

19 April 1989

NORWAY - RESTRICTIONS ON IMPORTS
OF APPLES AND PEARS

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

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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 comprised the Protocol of Provisional Application and that this understanding with regard to the scope of the mandate was communicated in written form to the Panel.

The representative of the United States said that his delegations could confirm that the United States concurred with Norway's understanding that the terms of reference for the Panel should also include the Protocol of Provisional Application.

(C/M/222, pages 31 and 32.)

1.4 The Panel met with the parties on 21 September and on 21 October 1988. Canada presented a submission on 21 September 1988 and the European Communities presented a submission on 21 October 1988.

2. Factual aspects

2.1 The subject of the dispute was a seasonal import restriction programme for apples and pears applied by Norway through a licensing scheme operated along the following lines. During the period of the year that domestic production was being marketed, i.e. from 1 August to 31 January in the case

of apples, and from 11 August to 19 December in the case of pears, import licences had been granted only when domestic production could not cover domestic demand. Whenever the market situation permitted, the quantitative restrictions were lifted and imports were allowed to be made prior to the ultimate deadline indicated above. Furthermore, the licensing requirements could be suspended whenever domestic prices exceeded a given target price by 12 per cent or more for two consecutive weeks. Whenever the price fell below that upper limit, the licensing requirements were reintroduced with a nine-days' notice.

2.2 In the period from 1 February to 30 April, no licensing requirements were in force as regards apples. This period could be extended beyond 30 April. In the period from 1 May to end of July or beginning of August, the import of apples was subject to licensing for surveillance purposes only to prevent the accumulation of excessive stocks at the time the domestic produce entered the market. Market demand in this period was met exclusively by imports. In the case of pears the free period was from 20 December to 10 August.

2.3 The stated legal basis for the actual Norwegian import regime for apples and pears, was Act No. 5 of 22 June 1934, relating to the provisional ban on imports etc. According to Section 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 authorities, at the time of importation, a written declaration from such authority or institution as is appointed by the King, that it consents to the import. ...". Moreover, under Section 2: "The King can decide, ... that the import from abroad of one or more kinds of articles and goods must not exceed a certain quantity with a certain period". (Annex I.) Due to the special considerations of the post-war situation, from 1945 to 1958, the Norwegian import regime for apples and pears had been based on general licensing requirements provided for in a temporary ordinance of 20 July 1945, subsequently repealed and replaced by a Provisional Act (No. 29) of 13 December 1946 relating to a general ban on imports (Annex II). The latter Act established a general ban on imports, while authorizing the King to grant dispensation by providing for the issuance of import licences.

2.4 During the early post-war period, some general principles and guidelines for agricultural policies were agreed upon by the Storting which in subsequent years formed a basis for various measures implemented by the Executive power. In 1945, a Common Political Programme establishing an income target for the agricultural sector, was concerted among the political parties then represented in the Storting (the Norwegian Parliament). This Programme and its implementation was considered by the Storting in 1947 (Annex III).

2.5 Further long-term agricultural policy goals, including production targets, were established during parliamentary discussions of the National Budget in 1947. The policy targets established were, on the one hand, to guarantee the profitability of orderly, well managed, family farms without resulting in agricultural products being unnecessarily expensive to consumers and, on the other hand, to ensure the agricultural population living conditions equivalent to those of other occupational groups in the society. It was stated that agricultural policy "must place agriculture on an equal footing with the other sectors and aim at an equalization of living conditions in the country", and it must be seen to that "the income and income potential of agriculture does not deteriorate in relation to that of other sectors". Another central aspect of agricultural policy directly related to the income target, was the production target, which was included in the National Budget of 1947. As regards the production target, the objective stipulated in 1947 was to cover in general the country's needs through domestic production. It was stressed however that becoming much more self-sufficient would prove too costly and would impede the development of the standard of living. Reference was at that time made merely to "some fruits" with no explicit reference being made to apples and pears (Annex IV).

2.6 This was the import regime applied by Norway at the time when the Protocol of Provisional Application of the General Agreement was established on 30 October 1947.

2.7 Income objectives and production targets were throughout subsequent years subject to further considerations by the Storting, in connection with its deliberations on White Papers and agricultural agreements and were in principle maintained in the form they had been given in 1945 and 1947. The agricultural policies adopted by the Storting in 1945 and 1947 required the Government to negotiate and conclude medium-term agreements with the farmers' organizations. There had been negotiations between the authorities and farmers as to agricultural policy since 1946. As an outcome of these negotiations, a basic agricultural agreement established between the Government and the farmers' organizations in 1950, was followed by a series of medium-term agreements concluded over 2 or 3 years. In a White Paper No. 60 of 1955, fruit and vegetable production was explicitly mentioned and it was stated that the aim should be meeting on a regular basis, a greater share of the demand with Norwegian produce and that this would require the building of more refrigeration plants and storage facilities (Annex V). That more of the domestic demand for fruit should be met on a regular basis by national production was again endorsed by a Storting Committee in 1957 which furthermore stated that great caution must be exercised as to the question of extending the period during which fruit might be imported without restrictions (Annex VI), thus confirming that at that time, import restrictions had a seasonal character. In a White Paper No. 80 of 1958, relating to the Agricultural Agreement for 1958-61, the Government announced its intention of appointing an Import Advisory Council with the task of providing the Government with advice and assistance regarding the categories of goods to be subject to import regulations, the duration of periods when imports shall be restricted and regarding establishment of a target-price mechanism governing imports. The Agricultural Agreement for 1958-61, concluded along the lines given by the Storting in 1945 and 1947 and taking account of subsequent considerations, were in particular important for the formulation of the regimes adopted in 1958 and 1960 (Annex VII).

