

19 April 1989

NORWAY - RESTRICTIONS ON IMPORTS  
OF APPLES AND PEARS

*Report of the Panel adopted on 22 June 1989  
(L/6474 - 36S/306)*

Table of Contents

	<u>Page</u>
1. Introduction	2
2. Factual aspects	3
3. Main arguments by the parties to the dispute	6
4. Submissions by third parties	14
5. Findings	15
6. Conclusions	18

Annexes

I. Act No.5 of 22 June 1934	19
II. Provisional Act No. 29 of 13 December 1946	21
III. Excerpts from White Paper No. 45 (1947)	24
IV. Excerpts from White Paper No. 10 (1947)	25
V. Excerpts from White Paper No. 60 (1955)	26
VI. Excerpts from Recommendation S. No. 47 (1957)	27
VII. Excerpts from White Paper No. 80 (1958)	28
VIII. Royal Decree of 1 August 1958	31
IX. Royal Decree of 12 December 1958	32
X. Royal Decree of 2 June 1960	33
XI. Royal Decree of 8 June 1973	34
XII. Excerpts from White Paper No. 64 (1963-64)	35

1. Introduction

1.1 In a communication dated 9 March 1988, the Government of the United States requested the CONTRACTING PARTIES to establish a panel to review a dispute between Norway and the United States concerning restrictions on imports of apples and pears applied by Norway (L/6311).

1.2 This recourse to Article XXIII:2 by the United States was considered by the Council on 22 March 1988. The Council agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned. On the same occasion Australia, Canada, the European Communities and Hungary reserved their right to make a submission to the Panel (C/M/218, page 9). However, Australia and Hungary later informed the Panel that they would not exercise their right to make a submission to the Panel.

1.3 At the Council meeting on 16 June 1988, the Chairman announced the terms of reference and composition of the Panel as follows:

Terms of reference:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document L/6311 concerning quantitative restrictions maintained by Norway on imports of apples and pears, and to make such findings as will assist the CONTRACTING PARTIES in making appropriate recommendations or in giving a ruling on the matter as provided for in Article XXIII:2."

Composition:

Chairman: Mr. Pierre Pescatore

Members: Mr. Munir Ahmad  
Mr. Alejandro de la Peña

The representative of Norway said that his Government could accept the proposed standard terms of reference on the clear understanding by both parties that "relevant GATT provisions" also

of apples, and from 11 August to 19 December in the case of pears, import licences had been granted only when domestic

2.6 This was the import regime

2.10 For the period 1978-87, annual apple production in Norway averaged 20 thousand tons, while average annual imports of apples amounted to 42 thousand tons accounting for 70 per cent of total supplies and consumption. For pears, average annual production was 3,100 tons and average annual imports 11 thousand tons, the latter covering 80 per cent of total supplies and consumption.

2.11 During the years 1978 to 1987, United States exports of apples to Norway varied between 2,400 and 8,600 tons accounting for between 6 and 19 per cent of total Norwegian imports. For pears, United States exports to Norway in the same period varied between 200 and 2,300 tons, covering between 2 and 24 per cent of total Norwegian imports.

3. Main arguments

- Article XI

3.1 The United States considered that the measures applied by Norway to imports of apples and pears clearly contravened Article XI:1,

in paragraph 1(b) of the Protocol of Provisional Application referred to legislation existing on 30 October 1947 (BISD, Vol. II/35). Both the Act of 22 June 1934 (Annex I) and the Provisional Act of 13 December 1946 (Annex II), predated 30 October 1947. The question of amendment of legislation had been addressed by the CONTRACTING PARTIES in 1948 and 1984 (BISD, Vol. II/183 and BISD 31S/89). Norway also recalled that the conclusion reached was that amendments in legislation which lead to a greater degree of conformity with the General Agreement would not alter the status of existing legislation in relation to the Protocol. The chronological presentation of developments since 1947, in the Norwegian import regime for apples and pears, demonstrated that all changes had improved the consistency of the regime with the General Agreement. It consequently argued that the Norwegian legislation on which the import restrictions for apples and pears was based, clearly qualified as existing legislation in terms of the Protocol of Provisional Application of the General Agreement.

3.6 The United States noted that the only defence of Norway was the claim that the restrictions on imports of apples and pears were excepted from the provisions of Article XI by virtue of paragraph 1(b) of the Protocol of Provisional Application. It stressed that quantitative restrictions could not be justified by mere longevity and he recalled that the United States had

on the United States Manufacturing Clause (BISD 31S/74 to 88), had amply demonstrated that the narrow nature and specific requirements of the mandatory legislation exception was not a mere theory, but was indeed the long-settled law of the GATT.

3.10 The United States disagreed with the suggestion by Norway that the reference in the Protocol to "existing

equivalent to or expressly part of the laws. An examination of parts of the Norwegian Constitution (i.e. Articles 17, 26 and 75(f)) seemed to confirm the United States position on this point. For instance, Article 17 of the Norwegian Constitution gave the executive the right to issue regulations. This was expressly distinct from legislative prerogatives.



