

URUGUAYAN RECOURSE TO ARTICLE XXIII

*Report of the Panel (September 1964) adopted on 3 March 1965¹
(L/2278 - 13S/45)*

1. On 6 July 1964 the Council agreed, on a request by the Government of Uruguay, that this Panel be reconvened to pursue further the question of compliance with the Article XXIII recommendations made by the CONTRACTING PARTIES on 16 November 1962, to examine certain newly applied trade barriers affecting Uruguayan exports and to re-examine the question of compatibility of certain measures with the General Agreement. The exact terms on which these various matters should be taken up by the Panel are restated in the appropriate sections of the present report.

2. The Panel met in formal sessions from 21 to 25 September 1964, and continued private deliberations on the content of its report in early October. The membership of the Panel remained the same.² As on previous occasions, Mr. Biermann (Netherlands) did not participate in the Panel's consideration of the cases of Belgium, France, the Federal Republic of Germany and Italy. An observer for Australia attended the formal meetings.

(A) Compliance with the Article XXIII:2 Recommendations

3. The Panel was asked "to consult with the countries concerned as to how they could more fully comply with the recommendations previously submitted by the Panel and approved by the CONTRACTING PARTIES". The Panel recalled that on the proposals which it had made in its report,³ the CONTRACTING PARTIES had, on 16 November 1962, approved recommendations under paragraph 2 of Article XXIII to seven contracting parties that they give immediate consideration to the removal of certain specified measures, and report by 1 March 1963 on action taken to comply with these recommendations or on any other satisfactory adjustment.⁴

4. On the instructions of the Council, the Panel had reconvened in July 1963 to examine the reports received from the seven contracting parties. The Panel's views were recorded in paragraph 6 of its report and its specific comments on the individual cases in Annexes A to G to that report.⁵

5. In accordance with its new instructions the Panel consulted with the delegations of Austria, Belgium, France, the Federal Republic of Germany, Italy and Norway. The seventh contracting party covered in the 1962 recommendations, namely Sweden, had reported full compliance.⁶

6. In the course of the discussions, the Panel noted that since the July 1963 review some of the contracting parties concerned had made further progress in complying with the recommendations by removing some more or all of their restrictive measures in question. In some cases there had been an improvement in the access for the Uruguayan exports in question, for example, through an increase in the quota, or the replacement of quota restriction by liberal licensing. In other cases the restrictive measure, which constituted the subject of the original Uruguayan recourses to Article XXIII and the

¹This is the second of two reports by the Panel adopted on 3 March 1965. The first report, on the October 1963 meeting of the Panel, appears on page 35.

²BISD, Eleventh Supplement, page 17.

³*Ibid.*, page 95.

⁴*Ibid.*, page 56.

⁵*Ibid.*, pages 38 to 44.

⁶See page 44.

recommendations, would soon be removed (notably the quantitative restrictions on beef and preserved meat of EEC countries which are to be removed on 1 November 1964). In these cases, the Panel considered that the relevant recommendations would *ipso facto* have become inoperative with the disappearance of the restrictive measures in question. (As regards any new measures applied or to be applied in their place, e.g. those pursuant to the Common Agricultural Policy regulations of the EEC, the Panel's views are noted in paragraph 18 of its first report¹ and in section C below.)

7. The information supplied to the Panel in regard to each of the six contracting parties which had not complied with outstanding recommendations at the time of the Panel's last report is set out in the tables in Annex 1. Besides reporting on the removal of restrictions and increases in access to markets, this Annex also discusses the prospects for removal of the remaining restrictions and action which might make possible progressive relaxation.

8. The Panel proposes that the procedure recommended in paragraph 20 of its first report² be renewed so that the Panel will continue to be in a position promptly to deal with any Uruguayan proposal to suspend concessions or obligations to compensate for any nullification or impairment arising from the continued maintenance of the trade barriers constituting the recommendations of 16 November 1962.³

(B) *New measures*

9. The Panel was asked "in the light of information provided by the Government of Uruguay in L/1662/Rev.1, to examine the restrictions applied since the latest report by the Panel and to submit recommendations". On examining the table in L/1662/Rev.1, the Panel immediately found that most of the measures included in it were not new measures applied since its latest report,⁴ but measures which had already been dealt with in its first report.⁵ The one case in which measures previously considered might now be regarded as new is that in which the situation of the country applying the restrictions has subsequently altered, as, for example, by disinvocation of Article XII. Many other new measures were, furthermore, of the kind regarding which the Panel had indicated that it was unable to make a recommendation under Article XXIII:2. This had been due to the unwillingness of the Uruguayan Government to claim that there was infringement of GATT provisions or otherwise to demonstrate the grounds for the invocation of the procedures relating to nullification and impairment.⁶ While a comprehensive table showing all of the obstacles confronting Uruguayan trade (which might presumably include certain measures not in L/1662/Rev.1) could, in the view of the Panel, conceivably be of value in indicating the magnitude and complexity of the problems faced by Uruguay in expanding its exports, it did not provide a basis for discussions relating to nullification or impairment and the invocation of Article XXIII.