2.8 Some changes were made in the Norwegian import regime for apples and pears in 1958: the application of the Act of 13 December 1946 having been suspended in 1958, Act No. 5 of 22 June 1934 became the legal basis for the regime. The regime of 1958 was initially implemented through a Royal Decree dated 1 August 1958 (Annex VIII), amended by another dated 12 December 1958 (Annex IX), but which were on 1 July 1960, repealed and replaced by a Royal Decree of 2 June 1960 (Annex X). The Royal Decree of 2 June 1960 was subsequently amended by a Royal Decree of 8 June 1973 (Annex XI). By an amendment adopted in 1973, subsequent to the conclusion of a Free Trade Agreement between Norway and the European Communities, the duration of the periods during which imports of apples and pears should be prohibited was reduced. In its amended form, the Decree stipulated, inter alia, that "Until further notice, it shall be prohibited to import to the country: 1. Apples during the period 1 May to 31 January. 2. Pears during the period 11 August to 19 December", and furthermore that: "The Ministry of Agriculture shall ensure that the ban on imports shall only be enforced to such extent as is compatible with Norway's obligations under current international agreements. ..." This Royal Decree, as last amended on 8 June 1973, constituted the measures complained of by the United States.

2.9 The stated purposes and aims of the import regime as established in 1958 have been explained in several White Papers, notably in White Paper No. 64 (1963/64) (Annex XII), recalling the long-term targets of Norwegian agricultural policy with regard to agricultural production and agricultural incomes. As regards fruit, "... the aim should be to meet as much of domestic demand as possible through domestic production ...". To achieve the objectives, three main categories of measures have been applied to safeguard market opportunities: price measures, other domestic market-stabilizing measures and import policy measures. Quantitative import restrictions were considered to be the most important means of protecting Norwegian agriculture and considered to be a prerequisite if the economic support schemes were to have the intended effects. Consequently, existing arrangements involved a price-related import ban on fruit, only applied when domestic price quotations remained below a prescribed upper limit.

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, which provided a fundamental and sweeping prohibition of licensing programmes restricting imports. The measures could not be justified under Article XI:2 as Norway did not have domestic supply management programmes restraining the production or marketing of apples and pears. Furthermore, prohibitions of imports such as the ones in question would fall outside the scope of Article XI:2(c). The United States therefore alleged that the measures applied resulted in an infringement of Norway's obligations under Article XI:1 and constituted, prima facie, a case of nullification or impairment of United States rights under the General Agreement.

3.2 Norway considered that as the legal basis for its import restrictions on apples and pears were provisions of the Protocol of Provisional Application of the General Agreement on Tariffs and Trade, a reference to Article XI or other Articles of Part II of the Agreement had not been envisaged to be made by its delegation.

- Protocol of Provisional Application of the General Agreement on Tariffs and Trade

- General comments

3.3 Norway considered that the Norwegian import regime for apples and pears was in full conformity with Norway's obligations under the General Agreement as the legislation on which the relevant import restrictions were based, was covered by the provisions of paragraph 1(b) of the Protocol of Provisional Application of the General Agreement on Tariffs and Trade worded as follows: "... to apply provisionally on and after 1 January 1948: ... (b) Part II of that Agreement to the fullest extent not inconsistent with existing legislation." The said Protocol was an integral part of the Agreement and had as such been signed in June 1948 and had entered into force for Norway on 10 July 1948.

3.4 The legal basis for the import régime for apples and pears was actually the Act of 22 June 1934 relating to the provisional ban on imports, etc. In the period 1945 to 1958, however, imports of apples and pears had also been restricted according to a temporary ordinance of 20 July 1945 and later the Provisional Act of 13 December 1946 relating to the ban on imports, mainly applied for balance-of-payments considerations. Some changes in the import regime of apples and pears had been made in 1958. While the Act of 22 June 1934, remained the stated legal basis for the amended regime, account had also been taken of decisions and considerations by the Storting and subsequent agreements established between the Government and the farmers' organizations. The changes made were without exception steps in the direction of greater liberalization.

3.5 As to various earlier considerations by the CONTRACTING PARTIES, Norway recalled that in 1948 the Chairman of the CONTRACTING PARTIES had ruled that the phrase "existing legislation"

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 questioned Norway about the application of import quotas to apples and pears and other products in consultations held pursuant to Article XXII early in the 1960's (L/2675). The fact that quotas had not been challenged in an Article XXIII proceeding did not alter the obligations accepted by contracting parties under GATT provisions as established by an earlier Panel (BISD 30S/130, paragraph 28). It also recalled that in 1958, Norway had informed the CONTRACTING PARTIES that the only basis under the GATT for its restrictions on agricultural imports was balance-of-payments reasons (L/1086, paragraphs 6 and 28), and did not at that time invoke the exception provided by the Protocol.

3.7 Norway recalled that the 1966 consultations between the United States and Norway were based on a request for consultations under Article XXII. Both parties, in accordance with normal GATT practice, had reserved their positions as to the GATT legality. These consultations were conducted and finalized without the issue of nullification or impairment of United States rights regarding existing restrictions applied by Norway being raised. The United States did not at that time seek recourse to Article XXIII, and Norway therefore concluded that the GATT conformity of the restrictions was accepted.

3.8 In the view of the United States, the burden of proof would rest upon the party claiming the protection of an exception to a general rule. Accordingly, Norway would have to prove the following: that the laws requiring these apple and pear restrictions were in force on 30 October 1947; that the laws absolutely prohibited the executive branch of the Norwegian Government from implementing the requirements of the General Agreement with respect to apple and pear imports (i.e., the laws were "mandatory"); and that the laws did not at any time lapse, nor were they subsequently liberalized to a greater extent than existed at the present time.

