

17 October 1984

PANEL ON NEWSPRINT

*Report of the Panel adopted on 20 November 1984
(L/5680 - 31S/114)*

I. INTRODUCTION

1. At the request of the delegation of Canada (L/5628), the Council agreed, at its meeting of 13 March 1984, to establish a Panel to examine the Canadian complaint relating to imports of newsprint

informed of the following (C/127):

Composition of the Panel

Chairman: Mr. G. Patterson
Members: Mr. A. Dumont
Mr. M. Shaton

Terms of reference

To examine, in the light of relevant GATT provisions, the complaint by Canada that:

- (a) the opening by the EEC of a duty-free quota for newsprint, as established by EEC Council Regulation No. 3684/83 of 22 December 1983, is not consistent with EC obligations under Article II of the GATT;
- (b) this action has nullified or impaired benefits accruing to Canada under the GATT; and

To make such findings as will assist the CONTRACTING PARTIES in making recommendations and rulings as appropriate.

3. The Panel met on 4 June, 9-11 July, 23-24 July, 1 August and 21-22 August 1984.
4. In accordance with the requests they had made in the Council, the delegations of New Zealand and the Nordic countries were heard by the Panel. The two other delegations which had also expressed an interest in the matter i.e. Austria and Chile, informed the secretariat that they did not wish to appear before the Panel.
5. In the course of its work the Panel heard statements by the delegations of Canada and the Commission of the European Communities. Arguments and relevant information submitted by both parties, 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

6. In 1963,

625,000 tonnes and a bound duty rate at 7 per cent on imports exceeding that level. This tariff quota was negotiated with the EEC's principal suppliers, i.e. the Nordic countries, but guaranteed access to all third country suppliers; no initial negotiating rights were granted. In view of the possible accession of Norway to the EEC, the following footnote was added to the concession:¹

"Aux fins d'éviter des difficultés dans l'application éventuelle des procédures prévues à l'article XXVIII, il est précisé qu'au cas où le territoire douanier d'un pays tiers deviendrait partie intégrante du territoire douanier de la CEE, ce contingent serait réduit au prorata de la part de ce pays tiers dans les importations admises au

9. During the Tokyo Round negotiations the European Communities reduced the bound tariff rate from 7 per cent to 4.9 per cent for imports exceeding the tariff quota. The concession resulting from the Tokyo Round reads as follows:

Item 48.01 A	Newsprint ¹	
-	within the limits of an annual tariff quota of 1,500,000 metric tonnes	Free
-	other (at 1.1.84)	5.7%
	(at 1.1.87)	4.9%

¹Entry under this heading is subject to conditions to be determined by the competent authorities.

10. In a communication dated 23 December 1983 (L/5599), the Commission of the European Communities pointed out that as from 1 January 1984, imports of newsprint from EFTA countries would, in accordance with the free-trade agreements between the EEC and those countries, become free of customs duties. The European Communities were of the view that some adjustment had to be made to the existing tariff régime on newsprint to reflect the fact that the EFTA suppliers had been by far the largest beneficiaries of the concession in recent years; they recalled that an appropriate reduction in the level of the bound quota had been decided in certain similar cases in the past which had been notified to contracting parties in document L/4537, paragraph 5. The Community informed the contracting parties that, pending the completion of consultations with their trading partners, they had opened a provisional duty-free quota of 500,000 tonnes from 1 January 1984, without prejudice to the GATT rights of the EC or of their trading partners. The import régime for newsprint for the year 1984 is contained in the EEC Council Regulation No. 3684/83 of 22 December 1983 (Official Journal of the European Communities of 29 December 1983, No. L 368/7-9, see Annex 2).

11. Before the transmission of this notification, informal consultations had taken place between the Communities and certain trading partners having negotiating rights, in particular with Canada. The Canadian delegation, in a communication of 12 January 1984 (L/5589), advised that, notwithstanding extensive bilateral consultations, the EC had decided to open a duty-free quota for newsprint at a level of 500,000 tonnes as of 1 January 1984. Canada considered that this action impaired the concession granted by the EC and it requested consultations pursuant to Article XXIII:1. The Canadian delegation further advised, in a communication of 2 March

