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TARIFFS AND TRADE**

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EEC - RESTRICTIONS ON IMPORTS OF APPLES

Statement by the Representative of Chile

The Government of Chile has asked for the inclusion of this item in order to request the Council to set up a panel to resolve the dispute between Chile and the European Communities over the latter's application of restrictions on the import of apples into the Community market.

As representatives will remember, at the Council meeting on 16-17 June, Chile stated that it would submit a request to the Commission of the European Communities for formal consultations under Article XXIII:1 of the General Agreement on application of countervailing charges linked to reference prices for the import of apples from Chile. The following day, a request for such consultations was made in accordance with the urgency procedures laid down in the Decision on Improvements to the GATT Dispute Settlement Rules and Procedures of April 1989, specifically those set out in paragraphs C4 and F(f)5. This meant that we had one month for consultations, after which the Council could authorize the establishment of a panel.

Unfortunately, the Community fixed the date of the first meeting three weeks after the request for consultations due to internal difficulties. As 8 July was the last date for inclusion of an agenda item for this meeting of the Council, in Note No. 467/93 of 8 July Chile requested the Director-General to include an item on "Restrictions on the import of apples" in order to be able to report on the outcome of the consultations and, if they did not produce a positive result, to request the establishment of a panel.

The foregoing is set out in document DS39/2, DS41/2 of 9 July 1993. The consultations were held on 14 July. At the meeting, the delegation of Chile called for the substantive application of GATT's rules and obligations by the European Economic Community and once again requested the elimination of countervailing charges linked to reference prices. We also identified the Articles which in our view were being violated as a result of the Community's measures.

We consider that the charges, which have been applied since 7 April 1993 in accordance with Regulation No. 1035/72 on the common organization of the market in fruit and vegetables, violate the obligations undertaken by the Communities in conformity with GATT Articles II, XI, I and XIII. They therefore represent a nullification or impairment of our rights in accordance with the provisions of Article XXIII:1(a) and(b) because they have significantly affected our trade.

In response, the Community said that the objective of Community Regulation No. 846/93 of 7 April 1993 and subsequent regulations was not to restrict imports but to maintain satisfactory market prices; that the system was automatic; that Regulation No. 1035/72 had been in force for more than twenty years; that it conformed to GATT rules and was a response to the serious problems affecting the Community market in apples.

It also stated that the conclusion of the Uruguay Round, which it believed would take place soon, would lead to a solution of the problem raised by Chile. For the current season for apple exports, the Community indicated that it would be prepared to reach an ad hoc solution without specifying any details.

Unfortunately, this reply does not satisfy us and we said so to the EEC delegates. The conclusions of the Uruguay Round are a possibility for the future. The Community must respect its present commitments in GATT. Moreover, the adjustments put forward as part of the Community's proposals under the Uruguay Round are in our view insufficient. Finally, they would only be implemented as from 1994 and would cease to be applied at all in the year 2000 in the best of cases. Such a solution would mean that our export campaign for apples in 1994 could suffer the same problems as this year's.

Regarding the Community's proposal to offer an ad hoc solution for the current season, unfortunately this proposal comes too late for Chile. The current season ended with the prejudice to which we have repeatedly referred. Our concern is with future seasons and we have not been given any solution which we deem satisfactory or which warrants continuation of the formal consultations with the EEC on current terms.

The European Community also told us that it appeared premature for us to request the Council to establish a panel since only a little over one month had elapsed since the request for consultations. It also stated that it could not agree that the case should be dealt with under emergency procedures.

We consider that the case of apples constitutes an emergency due to the extremely serious damage suffered by our exporters during the current year. The latter estimate the loss at US\$129 million, equivalent to more than 10 per cent of our overall global exports of fruit. If no satisfactory solution is found this year, the marketing of apples in 1994 and the future could once again be affected.

In addition, because apples are "fresh fruit" they are perishable and correspond to the definition given in 1978 by the EEC-United States of America panel in the case of tomato concentrates, namely that "tomato concentrate was perishable because after a certain time it would decline in quality and value." If this was the conclusion concerning a fruit or vegetable concentrate, it is even more relevant for a product such as apples which are sold raw without any type of processing.

Furthermore, since February we have requested the EEC, both in Geneva and Brussels, to eliminate the restrictive measures and bring its import régime for apples into line with GATT. However, we have not been successful.

You will note that, at the meeting of the Council held on 24 March, we informed the meeting of the outcome of the consultations held with the EEC on 22 March concerning the special surveillance system for apple imports applied since February 1993. Our action was not restricted to Geneva. We should also inform the meeting that our ambassador in Brussels has been discussing the matter with the Community's authorities for over six months. At the annual meeting of the Chile-EEC Bilateral Joint Committee held in May, Chile also sought the elimination of countervailing charges.

We always receive the same reply: the objective of the Community's régime is not to restrict imports, it is automatic, it has been in force for some time and, in the EEC's view, it is not contrary to the GATT.

Faced with the EEC's inability to propose a solution, on 24 May the Chilean Minister for Agriculture wrote to the EEC Commissioner for Agriculture and to the Ministers for Agriculture of

the twelve countries of the Community stating that, if we did not receive a satisfactory reply, we would bring the matter before GATT on 16 June. Since we did not receive any response to this either, we requested consultations under GATT, this time in relation to the countervailing charges applied by the Community under Regulation No. 846/93 of 7 April 1993.

It is now almost five months since we first asked the EEC to lift its restrictive measures. In response, we have received explanations which are not based on GATT rules and, in the meantime, the compensatory charges rose from 1.8 ECUs per 100 kg. during the second week of April to 17 ECUs during the second week of May and subsequently to 33 ECUs. As a result, our exports fell from 1 million crates/tonnes per week during the last week of April to only 40,000 crates/tonnes during the first week of May. Our total exports during 1993 fell by more than 40 per cent.

Under such circumstances and since it was not possible to reach a satisfactory agreement to safeguard our rights in respect of tariff heading 08.06 (apples), we request the establishment of a panel to study the matter and decide whether the countervailing charges linked to reference prices, which exceed those bound in GATT, are compatible with the EEC's obligations under the General Agreement, specifically Articles II, I, XI and XIII:1, and other relevant provisions of the General Agreement, as well as with the norms deriving from the General Agreement in general, whose violation constitutes nullification or impairment of the concessions granted to Chile under this heading. The panel should put forward conclusions and recommendations to resolve the issue in accordance with Article XXIII:2.

On 22 March 1993, consultations were held with the European Communities on the surveillance system for apple imports. As the concerns we raised did not receive a satisfactory response by the end of the consultations, we therefore consider that they have failed. Accordingly, at the same time we would request the establishment of a panel to examine the compatibility with GATT rules of the surveillance system for apple imports from third countries established by Commission Regulation No. 384/93. In particular, we request it to review the compatibility with Articles II, VII, XI and other provisions of the General Agreement as may be relevant, as well as with the norms deriving from the General Agreement in general.

As these are aspects that concern the same European Community Regulation No. 1035/72 which established the common organization of the market in fruit and vegetables, we also request that both the licensing system and the countervailing charges be examined by the same panel.

In addition, we request that the panel should follow the urgency procedures laid down in the 1989 Decision by the CONTRACTING PARTIES on improvements to the GATT Dispute Settlement Rules and Procedures, specifically those set out in paragraphs C4 and F(f)5.

To summarize, we request the Council at this session to take a decision on the establishment of the panel and on application of the emergency procedure.

Finally, we request that our statement should be circulated as an official document of the Council.