Existing legislation

3.9 The United States noted that Norway extended the term legislation to include regulations and other actions by the executive. The position adopted by Norway that "'legislation' ... must be regarded as a broader concept including not only 'laws', but also 'regulations' was in its view untenable for the purposes of defining Norway's international obligations. It found it to be unprecedented for such a major limitation of a country's international obligations to be authorized by implication, inference, or some other form of obscure interpretation. Referring to earlier considerations of the matter, it recalled that subsequent to the 1949 working party report, a Panel on the Belgian Family Allowances had construed the mandatory legislation requirement very narrowly, and that it was Norway that at the time had advanced the winning argument (BISD 1S/61). Later considerations such as that of a Working Party on Organizational and Functional Questions (BISD 3S/249) and most recently that of a Panel

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 legislation" should include existing regulations. Earlier considerations within the GATT had made it clear that there should be a sharp distinction between measures or executive action and the authorizing legislation (GATT Article III, BISD II/62 and BISD 1S/61). Legislation would refer only to the law and would not encompass executive action regardless of whether that executive action was taken in consultation with the legislature.

3.11 As to the meaning of the term "legislation" as used in the Protocol, Norway felt that this term included the Constitution and constitutional principles, the Acts, travaux préparatoires, as well as derivative legislation - regulations - clarifying the content of the Act. It noted that while Article III distinguished between laws, regulations and requirements, the Protocol only used the term "legislation", and thereby confirmed a broader concept of that term. Administrative decisions, instructions and practices could also be relevant when interpreting an Act. The exception provided by the Protocol was originally a compromise between opposing considerations, accepted in order to avoid the need for legislative changes as precondition for countries to become contracting parties. Subsequent considerations of the question whether the Protocol should be replaced by an acceptance of the General Agreement itself had not led to results. The formulation of paragraph 1(b) of the Protocol implied a reference to national legislation and it would follow from the wording and occasio legis of the clause that it would depend on national legislation whether the contracting party invoking that provision would be bound to apply Part II of the General Agreement. It was well established GATT dispute settlement practice that the respondent State would be entitled to explain its domestic provisions, its legal system, its sources of law and the method employed when national legislation was interpreted. The criterion "expressed intent" should be seen in that perspective.

- Mandatory character

3.12 While the United States could accept the 1934 Act as existing legislation, it did not accept Norway's attempt to broaden the term "legislation" to include subsequent regulatory provisions. It recalled that earlier considerations by the CONTRACTING PARTIES had clearly settled that a measure could be permitted under the Protocol, provided that the legislation upon which it was based was by its terms or expressed intent of a mandatory character -- that is, it imposed on the executive authority requirements which could not be modified by executive action (BISD Vol.II/62). To try, as Norway was doing, to use subsequent regulations to define an earlier piece of legislation as mandatory, rendered the whole requirement of mandatory legislation meaningless. In its view, long accepted GATT practice and interpretation required an explicit manifestation of the mandatory nature of the legislation itself. It noted that the legal basis for the restrictions under consideration was the Act of 22 June 1934. It seemed obvious to him in considering the language of the statute, that complete discretion was provided to the executive to determine which imports were permitted entry. The legislation upon which Norway relied, the Act of 22 June 1934, used both mandatory and enabling language. If the enabling language were in fact mandatory, there would be no reason for specific mandatory language in another section. In the view of the United States, Norway's argument required two different interpretations of the same statute. The United States also noted that it was obvious that the language of the statute concerning import restrictions was specifically intended to give great discretion to the executive, for the law permitted a complete ban on all agricultural imports. The Storting obviously did not intend to ban all such imports, for the nation could not physically survive such a ban. Furthermore, section 5 of the 1934 law explicitly gave the executive the authority to amend its own regulations without further parliamentary action. The fact that the Storting approved of the regulatory restrictions on imports of apples and pears and might have disapproved of contrary action, was merely a restatement of a normal relationship between the legislature and the executive and did not imply that the regulations were

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. In contrast, Article 26 of the Norwegian Constitution provided that treaties signed by the executive "shall not be binding until the Storting has given its consent thereto." Under Article 75, regulations such as those at issue here merely needed to be available for presentation to the Storting; there was no comparable need for approval. Obviously, the Norwegian Constitution expressly recognized the distinction between legislation and executive action now denied by the Government of Norway in this case.

3.13 Norway argued that the question of whether Norwegian legislation was "by its terms or expressed intent of a mandatory character, that it imposes on the executive authority requirements which cannot be modified by executive action", had to be answered on the basis of Norwegian law. Statutory provisions did not always reflect the level of discretion given to the executive authorities. Even if an Act, according to its wording might give a significant degree of discretion to the Executive Authority, it would be necessary to interpret each provision of the Act in the light of all relevant sources of law, and in particular to take into account the binding constitutional principles governing the relationship between the Government and the Storting. The parliamentary discussions of the National Budget of 1947 were in particular revealing of how the Storting might confer upon the Executive Power certain obligations. A proposal made by one representative to the effect that the budget should not be established by a formal decision, which would be binding for future policies, was rejected by a large majority clearly illustrating that the adoption of the National Budget entailed binding goals concerning, inter alia, agricultural policy. The Storting's consideration of a White Paper reporting on how the Government was implementing the Common Political Programme equally revealed that the Programme was considered binding on the Government. These statements of principle were made by the Storting before 30 October 1947, and the relevant legislation must therefore be interpreted in the light of the firm and unanimous attitude of the Storting and which remained unchanged ever since. Norway added that the reference by the United States to Articles 17, 26 and 75 of the Norwegian Constitution was irrelevant and based on a misinterpretation of these provisions.

3.14 The Norwegian delegation submitted the opinion of a legal expert on the matter which concluded that:

(a) The mandatory character of the system of quantitative restrictions on the import of apples and pears must be assessed on the basis not only of the written Constitution and the wording of the provisions which were adopted in 1814, and also applied in practice in the years thereafter; but according to the unwritten law which is also regarded as part of the Constitution, as it exists and is applied as of today.