10. Prior to, and in the course of, the Panel's meeting, a number of the governments mentioned in L/1662/Rev.1 informed the Uruguayan delegation of corrections and modifications to the document. On the instruction of the Panel, the secretariat assisted the Uruguayan delegation in identifying the cases which could be regarded as genuinely new and could possibly be in need of consideration under Article XXIII. These measures are listed in Annex II to this report.

11. With respect to these measures, the Panel noted that it had been constituted "to examine cases referred to it by Uruguay, in accordance with the provisions of paragraph 2 of Article XXIII" and

¹BISD, Eleventh Supplement, page 100.

²*Ibid.*, page 101.

³*Ibid.*, page 56.

⁴See page 35.

⁵BISD, Eleventh Supplement, page 95.

⁶*Ibid.*, pages 99-100.

that the procedures of Article XXIII:2 were, in general, not to be resorted to until possibilities of effecting "satisfactory adjustment" through direct consultation (under Article XXII:1 or XXIII:1) had been exhausted. It was recalled that when the previous cases were brought before the Panel in 1962, the Government of Uruguay supplied, in each case, papers concerning the representations and consultations under Article XXII or XXIII:1 which had led to the cases being brought under Article XXIII:2. The Uruguayan delegation shared the view of the Panel that the instructions of the Council, noted in paragraph 9 above, were not intended to, and could not, amend the express provisions of the General Agreement. Hence, a contracting party could not be obliged to appear before the Panel unless and until the CONTRACTING PARTIES had referred the case to it on the advice of the contracting party invoking the provisions that no "satisfactory solution" had been effected through direct representation or consultation.

12. In dealing with the first group of Uruguayan applications under Article XXIII: 2 in 1962, the Panel had been unable to find nullification or impairment under the General Agreement in respect of a large number of items. In many of such cases the contracting party concerned was nevertheless urged to remove the measure in question or any adverse effect which it might have on Uruguayan exports. The Panel was now informed by certain contracting parties that they had been able to take action in this direction. In respect of many of the cases, the Panel had also suggested that the Uruguayan authorities should seek mutually beneficial solutions through bilateral or multilateral consultations with the importing countries concerned. The Panel recalled its view on the value of this approach, as noted in paragraph 22 of its report,¹ and urged the Uruguayan delegation to make use of the facilities provided by paragraph 1 of Article XXII in this regard.

(C) *Questions of compatibility*

13. The Panel was instructed, as its third task "to take up, in the light of paragraph 19 of the Panel's first report,² the question of compatibility with the GATT referred to in paragraphs 16-18 of that report". These paragraphs referred to three subjects:

- (a) measures applied or to be applied pursuant to the Common Agricultural Policy of the EEC;
- (b) variable levies in general;
- (c) measures claimed to be consistent with GATT or required by national legislation existing on the date of the relevant application or accession protocol.

14. *EEC Common Agricultural Policy measures.* _ In paragraph 18 of its first report, the Panel had referred to the introduction by the EEC of Common Agricultural Policy regulations on cereals, but noted that they could not be taken up by the Panel because they had not formed part of Uruguay's original submission. Pursuant to its new terms of reference, the Panel has now advised the Uruguayan delegation that the Panel would be in a position to examine any specific cases which the Government of Uruguay wished to present, assuming it could also show at that time that bilateral consultations had been tried unsuccessfully. The Panel understood that Uruguay would soon be initiating proceedings in this manner in respect of these measures. As regards the Common Agricultural Policy measures on meat to be put in force on 1 November 1964, the Panel noted that it could have no case before it until such submissions had been made by Uruguay following unsuccessful bilateral consultations.

¹BISD, Eleventh Supplement, page 102.

²*Ibid.*, page 101.

15. *"Variable levies" in general.* _ In its first report the Panel had noted, in paragraph 17, the difficulties it faced in considering the status of variable levies or charges. In addition to these difficulties, the Panel also wished to point out the impossibility for a Panel of this nature to deal with a general concept without specific instances possessing defined features and characteristics on which comparison under GATT obligations could be based. The Uruguayan delegation agreed that it would pursue the matter in terms of the nature and effects of Uruguay's trade of the variable levies actually applied.

