

1 July 1983

PANEL ON QUANTITATIVE RESTRICTIONS AGAINST
IMPORTS OF CERTAIN PRODUCTS FROM HONG KONG

*Report of the Panel adopted on 12 July 1983
(L/5511 - 30S/129)*

I. Introduction

1. At the request of the delegation of the United Kingdom on behalf of Hong Kong the Council established the Panel on 1 October 1982, with the following terms of reference (C/M/161, item 7):

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United Kingdom on behalf of Hong Kong in document L/5362 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2".

The composition of the Panel was as follows:

Chairman: Mr.

III. Main arguments

(a) General

11. Hong Kong considered that the quantitative restrictions maintained by France against Hong Kong were contrary to the GATT because (a) they were not justified under any specific article of the GATT, including Article XI:2, and were, therefore, in breach of Article XI:1 which specifically forbade quantitative import restrictions; and (b) they discriminated against Hong Kong and were, therefore, in contravention of France's obligations under Article I which provided for most-favoured-nation

taken into account. If this interpretation of terms of reference of GATT panels was not generally accepted, it would lead in the future to great difficulties in the formulation of terms of reference of panels. The Community considered therefore that the limited interpretation by Hong Kong of the terms of reference was not founded and that social, economic and circumstantial factors should be taken into account as relevant factors.

(b) Article XI

15. The European Community argued that Article XI did not constitute an absolute prohibition on all residual restrictions and could not be applied in an absolute manner. The Article covered "other restrictions" and export

Article XI, paragraph 1. Discussions in the GATT on how such arrangements should be treated in the future were in any case without prejudice to the question of their legality and were in no way relevant to the Panel's deliberation on the present complaint which dealt with unilaterally imposed quotas. The argument that the law was made by facts could only have some validity in the absence of an existing law expressly prohibiting a certain act. In the present case Article XI was such an existing provision. The EEC argument in this respect was an attempt to create new GATT rules. The creation of new GATT rules was within the sole jurisdiction of the CONTRACTING PARTIES and was entirely outside the terms of reference of the Panel. If the principle advanced by the European Community were to be accepted by the CONTRACTING PARTIES, a situation would arise in which there could be no certainty as to the validity of the rules of the GATT, and in which the GATT would become unworkable. Finally, Hong Kong recalled its own statement at the closing session of the Ministerial Meeting, which had been supported by one other delegation and not further qualified by the Chairman or any other delegation and which had held that the Chairman's statement referred to by the European Community had no status in juridical terms.

17. The European Community recalled that the French restrictions were of a residual character and that this régime had been in existence for a long time without Article XXIII ever having been invoked in regard to the products concerned. This was an indisputable indication that the contracting parties had adopted a tolerant attitude that was tantamount to tacit acceptance of the situation. No complaint had been filed by Hong Kong until 1982, whereas the fundamental nature of the régime in France had not changed for the past twenty-five years and such a complaint could have been made at any time. This indicated that the European Community's partners had had no legal problem so long as administration of the quotas under reference had been deemed equitable and the régime had involved no excessive trade obstacles. It was only after the régime applicable to the specific sector of quartz watches had been intensified that the Hong Kong authorities had decided to argue from principle.

18. Hong Kong replied that it had constantly and consistently maintained that the French quantitative restrictions were inconsistent with the GATT; as formally recorded in the reports of the Joint Working Group on Import Restrictions. It had exercised great restraint in not asking for the establishment of a panel until it had exhausted all other possibilities of effecting a satisfactory adjustment on a bilateral basis. French quantitative restrictions against imports of certain products from the United States had been the subject of

19. The European Community, in a reply, reiterated that in its view the matter before the Panel could not be considered in an isolated legal context without regard to the evolutionary process - described most recently in document NTM/W/2 - involving

IV. Findings and conclusions

24. The Panel considered the matter referred to it by the CONTRACTING PARTIES in connection with the request made by the Government of the United Kingdom on behalf of Hong Kong regarding quantitative restrictions maintained by the Government of France, and carried out an examination in accordance with the terms of reference as expressed in paragraph 1 of this Report.

25. The Panel noted that restrictions on all categories of product covered by the complaint had been maintained de jure since 1944, by virtue of French Decree of 30 November of that year. The Panel also observed that the said Decree had not been notified to the GATT as being covered by the Protocol of Provisional Application of the General Agreement on Tariffs and Trade. From time to time certain adaptations have been made, on the basis of a licensing system, including restrictions applicable to a number of countries, bilateral quotas, and an SLQ régime without quantitative limitation.

26. The Panel first considered the argument that it could only discharge its obligations by examining the issue before it in the light of all relevant GATT provisions and all

¹ The Panel noted that Hong Kong, under certain product categories, was subject to an SLQ régime as described in paragraph 8 above. The Panel observed that this régime had been described as a suspension - which was provisional and could be revoked at any time - of strict quota limitation but that the SLQ régime was an import licensing procedure which would amount to a quantitative restriction unless it provided for the automatic issuance of licences² and that the EC itself referred to the products concerned as subject to quantitative restrictions.

32. The Panel further noted that no GATT justification had been advanced f