2.6.3
EEC MARKET WITHDRAWALS OF APPLES
(in metric tons)

| | |
|---------|---------|
| 1973/74 | 403,360 |
| 1974/75 | 42,916 |
| 1975/76 | 830,471 |
| 1976/77 | 167,189 |
| 1977/78 | 2,713 |
| 1978/79 | 378,974 |

TABLE 2.6.4
EEC IMPORTS OF APPLES
(in metric tons)

| Origin | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | |
|--------------------------------|---------|---------|---------|---------|---------|---------|------------------------|
| Chile | 15,241 | 35,985 | 48,360 | 35,686 | 64,714 | 46,407 | (46,326) ¹ |
| Argentina | 88,947 | 89,095 | 56,893 | 68,328 | 97,879 | 87,307 | (87,302) ¹ |
| Australia | 50,506 | 54,031 | 39,136 | 26,298 | 17,866 | 32,440 | (32,101) ¹ |
| New Zealand | 45,103 | 45,138 | 56,810 | 32,589 | 48,253 | 48,630 | (48,077) ¹ |
| South Africa | 131,976 | 143,985 | 159,213 | 86,405 | 156,552 | 128,405 | (129,608) ¹ |
| Total from Southern Hemisphere | 331,773 | 368,234 | 360,412 | 249,306 | 385,264 | 343,189 | (343,406) ¹ |
| Total from all third countries | 397,361 | 404,480 | 432,878 | 331,925 | 437,325 | 377,473 | (364,368) ¹ |

¹EEC Member State statistics for period January-September 1979.

III. Main arguments

Article I

3.1 Chile maintained that the EEC protective measure against Chile was discriminatory as it affected exclusively apples of Chilean origin and was thus inconsistent with the most-favoured-nation treatment prescribed in Article I. The fact that the EEC had concluded "voluntary restraint agreements" with other Southern Hemisphere exporters did not, in the view of Chile, provide any justification for the nullification or impairment of Chile's rights under the General Agreement.

3.2 The EEC stated that nothing in its action could be considered in contradiction with the basic most-favoured-nation principle embodied in Article I. Moreover, the EEC maintained that its action, being a quantitative restriction, should be examined in connection with the most-favoured-nation type commitment contained in Article XIII. (See paragraphs 3.25 and 3.26).

Article II

3.3 Chile stated that it has an initial negotiating right dating from the Dillon Round as regards an EEC tariff binding of 8 per cent ad valorem on apples imported during the marketing period 1 April to 31 July (BTN No. 08.06 AIIc). Chile held that it had a principal supplying interest on subsequent EEC tariff concessions concerning apples imported during the relevant marketing period as well as a principal supplying interest on other EEC bindings concerning apples imported during other marketing periods.

3.4 Chile held that these tariff concessions were a contractual obligation of the EEC and were incorporated in the legal system of the General Agreement through the references contained in Article II:1 and II:7 of Part I of the General Agreement. Under Article II and other provisions of the GATT, Chile considered that a contracting party may do nothing that impairs a tariff concession it has granted except for the case of measures of exception authorized by the General Agreement.

3.5 Chile indicated that the prohibition against import of apples from Chile imposed by the EEC clearly contravened Article II:1(a), in that the EEC measure involved treatment less favourable than that provided for in the concession granted by the EEC for apples.

3.6 As regards Article II:1(b) Chile stated that although the measure applied by the EEC was not in the form of a customs duty, it had the effect of being an absolute or infinite duty, and completely nullified the concession granted.

3.7 Furthermore, Chile considered that Article II as well as the whole of Part I of the GATT could not be read in isolation but must be examined in conjunction with the other provisions of the GATT, including Article XI:1.

3.8 The EEC stated that it was not

3.12 As regards XI:2c(ii), Chile questioned whether the EEC situation in 1979 could be considered a "temporary surplus" in light of the high levels of EEC production and surplus removal over the years. Chile also noted that apples withdrawn from the market in the EEC were destroyed, which was not provided for in XI:2c(ii).