III. MAIN

newsprint exports. The EEC was an important market for those mills, many of which had been recently modernized to meet the particular quality requirements of European publishers. The security of the duty-free binding in the GATT Schedule of the EEC was an important factor in those costly investment decisions and indeed in the continued operation of a number of mills. This was especially true in times when slow consumption growth and adverse exchange rates had made competitive conditions in the EC market difficult for Canadian exporters. Canada explained that the detailed negotiations concerning prices, delivery schedules and precise quantities occurred between exporters and importers in the autumn of each year. The implementation of the 500,000 tonnes tariff quota in January 1984 (as would any amount less than the GATT binding) had introduced uncertainty in the market not only for 1984 but for 1985 and beyond until this matter was resolved. In circumstances where the annual duty-free access hitherto guaranteed by a GATT binding had become subject to modification by unilateral EEC decision and where

been to adjust the quota pro rata, reflecting the respective shares of total imports from these two groups of countries. Using this method, imports from Canada under the bound quota had been estimated at about 25 per cent in recent years, i.e. approximately 375,000 tonnes;

- (b) To maintain a bound quota of 1.5 million tonnes. Imports from all sources, including the EFTA countries, would be recorded against that quota, and, once it had been filled, the Community's formal contractual obligations would have been met.

20. Under both these options the binding of 1.5 million tonnes would remain unmodified - and this would have also safeguarded the GATT rights of EFTA countries, which continued to exist and on which these countries could fall back in case the free-trade agreements were to be denounced. In choosing option (a), the EC had sought agreement with Canada on an annual quota at a reduced level. This was in effect equivalent to the negotiations and consultations provided for under Article XXVIII; but since there was no modification of the GATT concession, formal Article XXVIII procedures had not been necessary and the Community could therefore not accept that in any sense there had been an error in procedure.

21. The discussions with Canada did not result in any agreement. It was, however, important for the Community to take some decision, even of a provisional nature, to establish a

by the tariff quota. In the Community's view this phenomenon, however, could not in any way increase the level of guaranteed access, nor could it alter the GATT rights of the suppliers involved. Since in the period 1975-1983 both the GATT tariff quota and the autonomous duty-free quota had been operated in parallel, Canada's total export performance of 690,000 tonnes could not confer on it, in GATT terms, a right to maintain its past level of exports. Predictability of duty-free access for the totality of Canadian newsprint exports, in the sense that this was guaranteed under the GATT concession, never existed because the autonomous system was never intended to give any guarantee for a particular level or for growth. Since the Canadian exports to the EC were spread more or less evenly over the year, about one-half of this trade must be considered as having entered under the autonomous quota. The opening of a tariff quota in 1984 of 500,000 tonnes for Canada and a few other, minor m.f.n. suppliers of newsprint therefore fully preserved Canada's GATT rights.

25. The representative of Canada, in referring to the possibility of the Community applying option (b), i.e. to continue to operate a tariff quota of 1.5 million tonnes but to count all imports, including those from EFTA countries, against this quota, claimed that the Community could not operate a system whereby EFTA countries could be considered at the same time as m.f.n. suppliers for purposes of the tariff quota and as preferential suppliers under the free-trade agreements; only if these agreements were to be discontinued could they revert to an m.f.n. relationship with the EC. The EC practice in administering the newsprint quota over the years had been to exclude imports already benefitting from duty-free access under other preferential agreements.

(b) Article II

26. The Canadian delegation stated that the central issue

and that the EC would continue to accord the treatment provided for in its Schedule. Canada also rejected the EC contention that Canada's request for unlimited duty-free access during the Tokyo Round might be taken to mean Canada did not consider that the tariff quota of 1.5 million tonnes offered sufficient legal security. This, in the Canadian view, was a proposition that the purpose of trade negotiations was to protect

(c) Article XIII

33. The European Community representative stated that the action taken in early 1984 was fully justified under Article XIII which, according to paragraph 5, also applied to tariff quotas. He requested the Panel to take Article XIII into consideration since it was the only provision in the General Agreement which dealt with the administration of tariff quotas. Under Article XIII, the following possibilities for the administration of quotas existed: (1) global quotas to be used on a first-come-first-served basis, a formula which the Community had used for the past ten years in the case of newsprint; (2) country quotas, to be established preferably by agreement with the substantial suppliers. In the absence of such an agreement which the Community had sought to reach with Canada in consultations in the course of 1983, the third possibility left to the Community had been to allocate country quotas based on the proportion of total imports supplied by contracting parties during a previous representative period which would, in the view of the Community, be consistent with Article XIII: 2(d). Through the EC Regulation 3684/83, a quota of 500,000 tonnes was opened to m.f.n. suppliers, bearing in mind that this represented more than a fair share of the EC market for Canada and a few other m.f.n. suppliers. Imports from preferential suppliers such as EFTA countries were specifically excluded from this quota. The balance of the GATT quota (i.e. 1 million tonnes) had been kept in reserve as an allocation for EFTA suppliers, but no formal measures in this context were necessary because such imports already enjoyed duty-free access.