16. *Consistency of measures with GATT and protocols.* _ In a number of the cases presented in the original Uruguayan submissions, the Uruguayan Government did not wish to challenge the contention of the contracting parties concerned that the measures in question were either fully consistent with GATT or, though not consistent, were permitted under the terms of the relevant protocol of application, and the Panel refrained from examining the legal question of consistency in these cases. While the Panel's new terms of reference would appear to authorize it to "take up" the question of compatibility in the specific cases in question, the Government of Uruguay was not in a position to present to the Panel arguments or evidence which would narrow down and define the points at issue on which rulings were sought. Hence, the Panel found it difficult to proceed, and the delegation of Uruguay agreed that, if it wished to pursue the matter further, it would submit the necessary brief.

ANNEX I

Notes on discussions with contracting parties concerning compliance with the Recommendations of 16 November 1962

1. On the proposals of the Panel on Uruguayan Recourse to Article XXIII, the CONTRACTING PARTIES approved, on 16 November 1962, recommendations to seven contracting parties concerning certain import restrictions and other barriers to trade which they maintained.¹ In July 1963, the Panel examined the reports submitted by the seven contracting parties concerned and reported its findings² as to progress made in compliance with those recommendations. Further discussions were held in September 1964 with the six contracting parties, which had by then not fully complied, and the following notes are intended to register the information adduced in the course of these consultations.

2. These discussions principally covered only developments since July 1963. Consequently the notes must be read in conjunction with the previous ones, which reported on progress made up to that time.

A. AUSTRIA

1. The CONTRACTING PARTIES recommended to the Government of Austria that it give immediate consideration to the removal of the following measures:

Import permit requirement	02.01	Frozen and chilled bovine meat
		Chilled offals
	15.07	Crude and refined edible oils
	16.02	Preserved meat
	16.03	Meat extracts

¹BISD, Eleventh Supplement, pages 56 and 95-148.

²See page 35.

Discriminatory import permit requirement	53.07	Yarn of combed wool
	53.11	Wool textiles
Mixing regulation	10.01	Wheat

2. Among these the "import permit requirement" applying to items 02.01, 16.02 and 16.03 and the "mixing regulation" applying to item 10.01 should be deleted from the list for the reasons stated in paragraph 5 of Annex A to L/2074. Edible oils, item 15.07, have been liberalized by successive stages, of which the last became effective on 1 June 1964.

3. Recommendations are outstanding therefore only for:

Discriminatory import permit requirement	53.07	Yarn of combed wool
	53.11	Wool textiles

A part of these items has been liberalized in response to the GATT recommendations, the remaining sub-items will be liberalized in the near future;¹ the 1963 offer of bilateral quotas therefore becomes obsolete.

B. BELGIUM

1. The CONTRACTING PARTIES recommended to the Government of Belgium that it give immediate consideration to the removal of the following measures:

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 extraction of vegetable oils
	53.05	Combed wool (tops)

2. Among these, the "import permit with quota" applying to 02.01 (frozen and chilled bovine meat) and the "import permit" applying to 16.03 (meat extracts) should be deleted, these products having been liberalized.

3. Recommendations are outstanding for the import permit requirement applying to all the other items. The Belgian authorities maintain their position that the measure is purely administrative and not restrictive or incompatible with GATT.²

¹Liberalization effected 1 October 1964 (L/2278/Add.1).

²The representative of Belgium noted, at the Council meeting on 30 October 1964, that his Government considered that the items in question were *de facto* liberalized (L/2278/Add.1).

C. FRANCE

1. The CONTRACTING PARTIES recommended to the Government of France that it give immediate consideration to the removal of the following measures:

Import permit with quota	02.01	Frozen and chilled bovine meat
		Frozen ovine meat
	16.02	Preserved meat
Import permit	02.01	Chilled offals
Import permit and discrimination	53.05	Combed wool (tops)
	53.07	Yarn of combed wool
	53.11	Woollen fabrics

2. Among these, the "import permit with quota" applying to item 02.01 (bovine meat) are to be removed on 1 November 1964.

3. Recommendations are therefore still outstanding on all the other items mentioned above. The following are the points of substance noted by the Panel:

(a) With respect to combed wool (tops) (item 53.05), the import permit has been removed, but imports have been made subject to a countervailing duty amounting to 3 per cent ad valorem. This charge applies only to imports of tops of Uruguayan origin. The French authorities maintain that the import charge on tops is designed to countervail the effects of the Uruguayan export tax on raw wool, and meets the requirements of Article VI of GATT. Modification of this measure is, however, under active consideration and it is expected that the study to be engaged in from 9 October by a group of experts, appointed by an international meeting of wool producers and traders, might clarify certain factual questions, which would facilitate a settlement. The Government of Uruguay is of the view that the Uruguayan export tax on raw wool does not constitute a subsidy, as evidenced by the fact that no other country in Europe has found it necessary to impose a duty of this kind on Uruguayan tops and that nothing in the International Monetary Fund Agreement nor in the GATT prevents the application of the tax. Consequently, it considers the French import charge on tops to be unjustified. The Panel has taken note of the arguments on both sides.¹

(b) Imports into France of yarn of combed wool and woollen fabrics (items 53.07 and 53.11 respectively) have been liberalized for OECD countries, and the liberalization will be extended gradually to other countries, including Uruguay. The French delegation has pointed out that there is no known case in which a licence application has been denied for imports of these products from Uruguay.