(b) According to existing constitutional law, there is a generally accepted principle that decisions adopted by the Storting concerning how to exercise the Executive Power, are legally binding upon that Power.

(c) According to the principle mentioned under (b) above, the practice of quantitative restrictions on the import of apples and pears, which has been in force both prior to and after 30 October 1947, did not rest on the discretion of the executive organs and could not be modified by executive action; to the extent that the Storting had decided on the practice to be followed, or on the continuance of a practice earlier undertaken by executive decisions.

(d) Irrespective of their wording, the 1934 Act and the 1946 Act do not confer upon the executive organs any discretion to act contrary to what has been decided by the Storting; and the Acts must be viewed as instruments necessary to implement the Storting's policy vis-à-vis private individuals.

(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 confirmed the United States position, it was not necessary to enter into such a detailed analysis. Rather, what was involved here was not a question of Norwegian law, but a question of Norway's obligations to other contracting parties to the GATT. For purposes of defining the parameters of those obligations, an exception had been established for restrictions required by pre-existing legislation that was by its own terms or expressed intent of a mandatory nature. In its view, Norway had not carried the burden of proving the applicability of the exception contained in the Protocol, given the lack of written legislation requiring the quantitative restrictions at issue here. New parameters to the international rules could not now be written.

3.16 Norway emphasized that Article 1(b) of the Protocol implied a renvoi to national legislation. Its delegation had provided extensive documentation to substantiate the conclusion that domestic legislation was in fact mandatory. This conclusion followed clearly from constitutional principles governing the relationship between the Storting and the executive authorities. In the present case there was no risk that the outside world must accept a mere reference to Norwegian law. The documents containing the legal sources were accessible to everyone, and the conclusion reached was based on a perfectly normal legal method.

3.17 In this respect, Norway made reference to the adoption by the Storting of a Common Political Programme in 1945 establishing an income target for the agricultural sector, and to parliamentary discussions of the National Budget of 1947 which set out long-term agricultural policy goals including production targets. The considerations undertaken and decisions made by the Storting on these matters were binding for the administration. In implementing these targets, the executive authorities had been confined to applying only quantitative restrictions as this was the only possibility in pursuance of the Acts of 1946 and 1934. The system of quantitative restrictions had repeatedly been reconfirmed by the Storting in connection with its deliberations on White Papers, including unanimous recommendations from committees within the Storting to the plenary. Furthermore, the agricultural policies adopted by the Storting had imposed on the executive authority the obligation to negotiate and conclude agreements with the farmers' organizations such as the Agricultural Agreement for 1958-61. These agreements had on a continuous basis confirmed the obligation of the executive authorities to continue to apply quantitative import restrictions for apples and pears in accordance with the Act of 22 June 1934, thus confirming the mandatory character of the legislation. There was a legal obligation for the executive authorities to comply with directives given by the Storting, and this obligation was of a constitutional character, based on the system of parliamentarism. Non-compliance with this obligation could lead to proceedings against the responsible Minister before the Court of Impeachment. These constitutional elements were of crucial importance for determining whether existing legislation was by its terms or expressed intent of a mandatory character.

3.18 The United States found the Norwegian position on the question under consideration to be contrary to positions it had previously taken in the GATT, both with respect to the legal interpretation of the exception provided for in the Protocol of Provisional Application, and with respect to the justification of its restrictions on imports of apples and pears. In earlier considerations related to legal interpretation of the Protocol, Norway had advocated a very narrow interpretation of the exception provided by it (BISD 1S/59). Specifically, the United States noted that Norway had prevailed in its argument to the Panel in the case of Belgian Family Allowances to the effect that the Protocol exception did not apply

because there was some possibility of executive action, even though the Belgian law "appeared to be of a mandatory nature." Thus, in the earlier case, Norway claimed no applicability of the Protocol exception even though the law appeared mandatory; now Norway was arguing for applicability of the exception even though the law appeared to be completely discretionary. In the United States view, it was obvious that Norway was now arguing for exactly the opposite legal position it had proposed and won with earlier.

3.19 As to the allegation by the United States that there was inconsistency between the opinion now expressed by Norway and the positions taken by it earlier, with respect to what constituted existing legislation of a mandatory character in terms of the Protocol of Provisional Application, Norway asserted that there was no reason for that allegation, as its position remained unchanged. In 1948, Norway did endorse the view that legislation could not be mandatory if the executive authority had the discretion to "grant an exemption to a country whose system of family allowances did not meet fully the requirements of the law", i.e. to choose between actions which were consistent with GATT and those which were not (Belgian Family Allowances; report adopted by the CONTRACTING PARTIES on 7 November 1952, BISD 1S/59). The Norwegian opinion on that point remained the same, but as stated, the Norwegian Government had no such discretion in the present case. In 1958, Norway did not agree that any legislation in force would take precedence over Part II and not only "mandatory legislation" (Import Restrictions Maintained by the Federal Republic of Germany, report adopted by the Intersessional Committee on 2 May 1958, BISD 7S/104), and that view was still maintained. It recalled that "Other members did not consider that it was within the terms of reference of the working party to pass final judgement on the mandatory character of the legislation which the Government of the Federal Republic of Germany had officially presented to the CONTRACTING PARTIES as having such character. They did consider, however, that it was within the terms of reference, on the basis of a careful examination of the question and discussion with the contracting party concerned, to say whether they were satisfied that the Federal Republic was fulfilling its obligations by applying the provisions of Part II of the General Agreement to the fullest extent not inconsistent with the legislation in question" (BISD 7S/107). It was therefore necessary to carefully examine national legislation in order to establish whether such legislation met the requirements of the Protocol of Provisional Application.

