15 November 1962

CONCILIATION

URUGUAYAN RECOURSE TO ARTICLE XXIII

Report of the Panel (July 1963) adopted on 3 March 1965[1]
(L/2074 - 13S/35)

1. At their twentieth session, the CONTRACTING PARTIES adopted the reports of the Panel on the Recourse by Uruguay to Article XXIII, which comprised a general report and individual country reports for the fifteen contracting parties in respect of which Uruguay resorted to the provisions of Article XXIII.[2]

2. In adopting these reports, the CONTRACTING PARTIES, acting pursuant to paragraph 2 of Article XXIII, made recommendations to the Governments of *Austria*, *Belgium*, *France*, *the Federal Republic of Germany*, *Italy*, *Norway* and *Sweden*, calling on these Governments to give immediate consideration to the removal of certain measures whose maintenance could nullify or impair benefits accruing to Uruguay under the General Agreement. These contracting parties were asked to report by 1 March 1963 on action taken to comply with the recommendations or on any other satisfactory adjustment, such as the provision of suitable concessions acceptable to Uruguay. It was provided that, if by that date any recommendation had not been carried out and no satisfactory adjustment had been effected, the circumstance would be deemed to be "serious enough" to justify action under the penultimate sentence of paragraph 2 of Article XXIII, and Uruguay would be entitled immediately to request authority to suspend obligations or concessions. The Council was authorized to deal with any such requests.[3]

3. In March and April 1963, the seven contracting parties concerned submitted reports as required by the recommendations. These reports were reproduced in L/1980 and Add.1 to 8.

4. At the meeting of the Council of Representatives on 1 May, Uruguay requested that the Council give authority for the reconvening of the Panel. The Council agreed to this Uruguayan request. On 16 May, the Uruguayan delegation addressed a letter to the Executive Secretary requesting a meeting of the Panel to consider the replies received from the seven contracting parties concerned (L/2012).

5. The Panel met on 4 and 5 July. The membership of the Panel remained the same as when it drew up the reports to the twentieth session of the CONTRACTING PARTIES.[4] As on the previous occasion, Mr. Biermann (Netherlands) did not participate in the Panel's consideration of the cases of Belgium, France, the Federal Republic of Germany and Italy. Uruguay was invited to attend the meeting of 5 July. Prior to the conclusion of the present report, the Panel also communicated with four of the contracting parties concerned to obtain clarification on certain points of fact.

Compliance

6. In its communication in L/2012, the Uruguayan delegation requested that the Panel consider the replies received from the seven countries, and make a "recommendation" on the degree to which there exists compliance with the CONTRACTING PARTIES' recommendations. The Panel noted, however, that the Council's, and consequently the Panel's, present competence was limited to the consideration

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[1]Two reports of the Panel were adopted on 3 March 1965. The second report, on the September 1964 meeting of the Panel, appears on page 45.

[2]BISD, Eleventh Supplement, pages 95-148.

[3]*Ibid.*, page 56.

[4]*Ibid.*, page 97.

of any proposal which Uruguay might submit for authority to suspend concessions or obligations in terms of the penultimate sentence of Article XXIII:2. The Panel, at any rate, doubted that a "recommendation" was necessary on the question of compliance, and could have nothing to say on whether or not any alleviating action taken by a contracting party constituted "satisfactory adjustment" for the Uruguayan Government. Nevertheless, the Panel, in deference to the wish of the Uruguayan delegation, perused the communications from the seven contracting parties in question, and commented on each of them; these comments are attached as Annex A to G to the report, and are forwarded to the Uruguayan delegation for reference. The Panel stands ready to deal with any proposals which Uruguay, after further reflection, might wish to submit in terms of the penultimate sentence of Article XXIII:2, concerning the suspension of Uruguay's obligations and concessions. In that event, the panel expects promptly to recommend, for consideration and approval by the Council, whether, in each case, the proposed compensation was or was not appropriate in the circumstances.

Sanitary regulations

7. In its communications in L/2012, the Uruguayan delegation requested that the Panel make arrangements for consultations on the question of sanitary regulations on the import of meat. It will be recalled that, in its reports to the twentieth session, the Panel suggested, with respect to five contracting parties, that it would be useful if the countries concerned were to enter into consultation with Uruguay to examine the possibility of administering the regulations in such a way as to permit the import of Uruguayan meat whilst affording adequate sanitary protection to domestic livestock. The Panel had noted that the sanitary regulations maintained by some of the contracting parties were similar and for this reason a joint consultation might be appropriate. Whereas the arrangement of such consultations would seem to fall outside the scope of the Panel's work, the panel would point out, however, that multilateral consultations, perhaps under the auspices of the Group on Meat or in the context of the forthcoming trade negotiations, would not be inconsistent with the suggestions mentioned above.