34. The Community further explained that in changing the method of administering the quota, its objective had

Canadian view, was to open a global quota of 500,000 tonnes for 1984 for m.f.n. suppliers, equivalent to one-third of its contractual obligation. In doing so, Canada was of the view that the Community had not respected its obligations and that its action constituted a serious impairment of the rights of Canada and other m.f.n. suppliers, because there was no longer any possibility of growth which would have existed within a duty-free quota of 1.5 million tonnes.

(d) Article XXIII

38. The Canadian delegation considered that the establishment of a limited duty-free quota of 500,000 tonnes constituted a clear infringement of the provisions of the General Agreement and thus, in accordance with paragraph 5 of the Annex to the Framework Agreement, a prima facie case of nullification or impairment. It requested the Panel to recommend to the EC to take action immediately to open a duty-free quota of 1.5 million tonnes as provided for in the EC Schedule and further to find that the circumstances were serious enough to authorize Canada to suspend the application of appropriate concessions or other obligations under the GATT to the EC should the latter not expeditiously implement the above-noted recommendation.

39. The Community delegation, in maintaining the view that its action was in full conformity with the provisions of the GATT, did not address this question in any detail. In its written submission it did, however, disagree with the view that benefits accruing to Canada had been impaired and considered as a factual matter that such a claim could not be demonstrated. Based on the statistical data available, the Community's view was that

- (i) total duty-free imports would be considerably in excess of the level of the GATT concession;
- (ii) Canada's exports would be considerably in excess of its legal entitlement, i.e. 375,000 tonnes;
- (iii) Canada's trade in 1984 would be broadly at the level of its traditional exports, taking into account the relevant factors in the market-place (consumption and production trends).

IV. STATEMENTS BY OTHER DELEGATIONS

40. The delegate for New Zealand stated that as a nation significantly involved in trade in forestry and paper products, including newsprint, it was particularly concerned that the disciplines and rules applicable to trade in those products would be used in a way which would foster the stability and security of international trade. One should keep in mind the potentially disruptive effects which might result from the imposition of trade restrictive measures, not only for the exporters directly concerned but also for those who might be affected by the trade diversionary implications. In light of the sensitivities of world markets, it was particularly important that any parties taking important investment decisions involving assessment of international market conditions, should be assured that those GATT provisions aimed at providing a stable and orderly approach to the handling of important modifications to the conditions of the trading environment would be fully supported, respected and, where appropriate, strengthened.

41. In New Zealand's view, Article XXVIII embodied the principle that any alteration to concessions should be carried out only with the prior consent of the principal affected parties. This principle was deemed to be so important that Article XXVIII:3(a) and (b) provided that, should negotiations and consultations fail and the proposing party decided to modify the concession without agreement, affected parties might withdraw substantially equivalent concessions. However, there was no sanction that would require a country to initiate Article XXVIII procedures if it were contemplating the withdrawal of a concession. In this situation there might be a temptation for contracting parties to ignore Article

access for its exports would not be subject to alteration without prior warning. It was of course true that parties could have recourse, after the event, to Article XXIII but it would have serious implications for the security of concessions if resort to Article XXIII became the rule for handling cases of modification to tariff concessions. By the same token, if contracting parties had to rely on retaliation in every case of a proposed modification to a concession, this would represent a breakdown of the GATT provisions.

42. The case before the Panel had potentially important implications both for traders in the product concerned and in respect of the security of expectations by parties that prompt and effective action would be anticipated when parties had reason to believe that their trade interests were at stake.