3.20 Replying to a question whether Norway claimed the justification of paragraph 1(b) of the Protocol of Provisional Application for import restrictions applying to other products, Norway said that the terms of reference limited the examination of the Panel to import restrictions on apples and pears. The situation for other products fell outside those terms of reference and might if requested, necessitate a separate examination. Norway was therefore not in the position to be specific as to the situation for other products than apples and pears.

- Some concluding remarks by the parties

3.21 In conclusion, the United States claimed that it would be appropriate for the Panel to conclude that Norway's seasonal import prohibitions on apples and pears were inconsistent with Norway's obligations under Article XI of the General Agreement; that these measures were not sheltered by paragraph 1(b) of the Protocol of Provisional Application; and that they constituted, prima facie, nullification of benefits accruing to the United States under the General Agreement. It urged that the Panel suggested that the CONTRACTING PARTIES recommend that Norway take action immediately to eliminate its seasonal import restraints on apples and pears in accordance with Norway's obligations under the General Agreement.

3.22 Norway claimed that Norwegian regulations of imports of apples and pears were based on existing legislation in terms of the Provisional Protocol of Application; that the legislation was of a mandatory character as the Government had never, during the period in question, had any actual discretion to

alter the level and form of the restrictions, this authority being held by the Storting itself; that the changes in the import regime for apples and pears had without exception made the measures less inconsistent with the General Agreement, thereby retaining the "existing legislation" status; and that the changes in the regime had been formally implemented by means of Royal Decree, in each case subject to prior presentation to and approval by the Storting - reflecting the mandatory character of the legislation on which the restrictions were based; and that being in full conformity with the requirements of the Provisional Protocol of Application, the Norwegian regulations of imports of apples and pears did not constitute any nullification or impairment of United States rights under the General Agreement.

4. Submissions by third parties

4.1 In making a submission to the Panel, Canada pointed out that this only dealt with apples. It alleged that the measures applied by Norway to the imports of apples, in particular the ban on the importation of apples below an established price during the crop season, constituted a prohibition in terms of Article XI and was, prima facie, a contravention of that Article. Canada considered that the ban acted as an impairment to its right of entry to the Norwegian market. In addition, the introduction of quantitative restrictions on imports of apples through the granting of licences, was contrary to the provisions of Article XI:1. It was the view of Canada that the measures applied by Norway would not qualify as exceptions in accordance with Article XI:2(c), as that provision would not allow for a prohibition. Canada also held the view that Article XI:2(c)(i) allowed restrictions to be applied only where there were effective restrictions on the production or marketing of a like domestic product. It was Canada's understanding that Norway had no restrictions on production of domestic apples.

4.2 Canada recalled earlier considerations related to interpretation of paragraph 1(b) of the Protocol of Provisional Application (BISD Vol. II/62 and BISD 31S/90) and expressed the view that in the present case, the burden was on Norway to demonstrate that the legislation in question fulfilled all the conditions laid down by the CONTRACTING PARTIES to justify an exception under said Protocol. Furthermore, it insisted that any resolution of the complaint should be on a most-favoured-nation basis.

4.3 As to the compatibility with the provisions of Article XI, of the import restrictions applied by Norway to the imports of apples and pears, the European Communities underlined that in order to judge whether there was a ban or a simple restriction, import conditions over a sufficiently long period should be observed, assessing the effects of the measures in question. The usual method used under the GATT was to proceed with such an observation on an annual basis, or on the basis of a season, taking into account the duration of production and marketing for national and imported products. Splitting up the periods during which restrictions were applied, could for example, lead to import suspension measures being considered as import bans whenever the quota was filled. In this respect, the Community noted that imports into Norway were unrestricted for the greater part of the year and that they made up the major part of domestic consumption even exceeding 70 per cent of the latter.

4.4 The European Communities subscribed to the existing practice of interpreting the Protocol and agreed that for a measure to be covered by the Protocol, it must be based on legislation which by its terms or expressed intent was of a mandatory character, and secondly, that the Protocol would not cover increases in the degree of inconsistency with the General Agreement. In interpreting the Protocol the general objectives of the General Agreement to reduce barriers to trade and to establish an overall balance of the level of obligations for all contracting parties would need to be taken into account. It also drew the attention of the Panel to the fact that Article XXIII:1(b) and (c) might also be relevant in this context with a view to protecting the proper balance of benefits.

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 predating the Protocol, namely Act No. 5 of 12 June 1934 Relating to the Provisional Ban on Imports etc. (Annex I), the Common Political Programme adopted in 1945 by the parties represented in the Storting (the Norwegian Parliament) (Annex III) and some principles on agricultural policies endorsed by the Storting in connection with the adoption of the 1947 National Budget (Annex IV).

5.3 Norway did not contest the contention of the United States that the system of restrictive licensing was inconsistent with Article XI:1. The sole issue before the Panel was therefore whether Norway's system of restrictive licensing for import of apples and pears was covered by the existing legislation clause.

5.4 The Panel began its examination by analysing the historical origin of the Protocol and relevant decisions of the CONTRACTING PARTIES relating to the existing legislation clause.

5.5 The Panel noted in the first place that paragraph 1(b) of the Protocol served a well determined purpose in a particular historical situation. It was to enable, in 1947, governments to accept the obligations of Part II of the General Agreement without having to adjust their domestic legislation. The drafters of the Protocol expected the General Agreement to be superseded soon by the ITO Charter and they felt that legislative changes should not be required at that time because such changes would have delayed the acceptance of the obligations under the General Agreement and could have prejudged the outcome of the negotiations on the Charter (see Summary Record of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/TAC/SR 1, 2 and 6). In the light of this purpose of the existing legislation clause, the Panel considered that it would not be justified to give this clause four decades after the entry into force of the Protocol an interpretation that would extend its functions beyond those it was originally designed to serve.