Other matters

8. In L/2012, the Uruguayan delegation indicated that it might seek the opinion of the Panel, at some future time, on the question of compatibility of the German Marketing Laws with the terms of the Torquay Protocol and the question of the legal status of the Common Agricultural Policy of the European Economic Community. On both of these questions the Panel can only recall its views as noted in paragraphs 16 and 18 of its report to the twentieth session. The CONTRACTING PARTIES would, no doubt, make appropriate arrangements to deal with these questions should the Uruguayan Government decide to submit them.

ANNEX

Comments by the Panel on the Communications from Governments

A. AUSTRIA

1. The Panel recalls that, at their twentieth session, the CONTRACTING PARTIES, in adopting the Panel's report on the recourse by Uruguay to Article XXIII, recommended to the Government of Austria that it give immediate consideration to the removal of certain measures which, in the Panel's

view, could nullify or impair benefits accruing to Uruguay under the General Agreement.[1] These measures were:

Import permit requirement	02.01	Frozen and chilled bovine meat Frozen ovine meat Chilled offals
	15.07	Crude and refined edible oils
	16.02	Preserved meat
	16.03	Meat extracts
Discriminatory import permit requirement	53.07	Yarn of combed wool
	53.11	Wool textiles
Mixing regulation	10.01	Wheat

2. The Panel noted from the communications of the Austrian Government dated 28 February and 5 July (L/1980 and Add.7) and a subsequent letter dated 21 September, that:

(a) Items 53.07 A "effect yarns and fancy yarns of combed sheep's or lamb's-wool, not put up for retail sale", and 53.11 A "furnishing fabrics, other than those of raised pile of sheep's or lamb's-wool or of fine animal hair" had been liberalized on 1 January 1963. The Austrian authorities had offered Uruguay bilateral quotas amounting to US$10,000 for 53.07 B "yarn of combed sheep's or lamb's-wool, not put up for retail sale, other than effect yarns and fancy yarns" and US$15,000 for 53.11 B "woven fabrics of sheep's or lamb's-wool or of fine animal hair other that such fabrics falling under 53.11 A." In addition, import permits would be issued freely over and above these quotas, provided that such imports would not disrupt the market.

(b) A global quota had been opened for 15.07 "crude and refined edible oils" on 1 January 1963, which, for the six months beginning 1 July 1963, had been increased to 3.75 million Austrian schillings.

(c) The regulation concerning wheat (10.01) merely requires Austrian mills, whenever they purchase high quality wheat, to acquire at the same time a certain proportion of average quality wheat. As has been made clear by a recent decree (of 1 March 1963), neither in respect of the average quality wheat nor in respect of the high quality wheat is there any requirement as to the source (domestic or foreign) from which the purchase must be made. In the view of the Austrian authorities, the regulation does not constitute a "mixing regulation" affecting trade, such as is proscribed by paragraph 5 of Article III.

(d) The Austrian authorities, after having carried out a study of the legal questions involved, have come to the conclusion that Austria is entitled to maintain the import restrictions on items 02.01, 16.02 and 16.03 by virtue of the provisions of paragraph 1(a) (ii) of the Torquay Protocol, under which Austria applies the General Agreement.

3. The Panel notes that, as far as items 53.07 A and 53.11 A are concerned, Austria has, by removing the discriminatory import permit requirements, complied with the relevant recommendations of the CONTRACTING PARTIES.

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[1]BISD, Eleventh Supplement, page 105.

4. On the other hand, the Panel noted that, in opening a global quota for item 15.07 and by offering bilateral quotas for item 53.07 B and 53.11 B, Austria has taken action to improve the terms of access for Uruguayan exports of these products in the Austrian market and it is up to the Government of Uruguay to judge whether this represents a "satisfactory adjustment" in terms of the recommendation of the CONTRACTING PARTIES of 16 November 1962.

5. The Panel has also noted that, in the opinion of the Government of Austria, the mixing regulation maintained on item 10.01 is now maintained in conformity with Article III of the General Agreement and the import requirement in respect of tariff items 02.01, 16.02 and 16.03 are in fact consistent with the terms of the Torquay Protocol under which Austria applied the GATT. In considering the implications of the new justifications put forward by Austria, the Panel was mindful of its general attitude towards the relationship between consistency with the provisions of the General Agreement and the relevant protocols and the establishment of nullification and impairment as indicated in paragraphs 15 and 16 of its general report to the CONTRACTING PARTIES. In particular, it would recall that, in drawing up its findings on the Uruguayan recourse, it had "for practical purposes … taken the position that in cases where the contention (of justifiability) has not been challenged (by Uruguay) or is not contradicted by the available records of the CONTRACTING PARTIES, it would be beyond its competence to examine whether the contention was or was not justified." It would appear, therefore, that, if Uruguay does not wish to question the new contention of Austria, the recommendations of the CONTRACTING PARTIES in respect of these few items would, in the view of the Panel, become inoperative. If, on the other hand, Uruguay were to challenge them, then it would be necessary for the CONTRACTING PARTIES to establish suitable machinery to examine the issue.

