

23 January 1981

EUROPEAN ECONOMIC COMMUNITY -
IMPORTS OF BEEF FROM CANADA

RECOURSE TO ARTICLE XXIII:2 BY CANADA

Report of the Panel adopted on 10 March 1981
(L/5099 - 28S/92)

I. Introduction

1.1 In March 1980, the Council (C/M/139, p. 23) was informed by Canada that Canada had made several oral and written representations to the European Economic Community concerning access to the EEC market for Canadian high quality grain fed beef under a 10,000 tons levy free tariff quota, included within a global tariff quota of 21,000 tons contained in the EEC schedule of concessions annexed to the Geneva (1979) Protocol, and established as part of the MTN settlement. If the matter of Canadian access to this tariff quota were not resolved in the very near future, Canada would request the Council at its next meeting to establish a panel under Article XXIII:2 to investigate the matter.

1.2 At its meeting of 18 June 1980 (C/M/141, p. 15), the Council agreed to establish a Panel with the following terms of reference:

"To examine the compatibility with the General Agreement of the EEC regulations pertaining to the implementation of the levy free tariff quota for 10,000 tons of fresh, chilled or frozen high quality grain fed beef, and to make such findings as will assist the CONTRACTING PARTIES in making recommendations and rulings as appropriate."

1.3 The Chairman of the Council was authorized to nominate the Chairman and members of the Panel in consultation with the two parties concerned. On 9 October 1980, the Chairman of the Council informed the Council of the agreed composition of the Panel (C/M/143, p. 11).

Chairman: Mr. K. Berger (Permanent Mission of Norway, Geneva).

Members: Mr. E. Contestabile (Office Fédéral des Affaires économiques extérieures, Palais Fédéral, Berne).
Mr. C.A. Rego Santos-Neves (Permanent Mission of Brazil, Geneva).

1.4 In the course of its work, the Panel held consultations with Canada and the European Economic Community. Information and arguments 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's regulations concerning the implementation of the levy free tariff quota as the Panel understood them.

2.2 During the Multilateral Trade Negotiations the EEC granted a concession on "high quality cuts" of fresh, chilled or frozen meat of bovine animals under tariff heading 02.01 in the form of a global levy free tariff quota of 21,000 tons (product weight) at a tariff of 20 per cent ad valorem. Within this global quota a concession concerning 10,000 tons of high quality grain fed, fresh, chilled or frozen beef was granted.* According to a footnote to the concession "Entry under this sub-heading is subject to conditions to be determined by the competent authorities."

*EEC Schedule of Concessions annexed to the Geneva (1979) Protocol -Schedule LXXII, Part 1, Tariff Number 02.01 AII(a) and 02.01 AII(b).

observations or requests for clarification during the four month review period for Schedule LXXII and its notes because it is clearly stated in that Schedule that a global quota was being bound on a MFN basis subject to certain product specifications being met. He further stated that the Multilateral Trade Negotiations were conducted on a MFN basis as called for in the Tokyo Declaration recognizing that indirect benefits might accrue to suppliers who may not be directly involved in negotiations between the importing country and the initial negotiating country. In addition, the Canadian representative pointed out that the Tokyo Declaration called for the negotiations to "be conducted on the basis of the principles of mutual advantage, mutual commitment and overall reciprocity, while observing the most favoured nation clause" rather than on the basis of reciprocity on a strictly bilateral or individual sector basis.

3.4 During the consultations the EEC had been informed that as part of the MTN settlement between Canada and the United States, the latter agreed to accept Canadian grades A2, A3 and A4 as meeting the definition of high quality beef eligible for entry under TSUS 107.61. Beef entering under this tariff classification must meet the specifications in regulations issued by the United States Department of Agriculture for "prime" or "choice" beef.

3.5 The representative of Canada further stated that in the opinion of the Canadian authorities the EEC had implemented the 10,000 ton levy free tariff rate quota for high quality grain fed beef in a manner not consistent with Articles I and II of the General Agreement by setting out discriminatory conditions.

3.6 The exclusion of Canadian beef grades A2, A3 and A4 from Article 1(1)(d) of Commission Regulation (EEC) No. 2972/79, was, in the opinion of Canada, not consistent with the obligations of the EEC under Article I, paragraph 1 of the General Agreement. Furthermore, the representative of Canada said that the manner in which the quota was implemented was also inconsistent with the provisions of Article II, paragraph 1(a) since beef from the United

3.10 The representative of the European Economic Community further stressed that Canada did not put forward any observation, not even a request for clarification, during the review exercise concerning Schedule LXXII and its Notes, which lasted for four months, whereas on other points it presented observations which led to rectifications and it even requested that concessions in its favour should be incorporated in the Schedule. What is more, at no time in the Multilateral Trade Negotiations - including the final phase when there were close contacts between the Community and Canada during which the exchange of priorities were exchanged

The Panel further found that the right to set conditions was presupposed in Article II: 1(b) of the General Agreement. The Panel found, however, that the words "terms, conditions or qualifications" in paragraph 1(b) of Article II could not be interpreted to mean that countries could explicitly or by the manner in which a concession was administered actually limit a given concession to the products of a particular country.

(b) The Panel further found that the fact that in Annex II there was only one certifying agency for the meat in question and that this agency only certified meat of United States origin in effect prevented access of high quality meat as described in Article 1(1)(d) of Commission Regulation (EEC) N° 2972/79 from other countries.

4.6 Consequently, the Panel concluded that the manner in which the EEC concession on high quality beef was implemented accorded less favourable treatment to Canada than that provided for in the relevant EEC Schedule, thus being inconsistent with the provisions of paragraph 1 of Article II of the General Agreement.

4.7 The Panel noted the reference made by the European Economic Community to the importance of a balance of concessions and also its reference in this regard to paragraph 5 of the Tokyo Declaration. The Panel agreed that the achievement of a satisfactory balance was an important consideration of the participants in a negotiation. However the Panel did not find reason to consider the question of balance between the parties in relation to the matter before it. The Panel found that when a multilateral negotiation under the auspices of the GATT had been completed, the concessions granted would have to be implemented as laid down in the Schedules and on the basis of the relevant provisions of the General Agreement