5.6 The Panel further recalled that paragraph 1(b) of the Protocol had in various circumstances in the past been interpreted by the CONTRACTING PARTIES so as to further the full application of the General Agreement. The following decisions of the CONTRACTING PARTIES were particularly relevant in this respect.

- (a) In a report approved by the CONTRACTING PARTIES on 10 August 1949, a Working Party agreed that the existing legislation clause applied only to:

"legislation which is of a mandatory character by its terms or expressed intent - that is, it imposes on the executive authority requirements which cannot be modified by executive action" (BISD II/49, paragraph 99, at 62).

This position was on several occasions reconfirmed by the CONTRACTING PARTIES (see Report of a Working Party adopted on 28 February, 5 and 7 March 1955, BISD 3S/231, paragraph 58 at 249/250; Report of a Working Party on Import Restrictions Maintained by the Federal Republic of Germany, adopted on 2 May 1958, BISD 7S/99, paragraph 18, at 106; Panel Report on United States Manufacturing Clause, adopted on 15/16 May 1974, BISD 31S/74, paragraph 35, at 88).

The Panel noted that the parties to the present dispute agreed that this interpretation applied in the present case.

- (b) In a Panel report adopted by the CONTRACTING PARTIES on the Manufacturing Clause in the US copyright legislation, the scope of paragraph 1(b) of the Protocol was extensively considered. The basic issue before that Panel was whether the existing legislation clause should be interpreted as opening a one-way street permitting only movements from the situation on 30 October 1947 to the situation required by Part II of the General Agreement or a two-way street permitting also movements back to the 1947 situation. The Panel decided in favour of the "one-way street" principle arguing that the Protocol was designed to provide only a temporary dispensation from Part II, that the basic aim of the General Agreement was security and predictability in trade relations and that it would be inconsistent with that aim if contracting parties were free to reverse, at any time and at their discretion, the steps they had taken to bring their legislation into conformity with the General Agreement (BISD 31S/74, at 90).

5.7 It follows from the foregoing that to be eligible as "existing legislation" under the Protocol, such legislation must:

- (a) be legislation in a formal sense,
- (b) predate the Protocol and
- (c) be mandatory in character by its terms or expressed intent.

The Panel then proceeded to examine the 1934 Act and the other declarations cited by Norway in the light of these criteria.

5.8 The Panel recalled that Norway argued that, under the constitutional system of Norway, the executive authorities had no option but to restrict imports of apples and pears on the basis of the 1934 Act, after the agricultural policies to be followed by the executive authorities had been defined in the Common Political Programme of 1945 and the Government's principles of agricultural policies had been endorsed in the Storting in 1947. The United States doubted that the Norwegian executive authorities were legally bound to restrict apple and pear imports under the 1934 Act and the parliamentary declarations referred to. In any case an obligation to do so was in its view not apparent from the text of the documents put forward; thus, even assuming the existence of such an obligation, the Act and the declarations surely were not mandatory by their terms or expressed intent.

5.9 The Panel further recalled that when in 1955 and 1958 the CONTRACTING PARTIES requested notification of legislation eligible under paragraph 1(b) of the Protocol, six contracting parties (Canada, Denmark, Germany, the United Kingdom, the United States and the Union of South Africa) notified legislative acts, whereas seven contracting parties (Australia, Ceylon, Finland, Japan, Pakistan, Rhodesia and Nyasaland) declared that they had no such legislation (see document L/2375/Add.1). Although the Panel recognized that there was no legal obligation to make such notification, it did note that Norway did not avail itself of the opportunity to notify on that occasion the Acts and declarations cited in the present dispute.

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 not be considered as being covered by the existing legislation clause.

5.11 As for the Common Political Programme of 1945 (Annex III) and the Government's White Paper No. 10 (Annex IV), endorsed by the Storting on the occasion of the adoption of the National Budget in 1947, the Panel concluded from the documents and from the explanations provided by Norway that these documents and the discussions which ensued in the Storting had in fact no bearing on import restrictions as such and contained no reference to the subject matter of the present dispute, i.e. import restrictions to be imposed on apples and pears. Though political guidelines could possibly be inferred from them, they could not be considered to be legislation conforming to the criteria enumerated in paragraph 5.7 above, and therefore could not fall within the meaning of the Protocol.

5.12 As for the various developments in the field of agricultural policy which took place after 1947, such as the "Basic Agricultural Agreement" concluded in 1950 and supplemented since by periodic medium-term agreements, several White Papers presented by the Government and recommendations of a Storting Committee, which have been relied upon by Norway (see Annexes V, VI, VII and XII), the Panel noted that these could have no relevance to the application of the existing legislation clause, since they occurred after the date of the Protocol.

5.13 For the reasons stated above, the evidence presented by Norway on the state of the legislation that existed on 30 October 1947 did not show that the Norwegian system of restrictive licensing of the import of apples and pears was based on legislation eligible under the paragraph 1(b) of the Protocol.

6. Conclusions

6.1 In the light of the considerations set out in Section 5 above, the Panel concluded that Norway's restrictions on imports of apples and pears were not covered by the existing legislation clause of the Protocol of Provisional Application.

6.2 The Panel recommends that the CONTRACTING PARTIES request Norway to bring its measures applying to imports of apples and pears into conformity with its obligations under the General Agreement.

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 authorities, at the time of importation, a written declaration from such authority or institution as is appointed by the King, that it consents to the import.

The King can stipulate a fee for the grant of dispensation from the ban on import laid down pursuant to the first paragraph of this section. The King can likewise lay down the conditions on which such dispensation may be granted.

Insofar as a compensatory levy payable to the Treasury is imposed on agricultural products subject to import restrictions, the Ministry shall lay down more detailed provisions regarding the computation and collection of such compensatory levies and the supervision of the arrangement. The King stipulates the agricultural products on which a compensatory levy is to be imposed.