B. BELGIUM

1. The Panel recalls that, at their twentieth session, the CONTRACTING PARTIES, in adopting the Panel's report on the recourse by Uruguay to Article XXIII, recommended to the Government of Belgium that it give immediate consideration to the removal of certain measures which, in the Panel's view, could nullify or impair benefits accruing to Uruguay under the General Agreement.[1] These measures were:

Import permit requirement with quota	02.01	Chilled and frozen bovine meat
Import permit requirement	02.01	Frozen ovine meat
	15.07	Crude linseed oil
		Crude and refined edible oils
	16.02	Preserved meat
	16.03	Meat extracts
	23.04	Oilcake and meal resulting from the the extraction of vegetable oils
	53.05	Combed wool (tops)

2. The Panel noted, from the communication of the Belgian Government of 14 March 1963 (L/1980/Add.4), that there had been no change in the position taken by the Belgian delegation at the twentieth session which was to the effect that "as regards the recommendations [of the CONTRACTING PARTIES] no quotas were, in fact, in force and the permit requirements enumerated were purely

[1]BISD, Eleventh Supplement, page 108.

administrative and were, in the opinion of the Belgian delegation, compatible with the provisions of the General Agreement".

3. The Panel can only observe that the information supplied by the Government of Belgium has not altered the basis upon which the recommendations of the CONTRACTING PARTIES were formulated.

C. FRANCE

1. The Panel recalls that, at their twentieth session, the CONTRACTING PARTIES, in adopting the Panel's report on the recourse by Uruguay to Article XXIII, recommended to the Government of France that it give immediate consideration to the removal of certain measures which, in the Panel's view, could nullify or impair benefits accruing to Uruguay under the General Agreement.[1] These measures were:

2. In a communication dated 11 March (L/1980/Add.3), the French Government advised of the opening of an import quota of 500 tons for Uruguayan combed wool tops (53.05). From a subsequent notification on French import restrictions, the Panel noted that imports of this item had been liberalized with effect from 2 July 1963. At the same time, the Panel was also apprised that a "countervailing duty" (*droit compensateur*) of 3 per cent ad valorem had been imposed on imports of this item.

3. The Panel noted that, in removing the quantitative restriction on combed wool (tops), the Government of France had taken action in compliance with the relevant recommendation of the CONTRACTING PARTIES. While it was obvious that the beneficial effect of the removal of quantitative restrictions must have, to some extent, been attenuated by the introduction of the "countervailing duty", the Panel has not considered it appropriate to go into this new measure; no doubt the Uruguayan authorities will have considered what consequent action they would wish to take in the light of its effect on trade and other relevant factors.

4. The Panel noted that no action was reported by France in respect of any of the other measures listed in paragraph 1 above.

D. FEDERAL REPUBLIC OF GERMANY

1. The Panel recalls that, at their twentieth session, the CONTRACTING PARTIES, in adopting the Panel's report on the recourse by Uruguay to Article XXIII, recommended to the Government of the Federal Republic of Germany that it give immediate consideration to the removal of certain measures which, in the Panel's view, could nullify or impair benefits accruing to Uruguay under the General Agreement.[2] These measures were:

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[1]BISD, Eleventh Supplement, page 123.

[2]BISD, Eleventh Supplement, pages 127 and 128.

Import permit requirement with discriminatory quota	02.01	Frozen ovine meat
Import permit requirement with quota	41.02	Neat leather
	53.11	Woven fabrics of wool or of fine animal hair other than for padding and felt cloth
Import permit requirement without quota	53.07	Yarn of combed wool, not put up for retail sale, raw, other than worsted yarns, bleached, dyed or printed

2. The Panel noted from the communication of the Government of the Federal Republic of Germany dated 6 March (L/1980/Add.2) that:

(a) the quota for ex 41.02 "neat leather" has been raised from DM 3.22 million in 1962 to DM 4.18 million in 1963;

(b) the quota for ex 53 "tightly woven fabrics made of wool and fine animal hair for furniture and interior decorating purposes" has been raised from DM 300,000 in 1962 to DM 400,000 in 1963;

(c) a global quota was established for ex 02.01 "frozen ovine meat" on 15 December 1962; and

(d) permits are granted for all applications now filed for ex 53.07 "yarn of combed wool, not put up for retail sale, raw, other than worsted yarns, bleached, dyed or printed", and for ex 53.11 "other woollen and fine animal hair textiles".