43. The representative of Finland, on behalf of the delegations of Finland, Norway and Sweden, stated that they were of the view that the EC had the right to adjust a bound tariff quota so as to take into account the establishment of the free-trade agreements between the EFTA countries and the EC. He pointed out that a precedent had been set in 1977 (see L/4537, paragraph 5) when duty-free treatment under the EFTA-EC free-trade agreements had been introduced for certain other tariff items which had been covered by EC bound tariff quotas. In that case, as free trade had been achieved for most products on 1 July 1977 between the EEC and the EFTA countries, the EC bound tariff quotas for some headings (54.03, 70.19 and 73.03) had been reduced by the share formerly taken up by the EFTA countries. The decision of the EC had entered into force without objections from any contracting party.

44. He further said that the principles of the administration of quotas were laid down in Article XIII. The basic principle was that if agreement with the supplying countries could not be reached, the allocation of the quota should be based on past performance. An arrangement based on Article XXIV with one or more supplying countries should be taken into account in a way which would maintain the balance of rights and obligations between the contracting parties in question.

45. The tariff quota of 1.5 million tonnes for newsprint had been established in 1974 for all suppliers to the EC. Free trade between the EEC and the EFTA countries for newsprint had started on 1 January 1984. In this particular case, the EC could have continued after this date to apply the original duty-free quota, allocating shares thereof according to Article XIII to all exporters, including the EFTA countries. In practice, the effect of such

48. The Panel noted that in its Regulation No.3684/83 of 22 December 1983, the European Communities have, for the year 1984, opened a duty-free tariff

case of nullification or impairment of benefits which Canada was entitled to expect under the General Agreement.

54. While holding that the right of Canada to compete within a duty-free tariff quota of 1.5 million tonnes has been impaired by the EC action, the Panel recognized, however, that as a result of newsprint imports from EFTA countries entering the EC marked duty-free since 1 January 1984 under the terms of the free-trade agreements, the value of the EC concession had greatly increased for non-EFTA suppliers and especially for Canada as the most important m.f.n. supplier. The Panel concluded that this increased value of the concession justifies the EC engaging in renegotiations under Article XXVIII, in accordance with the customary procedures and practices for such negotiations, with the objective of achieving some reduction in the size of the tariff quota. In the view of the Panel, such a reduction would, in a case like the one before the Panel where the increased value of the concession derives from an action by the EC to grant duty-free access to newsprint imports from the EFTA countries, be without payment of compensation. In this connection, the Panel found that although the statistical data before it did not differentiate between imports entering duty-free under the GATT quota and those under the autonomous régime, the fact that the GATT quota was filled while total Canadian exports never exceeded half that quota is evidence that the EFTA countries did participate in the GATT quota up until the end of 1983.

55. The Panel carefully noted and examined the statement by the EC that, should the Panel consider the action taken by the EC as not being in conformity with the GATT, they might proceed to option (b) under which the tariff quota would be maintained at 1.5 million tonnes but that imports from all sources, including the EFTA countries, would be recorded against that quota; once the latter had been filled, the Community's formal contractual obligations would have been met. While the Panel could find no specific GATT provision forbidding such action and no precedents to guide it, it considered that this would not be ~~an~~ appropriate solution to the problem and would create an unfortunate precedent. It is in the nature of a duty-free tariff quota to allow specified quantities of imports into a country duty-free which would otherwise be dutiable, which is not the case for EFTA imports by virtue of the free-trade agreements. Imports which are already duty-free, due to a preferential agreement, cannot by their very nature participate in an m.f.n. duty-free quota. The situation in this respect could only change if the free-trade agreements with the EFTA countries were to be discontinued; in this case these countries would be entitled to fall back on their GATT rights vis-à-vis customary

ANNEX 1

Newsprint Imports by EEC of Ten

(' 000 tons)