The money received through collection of such compensatory levies goes into a fund. The fund is administered by the Ministry in accordance with regulations laid down by the King for the administration of the fund and the utilization of its moneys.

§ 2. The King can decide, with force until further notice, that the import from abroad of one or more kinds of articles and goods, indicated by the King, as mentioned in § 1, must not exceed a certain, by the King stipulated, quantity within a certain period stipulated by the King.

§ 3. The King can decide, with force until further notice, that all purchases from abroad of one or more, by the King indicated, kinds of articles and goods as mentioned in § 1, including purchases on deliver-contracts, shall, within a certain time-limit calculated from the time when the purchase was effected, be reported to such authority as the King decides, accompanied by such additional information as the King prescribes. It may be decided that the duty to report and to give information shall apply also to purchases effected before the King's decision became effective, provided that it relates to goods then not yet delivered. With such exceptions as the purpose of the reporting duty may render necessary, the authority concerned must retain secrecy with regard to such information as it receives, provided that rules to the contrary have not been specially laid down by statute. Sections 13 to 13 e of the Public Administration Act do not apply.

§ 4. Anyone who intentionally or negligently imports, or attempts to import, articles or goods contrary to a ban on import laid down pursuant to § 1, or who is an accessory thereto, is punished by fines or imprisonment up to 6 months.

Intentional or negligent transgression of regulations issued by virtue of paragraph 3 is punished by fines.

§ 5. The supplementary regulations for the implementation of this Act are issued by the King.

§ 6. The Act enters into force at once. From the same time the Act relating to provisional ban on import of 22 March 1918 and the Act relating to import of coal, coke and cinders of 24 June 1933 are repealed. The regulations issued by virtue of these Acts shall remain in force until they are repealed or succeeded by regulations issued by virtue of this Act. As regards penalty in connection with transgression of such regulations, the provisions in § 4 shall apply correspondingly.

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

- (5) contravened or attempted to contravene in other manner provisions of the Act, or regulations issued by virtue of the Act, he shall be punished by fines or imprisonment of up to 6 months, or with both, if the conduct does not come under more severe penal provisions.

For aiding in an offence as mentioned in the first paragraph, similar penalty shall apply.

If anyone has unintentionally committed or aided in any such offence as is mentioned in the first paragraph he shall be punished by fines or imprisonment of up to 3 months.

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§ 6. If an offence as mentioned in § 5 is committed in a commercial occupation which the offender carries on for his own account or for others, he may by court decision be deprived of his right to carry on such occupation for such time and to such extent as the court decides, but not for more than 5 years. A person who has been deprived of his right to carry on such activity cannot be a manager or director or occupy any other leading position in a commercial undertaking, whether it be a personal firm, company, association or corporation, in such fields of activity as mentioned in the judgment, nor can he be a board member or occupy any other position of trust in a company, association or corporation as mentioned.

The objects and goods imported or attempted to be imported in contravention of this Act or regulations issued by virtue of the Act, may be confiscated by a court decision without regard to ownership and without regard to whether penal prosecution may be instituted against anybody. This also applies to such objects and goods which anyone has disposed of or attempted to dispose of in contravention of conditions laid down by virtue of this Act. If the objects or goods mentioned cannot be confiscated, their value - all or in part - may be seized from the offender or any person for whom he acted, without penal prosecution being instituted or being possible against anyone.

§ 7. This Act enters into force at once.

The provisional regulations of 20 July 1945 relating to the ban on imports shall be repealed from the same time.

Regulations issued by virtue of the said regulations shall be valid until they are repealed or replaced by regulations issued by virtue of this Act.

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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 resolved."

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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 impede the development of our standard of living. However, regard must nevertheless be had for the supply situation in the event of war or a blockade. In defining the more specific, concrete objectives of agricultural policy, due emphasis must be placed on market stability, demographic policy considerations and the social and cultural considerations indicating that a reasonable share of the population should be involved in agriculture. There should be very good possibilities of realizing these objectives.

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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.

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... 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.

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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 VII

EXCERPTS FROM WHITE PAPER NO. 80 (1958)
ON THE AGRICULTURAL AGREEMENT FOR 1958-1961

§ 4

Potatoes, fruit, berries, vegetables, live plants
and parts of plants

A. Pursuant to the Act of 22 June 1934 relating to a provisional ban on imports, etc. the Ministry of Agriculture is authorized to make decisions concerning bans on the import of ... the types of fruit ... in respect of which the Working Group on the future import regime for fruit, berries, etc., has proposed import restrictions in a recommendation of 3 June 1957. Cf. Appendix I. -- The Import Advisory Council will submit a proposal concerning the scope of the import ban.

B. An Import Advisory Council comprising the following members is to be appointed:

Ministry of Agriculture	1 member
Ministry of Wages and Prices	1 "
Ministry of Family and Consumer Affairs	1 "
Ministry of Trade	1 "
Norwegian Farmers' Union	1 "
Norwegian Smallholders' Union	1 "
Council for Nurseries and Horticulture	2 "
Central Association for Agriculture	1 "
Norwegian Fruit and Vegetable Pool	1 "
Consumer Council	1 "
Norwegian Co-operative Union and Wholesale Society	1 "
Norwegian Fruit Wholesalers' Association	1 " *)
Norwegian Vegetable Wholesalers' Association	1 " *)

The members of the Council and their personal deputies are to be appointed by the Ministry of Agriculture on the basis of proposals submitted by the institutions and organizations to be represented on the Council. The Ministry of Agriculture shall issue specific regulations concerning the activities of the Import Advisory Council.

The Chairman shall be appointed by the Ministry of Agriculture.

C. The various categories of goods shall be regulated during the following periods:

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3. Fruit:

Apples - 1 August to 31 March.

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*) These will alternate in questions concerning the import of fruit and vegetables, respectively, and will be replaced by a representative from the Flower Importers' Association in questions concerning the import of live plants and parts of plants.