3. The Panel further noted from the report that liberalization is envisaged in respect of ex 41.02 "neat leather" on 1 June 1964, and in respect of ex 53.11 "tightly woven fabrics made of wool and fine animal hair for furniture and interior decorating purposes" on 1 January 1965.

4. The Panel noted that, in expanding quotas for two items, in removing the discriminatory aspect of the quota for frozen ovine meat, and in undertaking to issue licences freely for two other items, the Federal Republic of Germany has taken action to improve the terms of access for Uruguayan exports of these products in the German market. It is of course up to the Government of Uruguay to judge whether the alleviating action taken by the Federal Republic of Germany represents a "satisfactory adjustment" in terms of the Recommendation of the CONTRACTING PARTIES of 16 November 1962.

E. ITALY

1. The Panel recalls that, at their twentieth session, the CONTRACTING PARTIES, in adopting the Panel's report on the recourse by Uruguay to Article XXIII, recommended to the Government of Italy that it give immediate consideration to the removal of certain measures which, in the Panel's view, could nullify or impair benefits accruing to Uruguay under the General Agreement.[1] These measures were:

Quota	02.01	Frozen and chilled bovine meat
Discriminatory quota	15.07	Crude linseed oil

[1]BISD, Eleventh Supplement, page 130.

2. The Panel noted from the communications of the Italian Government dated 16 March and 8 August (L/1980/Add.5 and 8) that:

(a) by a Decree of 31 October 1962, imports of crude linseed oil had been liberalized;

(b) as from 15 June 1963, the Government had authorized, as a provisional and exceptional measure, the unrestricted importation of chilled bovine meat irrespective of origin;

(c) as from the month of March 1963, a quota had been opened in respect of imports of frozen meat of Argentinian, Brazilian and Uruguayan origin, amounting to 58,700 tons.

3. The Panel notes that, as far as crude linseed oil and chilled bovine meat are concerned, Italy has, by removing the quotas, complied with the relevant recommendations of the CONTRACTING PARTIES. It notes, however, that the liberalization in respect of chilled bovine meat is described by the Italian Government as a "provisional and exceptional measure" and would point out that should the Italian Government restore the quantitative restriction on chilled bovine meat, the recommendation of the CONTRACTING PARTIES relating to this item would once more become valid. As regards the quota provision for frozen bovine meat, which appeared to represent an increase in the access to the Italian market for Uruguayan exports, it would be up to the Uruguayan Government to judge whether this represented a "satisfactory adjustment".

F. NORWAY

1. The Panel recalls that, at their twentieth session, the CONTRACTING PARTIES, in adopting the Panel's report on the recourse by Uruguay to Article XXIII, recommended to the Government of Norway that it give immediate consideration to the removal of certain measures which, in the Panel's view, could nullify or impair benefits accruing to Uruguay under the General Agreement.[1] These measures were:

Import permit requirement involving a maximum and minimum price system	02.01	Frozen and chilled bovine meat Frozen ovine meat Chilled offals
Import permit requirement	16.02	Preserved meat
	16.03	Meat extracts

2. The Panel noted, from the communication of the Norwegian Government dated 5 March (L/1980/Add.1), that the Norwegian Government had initiated a study to determine whether the restrictions in question should be considered as consistent with the General Agreement and that, on the basis of this study, the Norwegian Government would take a position as to possible changes in the import system for agricultural goods.

3. The Panel considered that, as long as it has not been established that the measures in question are consistent with GATT provisions so as to invalidate the legal basis of the CONTRACTING PARTIES' recommendations, Uruguay will remain entitled to expect the measures to be removed. The Panel can only observe that the information supplied by the Government of Norway has not altered the basis upon which the recommendations of the CONTRACTING PARTIES were formulated.

[1] *Ibid.*, page 138.

G. SWEDEN

1. The Panel recalls that, at their twentieth session, the CONTRACTING PARTIES, in adopting the Panel's report on the recourse by Uruguay to Article XXIII, recommended to the Government of Sweden that it give immediate consideration to the removal of a measure which, in the Panel's view, could nullify or impair benefits accruing to Uruguay under the General Agreement.[1] The measure was:

Discriminatory import permit requirement	02.01	Frozen and chilled bovine meat

2. The Panel noted, from the communication of the Swedish Government dated 1 April (L/1980/Add.6), that the permit requirement in question has been abolished for imports from North, Central and South America, as from 1 April 1963.

3. The Panel considers that, by removing the import permit requirement in respect of frozen and chilled bovine meat of Uruguayan origin, the Government of Sweden has complied with the relevant recommendation of the CONTRACTING PARTIES.

[1]BISD, Eleventh Supplement, page 141.