Origin	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982*	1983*
Norway	213.3	261.7	354.4	358.1	337.7	371.7	391.2	383.7	278.1	312.5	289.4	307.4	374.4	396.7	404.9	389	389
Sweden	299.8	354.7	410.7	500.5	495.3	568.9	664.8	718.0	637.2	692.5	696.1	730.9	833.0	849.2	877.8	778	778
Finland	564.4	570.9	671.7	693.7	759.7	939.9	1023.3	1104.1	855.7	954.8	785.0	848.5	918.4	940.4	935.3	918	918
Switzerland	0.1	-	-	-	0.1	1.5	3.3	2.8	8.7	24.6	29.5	27.6	30.9	26.9	37.9	36	36
Austria	60.3	55.1	73.7	67.3	56.1	56.2	45.0	28.2	37.4	42.5	55.4	49.2	50.9	50.7	52.1	61	61
Portugal	0.1	-	-	-	0.1	-	-	-	0.2	10.2	-	-	0.5	-	-	-	-
EFTA																	(2206)
Spain	-	-	-	-	-	-	0.7	0.2	-	1.8	0.3	0.1	1.1	1.0	0.1	-	-
Canada	402.1	459.4	540.3	492.6	423.4	583.9	530.3	518.7	392.7	538.6	621.1	628.3	580.9	605.0	749.1	703	(635)
South Africa	-	-	-	-	-	-	-	-	-	-	0.7	0.8	9.4	9.9	3.6	13	(20)
Other countries	17.9	15.9	23.0	31.3	31.2	35.4	38.8	38.9	23.9	53.1	65.1	77.0	65.1	54.9	54.5	43	(43)
Total	1558.0	1717.7	2073.8	2143.5	2103.6	2557.5	2697.4	2794.6	2233.9	2630.6	2542.6	2669.8	2864.6	2934.7	3115.3	2941	2904

Source: OECD - The pulp and paper industry 1967, ... 1981

*Estimated figures: South Africa included in other countries for the United Kingdom in 1982.

	1980	1981	1982
Benelux	9.12	8.43	8.08
Denmark	0	0	0.03
Germany	15.96	13.25	15.02
Greece	0.36	0.81	0.05
France	3.14	1.22	1.00
Ireland	1.65	0.85	1.34
Italy	0.04	0.19	0.52
United Kingdom	69.73	75.25	73.96

Whereas, in view of the above and of the foreseeable trend on the market in newsprint, in general, and of Community production in particular during 1984, the initial quota may be allocated approximately in the following percentages:

Benelux	11.32
Denmark	0.14
Germany	12.74
Greece	0.03
France	0.57
Ireland	1.42
Italy	0.14
United Kingdom	73.64

Whereas to take account of import trends for the product concerned, the quota should be divided into two tranches, the first being allocated among the Member States and the second held as a reserve to cover subsequently the requirements of Member States which have exhausted their initial shares; whereas, to give importers some degree of certainty and yet enable Community production to be disposed of on satisfactory terms, the first tranche of the quota should be fixed at 90 per cent of the full amount;

Whereas Member States may exhaust their initial shares at different rates; whereas, to provide for this eventuality and avoid disruption of supplies, any Member State which has almost used up its initial share should draw an additional share from the reserve; whereas each time its additional share is almost exhausted a Member State should draw a further share, and so on as many times as the reserve allows; whereas the initial and additional shares should be valid until the end of the quota period; whereas this form of administration requires close collaboration between the Member States and the

HAS ADOPTED THIS REGULATION:

Article 1

1. During the period 1 January to 31 December 1984, a Community tariff quota of 500,000 tonnes

3. If, after its second share has been exhausted, 90 per cent or more of

4. The extent to which a Member State has used up its shares shall be determined on the basis of imports of the products in question entered with the customs authorities for free circulation.

Article 8

At the Commission's request, the Member States shall inform it of imports actually charged against their shares.

Article 9

Member States and the Commission shall co-operate closely to ensure that this Regulation is complied with.

Article 10

This Regulation shall enter into force on 1 January 1984.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 December 1983.

For the Council

The President

C. VAITSOS

ANNEX 3

Year	Volume of quotas opened:			Actual use
	Initial volume	Additional volumes	Total	
1970	1,025,000	150,000	1,175,000	1,139,365
1971	1,193,000	-	1,193,000	1,109,672
1972	1,141,000	20,000	1,161,000	1,135,647
1973	1,160,000	183,500	1,343,500	1,306,034
1974	3,053,000	15,000	3,068,000	2,497,131
1975	3,000,000	-	3,000,000	2,257,099
1976	2,250,000	150,000	2,400,000	2,383,891
1977	2,311,000	200,000	2,511,000	2,384,278
1978	2,300,000	200,000	2,500,000	2,500,000
1979	2,500,000	200,000 + 40,000	2,740,000	2,659,595
1980	2,800,000	-	2,800,000	2,721,414
1981	2,650,000	350,000	3,000,000	2,858,021
1982	2,700,000	100,000	2,800,000	2,747,532
1983	2,500,000	180,000	2,680,000	2,680,000