As regards other products subject to import restriction within each of these categories, and live plants and parts of plants, the duration of the restricted period is to be stipulated after proposals have been received from the Import Advisory Council.

D. As a basis for determining prices, weekly target prices and upper price limits for the most important types of goods are stipulated after proposals have been received from the Import Advisory Council.

For each period, the Import Advisory Council takes as its basis the average price of quality grade Standard I of the representative goods ... and apples as registered by the Price Commission for Agriculture for the years 1955-57 ... to which 8 per cent is added. This price is considered to be the target price. The upper price limit is set at 12 per cent above the target price. The prices of other types of goods are determined according to the same principles.

E. When the annual crop deviates from a normal annual harvest, the Import Advisory Council proposes changes in the restricted periods and target prices. The crop for a normal year budgeted by the Budget Commission and the Director General of Agriculture's report on the status of the annual crop are used as a basis.

F. When the price of Norwegian products has exceeded the upper price limit for two consecutive weeks of the restricted period, the import of the product in question is freed. The free import of such products is suspended again when the price of Norwegian products equals or is less than the upper price limit. It is required that products ordered during free periods be cleared at the latest one week after unrestricted import has been suspended. Upper price limits may also be stipulated as a maximum price.

The price quotations used as a basis are those applying to bulk delivery c.i.f. Oslo. The prices are quoted every Tuesday.

The import Advisory Council proposes the amount and time of supplementary imports considered necessary at any given time to meet market demands in a reasonable manner with a view to the target prices referred to in section 4 D.

The Import Council also submits specific proposals concerning the distribution and sale of supplementary imports.

Imports are unrestricted outside the restricted periods.

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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

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fruits ...
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§ 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.

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§ 4. These provisions shall come into force from the date fixed by the Ministry of Agriculture.

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Annex IX

EXCERPTS FROM ROYAL DECREE OF 12 DECEMBER 1958

Regulations prohibiting the import of certain
agricultural products, etc.
laid down by Royal Decree of 1 August 1958,
with amendments of 12 December 1958.

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

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G. Fruit and berries:

1. Apples.
2. Pears.

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§ 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 specific 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 shall only be 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.

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§ 4. These provisions shall come into force from the date fixed by the Ministry of Agriculture.

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Annex X

EXCERPTS FROM ROYAL DECREE OF 2 JUNE 1960

Regulations prohibiting the import of certain
agricultural products, etc.
laid down by Royal Decree of 2 June 1960

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

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O. Fruit and berries:

1. Apples.
2. Pears.

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§ 2. 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 specific 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 shall only be 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.

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§ 3. These provisions shall come into force on 1 July 1960.

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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:

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- O. Fruit and berries:

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

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- 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.

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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.

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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 country", and it must see to it that "the income and income potential of agriculture does not deteriorate in relation to that of other sectors." This has been the fundamental principle of agricultural policy throughout the entire post-war period. In the annual national budgets, the long-term programmes for 1954-57, 1958-61, 1962-65, and White Paper No. 60 on guidelines for the development of agriculture, it is specified that the main objective of agricultural policy is to develop a system of agriculture which is rational from an economic point of view and which can place the agricultural population on an equal economic footing with those in other sectors of society.

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3. Marketing and market-stabilizing measures

a. Introduction

As far as agricultural production is concerned, the objective is to meet the domestic demand for livestock products and to produce as large a share of the plant products as is considered possible and reasonable. The consumer should be ensured regular access to good foodstuffs at reasonable prices. Furthermore, the agricultural population should be ensured incomes that are reasonable in relation to those of the rest of the population.

If these objectives are to be realized, measures to safeguard market opportunities are called for. There are many measures that could be implemented, and these have varied according to circumstances. The recommendation of the Market Committee includes a detailed account of the market and market-stabilizing measures that might be implemented.

In general, a distinction may be made between three main categories of measures: Firstly, those that are manifested in price policy; secondly, other domestic market-stabilizing measures; and thirdly, import policy measures.

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Earlier, duties on agricultural products were the major means of protecting the agricultural sector against external competition. During the interwar period, the duty on certain agricultural products was increased considerably, making it possible to ensure better market conditions for Norwegian agricultural products.

In the years following World War II, duties on agricultural products had less significance as a means of protecting agriculture. This is partly attributable to the fact that an almost total ban on the import of agricultural products was imposed during this period. The rise in prices during and following the war had also reduced the actual protection the duties were originally intended to provide.

The use of duties to protect agriculture has also been reduced as a result of Norway's membership of the GATT. Norway has agreed to a number of tariff concessions within the organization, i.e., Norway has undertaken to refrain from increasing the duties on certain goods beyond an agreed limit for a specified period of time. In principle, there are no restrictions on increasing duties that are not bound. Norway's international trade interests will, however, serve to limit such activity.

By means of quantitative import restrictions, imports can be adapted at any given time to domestic production and demand such that prices are kept at or above specified levels.

At present, quantitative import restrictions are the most important means of protecting Norwegian agriculture and, at the same time, a prerequisite if the economic support schemes employed thus far are to have the intended effect. As far as most of the products are concerned, the current import arrangements are the same as those that were set out in the Agricultural Agreement for 1958-61 and which have been prolonged in subsequent agreements.

The main guidelines are based on a provisional recommendation of 8 February 1958 from the Market Committee.

In brief, the existing arrangements involve a price-related import ban on ... fruit The ban shall apply only when domestic price quotations remain below a prescribed upper limit. Should the price quotation exceed the upper price limit for two consecutive weeks, free import is permitted for as long as the price exceeds the upper limit. As regards a number of horticultural products, import restrictions are limited to specific periods of the year when Norwegian production will normally be able to meet the market demand. With the exceptions of these restricted periods, imports are expected to be unrestricted.

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