(e) The legally binding character of the practice concerning quantitative restrictions on the import of apples and pears will also rest on, as a separate basis, the binding character of the Storting's decisions concerning appropriations of money according to Article 75, paragraph d of the Constitution; when the continued practice of those restrictions were at the basis of the decisions made, as conditions considered to apply in order to attain the objectives intended by the Storting's appropriations.

3.15 The United States observed that while an examination of the terms of Norway's Constitution



alter the level and form of the restrictions, this authority

5. Findings

5.1 The Panel noted that Norway maintained a system of restrictive licensing for import of apples and pears which was claimed by the United States to be inconsistent with Article XI:1 of the General Agreement. It also noted that Norway claimed that this system was covered by paragraph 1(b) of the Protocol of Provisional Application of the General Agreement of 30 October 1947 (hereinafter referred to as "the Protocol"), according to which the signatory contracting parties undertake to apply Part II of the General Agreement

"to the fullest extent not inconsistent with existing legislation" (hereinafter referred to as "the existing legislation clause") (BISD Vol. IV/77).

5.2 According to Norway, the system of restrictive licensing was covered by the existing legislation clause because it implemented parliamentary acts

This position

5.10 In relation to the legislative measures relied upon by Norway, the Panel noted that the application of the 1946 Act (Annex II), which had prohibited all imports save those for which the King had granted express dispensation, was discontinued on the occasion of the introduction of a revised system of import licensing in 1958. The 1934 Act (Annex I) was then revived as the basis for import licensing. The relevant part of the 1934 Act provided that the "King can decide that ... it should be prohibited to import from abroad ... articles or goods, indicated by the King, ...". Under the terms of this Act, the King had discretion to prohibit the import of any commodity. The Panel found nothing in the text of the 1934 Act expressing the intent of rendering the institution of such restrictions mandatory. The Panel recalled that in fact no import restrictions relating to apples and pears had been based on the 1934 Act before the year 1958, restrictions in force before that period having resulted from the 1946 Act. According to its terms, the 1934 Act is enabling, not mandatory in character and can for this reason

Annex I

ACT NO. 5 OF 22 JUNE 1934 RELATING TO THE PROVISIONAL  
BAN ON IMPORTS, ETC.

§ 1. The King can decide that, until further notice, it shall be prohibited to import from abroad one or more, by the King indicated, kinds of articles and goods, hereunder live animals and plants, unless there is shown to the customs

Annex II

PROVISIONAL ACT NO. 29 OF 13 December 1946  
RELATING TO THE BAN ON IMPORTS

§ 1. Without a special licence (import licence) nobody must import objects and goods of any kind - including live animals - from abroad, Spitzbergen Jan Mayen and lands placed under Norwegian sovereignty as dependencies.

The King may grant dispensation from the ban.

§ 2. The King or anyone authorized by him issues an import licence. Special conditions may be laid down for the licence.

For licences a fee shall be paid as determined by the King. The fee can be collected by distraint.

§ 3. Everybody must submit to the Ministry concerned the information requested in order to implement the provisions of this Act, such as a statement of import of objects and goods which pursuant to the 2nd paragraph of § 1 do not come under the ban of the first paragraph of the same section. On request, accounting books, commercial documents and other documents, which the Ministry considers of importance for the case, must be presented. If necessary the Ministry may order the police to inspect such books and documents.

When the Ministry has so decided, public authorities in charge of tax assessment and control of the turnover tax may be allowed to obtain the information submitted in accordance with this Act.

Insofar as obligations connected with a public office do not prevent this everybody shall observe silence with regard to information obtained in their official capacity under this Act.

§ 4. The King may issue more detailed regulations for the implementation of this Act.

§ 5. If anybody has intentionally:

- (1) imported or attempted to import objects or goods in contravention of this Act or regulations issued by virtue of the Act, or
- (2) violated or attempted to violate conditions laid down by virtue of this Act, or
- (3) sold imported objects or goods without letting it be known that conditions laid down pursuant to the 1st paragraph of § 2 restricted the right of disposal of the goods sold, or
- (4) given incorrect information, verbally or in writing:
  - (a) in attestations furnished for use by a public authority or a public official in an import case or in connection with an application for an import licence,
  - (b) in attestations which may lead to another person furnishing such attestations as mentioned under (a) relating to circumstances which may be of significance for the access to import objects or goods, or





Annex III

COMMON POLITICAL PROGRAMME OF 1945 (1947)

EXCERPTS FROM WHITE PAPER NO. 45, PAGE 7

"3. Our agricultural policy must give agriculture a status comparable to that of other industrial sectors and aim at an equalization of living conditions in the country. The farm is ensured as the family's property and the basis for the farming profession. Increased efforts to reclaim new land and to bring our arable land into good tillable condition. Further development of social security arrangements and of marketing organizations. Our agricultural production must, as far as possible, be based on Norwegian material in order to reduce gradually the imports of feed concentrates. Practical arrangements in order to facilitate farmers access to the results of research and to modern equipment and imports. Establishment of drying plants and cold stores for vegetables and fruit. Prices and transportation facilities shall be regulated with the aim to ensure the profitability of orderly, well managed, family farms without resulting in agricultural products being unnecessarily expensive to the consumers. The question of tractive power on small farms shall be