¹The representative of France announced in the Council, on 30 October 1964, that his government had decided to remove the countervailing duty on wool tops (53.05-combed wool), and the duty was subsequently terminated by a decree effective 24 December 1964 (L/2278/Add.1).

D. FEDERAL REPUBLIC OF GERMANY

1. The CONTRACTING PARTIES recommended to the Government of the Federal Republic of Germany that it give immediate consideration to the removal of the following measures:

Import permit requirement with discriminatory quota	02.01	Frozen ovine meat
Import permit requirement with quota	41.02	Neat leather
Import permit requirement with quota	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 "discriminatory quota" applying to 02.01 (frozen ovine meat) has been replaced by a global quota as from 15 December 1962; consequently the reference to the discriminatory element in this restriction has been removed. The "import permit and quota" on neat leather has been removed with effect from 1 June 1964. For a portion of item 53.11 (other woollen and fine animal hair textiles) licences are issued freely; consequently the reference to the "quota" for that portion of the item has been removed.

3. Recommendations are outstanding on the other measures, namely:

Import permit with quota	02.01	Frozen ovine meat
Import permit with quota	53.11	Tightly woven fabrics made of wool and fine animal hair for furniture and interior decorating purposes (see below)
Import permit	53.11	Other woollen and fine animal hair textiles
Import permit	53.07	Yarn of combed wool, not put up for retail sale, raw, other than worsted yarns, bleached, dyed or printed

The German authorities have renewed an earlier promise that tightly woven fabrics made of wool and fine animal hair for furniture and interior decorating purposes (53.11) will be liberalized on 1 January 1965.¹

¹This action has now been taken (L/2278/Add.1).

E. ITALY

1. The CONTRACTING PARTIES recommended to the Government of Italy that it give immediate consideration to the removal of the following measures:

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

2. The "quota" restriction on chilled bovine meat was removed on 15 June 1963. The quotas for frozen bovine meat have been increased for Argentina, Brazil and Uruguay, amounting, in 1963, to 76,300 tons out of a total of imports from all sources of 89,500 tons. Import provisions for the three countries have been ample for 1964 and the quota restriction will be removed by 1 November 1964. The discriminatory quota on crude linseed oil was removed on 31 October 1962.

3. By 1 November 1964, all the Italian restrictions covered by the recommendations will have been removed.

F. NORWAY

1. The CONTRACTING PARTIES recommended to the Government of Norway that it give immediate consideration to the removal of the following measures:

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 16.03	Preserved meat Meat extracts

2. The Norwegian Government initiated a study to determine whether the restrictions in question should be considered as consistent with the General Agreement; on the basis of this study, the Norwegian Government was to take a position as to possible changes in the import system for agricultural goods. Up to now, the Government has not acted on the report by the officials.

ANNEX II

New measures¹

<i>Country</i>	<i>Item No.</i>	<i>Description of item</i>	<i>Measures (as of 1 September 1964)</i>
Belgium/ Luxemburg France Germany Netherlands Italy Agreement	10.06	Rice (peeled)	A provision of the Association of Yaoundé accords a preference to

rice from associated countries

<i>Country</i>	<i>Item No.</i>	<i>Description of item</i>	<i>Measures (as of 1 September 1964)</i>
Germany	02.01	Meat of animals of the bovine species, frozen and chilled	Discriminatory quota of 14 July 1964 open only to imports from one country
Japan	02.01	Meat of animals of the bovine species, frozen and chilled	Import permit
	16.02	Preserved meat	Import permit and quota (applicable to part of the item)
	11.01	Wheat flour	Import permit and quota
	ex 15.07	Groundnut oil and crude and refined	Import permit (applicable to part of sunflower seed oil, the item)
	23.04	Oilcake and meat	Import permit and quota (applicable to part of the item)
	ex 41.02	Cowhide, tanned	Import permit and quota
	ex 41.03	Sheepskin leather, tanned	Import permit and quota
	ex 41.08	Patent leather	Import permit and quota (applicable to part of the item)
	53.11	Wool textiles	Import permit and quota
United States	16.02	Preserved meat	Certain state legislation requiring relabelling of canned corned beef to show country of origin in 1-inch high letters

¹See paragraph 10, page 2.