3.13 The EEC considered that its action was consistent with Article XI.

3.14 The EEC recalled that the EEC had taken a series of internal

Article XIII

3.19 Chile maintained that the EEC had not strictly complied with the provisions of Article XIII as regards non-discriminatory treatment. Chile stated that the EEC import suspension had applied exclusively to Chile and that the "voluntary agreements" which the EEC had reached with the other Southern Hemisphere suppliers were not

3.24 Finally, Chile believed that the obligation under Article XIII:3(b) not to exclude from entry goods "en route", should not limit itself to goods on board, but should also cover goods for which contracts have been signed and are in full legal and commercial execution. Chile held that the EEC prohibition had a retroactive effect contrary to the principles of international law. Chile stated that retroactive was defined according to Black's Law Dictionary as being "those laws or acts which take away or impair vested rights acquired under existing laws, create new obligations, impose a new duty, or attach a new disability in respect of the transactions or considerations already past." Chile claimed that the EEC measure affected contracts previously signed by Chilean exporters with European importers, leaving contracts for approximately 18,000 m.t. of Chilean apples unfulfilled. The EEC measure had also affected, according to Chile, a series of related contractual arrangements, including contracts concerning charters, credit insurance and prior payment. Chile stated that while the General Agreement does not contain any specific reference to retroactivity, it is implicit in any system of law that acts or laws may not have a retroactive effect. Although there are exceptions which are to be found in the

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3.32 Chile stated that its tariff was set at 10 per cent for all products, and that Chile had no non-tariff barriers. There was nothing to prevent Chile from buying apples from the EEC, Chile stated, if European apples were competitive in the Chilean market and satisfied the taste of consumers.

3.33 Chile did not import apples from the EEC but it did purchase manufactures and semi-manufactures. In respect of motor vehicles alone, Chile pointed out that its pu

Article II

4.2 The Panel examined the EEC measure in relation to Article II:1(a) and (b). The Panel considered that the EEC import suspension did affect the value of the EEC tariff binding to Chile on apples. With reference to II:1(b), however, the Panel considered that the EEC measure was not strictly speaking a duty or charge in excess of the tariff concession

before restraints were put into place.¹ The levels the EEC fixed during its negotiations of voluntary restraint agreements with the Southern Hemisphere countries (including Chile) totalled 313,000 m.t. which meant a proportion of imports to EEC production of 4.5 per cent.

4.9 As regards XI:2c(ii), the Panel found that the EEC was "making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level", in so far as the apples withdrawn from the market during 1978/79 went into animal feed as well as were distributed freely to social organizations. However, the Panel had doubts as to whether the EEC apple surplus could be considered a "temporary surplus" in terms of XI:2c(ii). The Panel noted that the EEC production statistics indicated the EEC has constantly had a surplus of apples over the years. On the other hand, it appeared from the statistics on monthly stocks in the EEC, that the levels of stocks during 1979 were significantly higher than normal.

4.10 In concluding its examination of the EEC measures in relation to Article XI, the Panel found that they met some but not all of the criteria contained in XI:2c(i) and (ii) in order to qualify as an exception to XI:1. The Panel found the EEC measures could not qualify as an exception to XI:1 under XI:2c(i) in that they had not fulfilled the conditions of the last paragraph of Article XI:2. As regards XI:2c(ii) the Panel thought that the EEC surplus of apples could not be considered "temporary" as it appeared year after year higher. However,



4.14 The Panel noted that XIII:2a stipulated that "wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed." The Panel also noted that the EEC had issued regulations in the Official Journal regarding the suspension of imports from Chile but that there had not been public notice given of the quantity or value of permitted imports under the voluntary restraint agreements. Such notice is required by XIII:2a and :3b first sentence.

4.15 The Panel noted that the EEC had held bilateral consultations with each Southern Hemisphere supplier "with respect to the allocation of shares in the quota" in keeping with XIII:2(d) first sentence but that it had not been possible to reach agreement with Chile. The Panel noted that XIII:2(d) second sentence states that "the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special

In accordance with established GATT practice¹, the Panel considered that where a measure was applied which was judged to be inconsistent with the GATT obligations of the contracting party concerned, this action would prima facie constitute a case of nullification or impairment.

4.25 The Panel recalled that it had found the EEC measure not to be in conformity with Article XIII:2(a), :2(d) and :3(b) first sentence. Accordingly, the Panel concluded that there was a prima facie case of nullification or impairment of benefits accruing to Chile within the meaning of Article XXIII.

4.26 In light of the above, the Panel was of the view that the economic interests of Chile had been adversely affected. The Panel considered that the CONTRACTING PARTIES should recommend that the EEC and Chile consult bilaterally with a view to arriving at a mutually satisfactory solution.

¹Basic Instruments and Selected Documents, Eleventh