Annex IV

EXCERPTS FROM WHITE PAPER NO. 10 ON THE 1947 NATIONAL BUDGET

Inasmuch as population trends indicate that an absolute decline in the agricultural population is to be expected in the next twenty years, agricultural policy will have to solve the problem of maintaining or even increasing production at the same time as the availability of labour declines. Moreover, the agricultural population must be ensured living conditions that are on a par with those of other occupational groups in society, and the cost of production must be kept at a reasonable level. In the years ahead, the objective must be to produce what the country needs of milk, meat, pork, eggs, cheese, vegetables and some fruits, a large share of the edible fats and a reasonable share of the grain using less labour than that employed in agriculture today and without importing an unreasonably large quantity of concentrates. Becoming very much more self-sufficient, e.g., by cultivating most of the grain we need, would prove too costly, and would thus

Annex V

EXCERPTS FROM WHITE PAPER NO. 60 (1955)  
ON GUIDELINES FOR THE DEVELOPMENT OF AGRICULTURE

It is probable that the present tendency to include more fruit and vegetables in the diet will continue. Therefore, it is very important that the production of these goods become more effective. The aim should be to meet a greater share of the demand on a regular basis with Norwegian produce. This will require the building of more refrigeration plants and storage facilities.

. . . . .

... As much as possible of the demand for fruit ... should be met.

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Annex VI

EXCERPTS FROM RECOMMENDATION S. NO. 47 (1957)

It is very important that the production of fruit and vegetables become more effective, and the aim should be that more of the domestic demand be met on a regular basis by Norwegian products.

. . . . .

Fruit, berries and vegetables

The Ministry is of the opinion that more importance should be attached to horticulture on the smaller farms, and that the market should receive a more even supply of fruit ... . In order to facilitate this, proposals for supporting production co-operatives will be considered. The idea is also to discuss proposals concerning support for erecting appropriate facilities in which these products can be stored during the winter.

In general, the Committee supports the Ministry on this point. Everyone would agree that it would be desirable for the smaller farms to begin to concentrate more on garden/nursery products and vegetables. The fact is that statistics show that, in terms of percentage, the smaller farms have the largest available area for such production.

As regards the question of extending the period during which fruit ... may be imported without restrictions and amending the customs tariff in this area, the Committee states that great caution must be exercised, and that such matters must be viewed in the light of the desirability of increasing the cultivation of such products on smaller farms. The desirability of achieving a greater degree of self-sufficiency on a year-round basis as regards these products is another argument in favour of this view.

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Annex VIII

EXCERPTS FROM ROYAL DECREE OF 1 AUGUST 1958

ROYAL DECREE  
of 1 August 1958

prohibiting the import of certain agricultural products

Pursuant to the Act of 22 June 1934 relating to a provisional ban on import etc. it is hereby decreed:

§ 1. Until further notice, it shall be prohibited to import to the country

. . . . .  
fruits ...  
. . . . .

§ 3. The Ministry of Agriculture may make general regulations relating to exemption from the ban on import, and the Ministry may likewise provide that it shall be permissible for a special period to import certain quantities of one or more of the products specified above.

The Ministry of Agriculture shall ensure that the ban on import is only enforced to such extent as is compatible with Norway's obligations under current international agreements.

In special cases the Ministry of Agriculture may grant dispensations from the ban, and the Ministry may likewise apportion the limited quantities permitted to be imported for specific periods.

. . . . .

§ 4. These provisions shall come into force from the date





Annex X

EXCERPTS FROM ROYAL DECREE OF 2 JUNE 1960

Regulations prohibiting the import of certain  
agricultural products, etc.

Annex XI

EXCERPTS FROM THE ROYAL DECREE OF 8 JUNE 1973

- I. Section 1 of the Royal Decree of 2 June 1960 prohibiting the import of certain agricultural products, etc., shall read as follows:

Until further notice, it shall be prohibited to import to the country:

. . . . .

- O. Fruit and berries:

1. Apples during the period 1 May to 31 January.
2. Pears during the period 11 August to 19 December.

. . . . .

- II. The amendments enter into force on 1 July 1973.

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Annex XII

EXCERPTS FROM WHITE PAPER NO. 64 (1963-64)  
ON AGRICULTURAL POLICY

With reference to the Committee's deliberations on market possibilities and production objectives, the Ministry is of the opinion that our agricultural policy must in the main continue to be based on the production objectives set out in the White Paper No. 60 of 1955.

. . . . .

As regards fruit ..., the aim should be to meet as much of the domestic demand as possible through domestic production. However, out of consideration for supply, it must be permitted to import such fruit ... in the seasons during which the demand cannot reasonably be met by Norwegian production.

. . . . .

According to the Common Political Programme of 1945 and the Storting decision of 2 October 1947, respectively, agricultural policy "must place agriculture on an equal footing with the other sectors and aim at an equalization of living conditions in the

