

GENERAL AGREEMENT ON TARIFFS AND TRADE

L/2088

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PANEL ON POULTRY

Report of Panel

1. The Panel was established by the GATT Council of Representatives on 28 October 1963, following a request from the European Economic Community and the United States that such a panel be established to render an advisory opinion to the two parties in connexion with their dispute concerning poultry.

2. The composition of the Panel was as follows:

Mr. E. Wyndham White (Executive Secretary) (Chairman); Mr. A. Weitnauer (Switzerland); Mr. R. Campbell Smith (Canada); Mr. N. Montan (Sweden); Mr. F.P. Donovan (Australia).

3. The terms of reference of the Panel were as follows:

"To render an advisory opinion to the two parties concerned in order to determine:

'On the basis of the definition of poultry provided in paragraph 02.02 of the Common Customs Tariff of the European Economic Community, and on the basis of the rules of and practices under the GATT, the value (expressed in United States dollars) to be ascribed, as of 1 September 1960, in the context of the unbindings concerning this product, to United States exports of poultry to the Federal Republic of Germany.'"

4. The Panel held a number of meetings during the period 11 to 19 November 1963. It had before it submissions in writing from the two parties to the dispute and it also met with, and heard, the two parties.

5. The Panel recognized that the matter before it fell to be dealt with in the context of the Article XXIV:6 negotiations. This was relevant both to the question of the reference period on the basis of which, as of 1 September 1960, the value of United States poultry exports to the Federal Republic of Germany should be determined and to the manner in which this determination was to be made.

6. In its choice of a reference period, the Panel was guided by the practice normally followed by contracting parties in tariff negotiations, namely to lay particular emphasis on the period for which the latest data were available. As, in its view, the latest data which could reasonably have been expected to be available on 1 September 1960 would run up to 30 June 1960, the Panel decided to take as the reference period the year 1 July 1959 to 30 June 1960.

7. The Panel then considered what corrections to the figures for the reference period might be necessary to enable it to make the evaluation called for under its terms of reference.

8. The Panel was satisfied that it was in accordance with the normal practice of the GATT for a correction to be made to the figures for the reference period to take account of the discriminatory quantitative restrictions existing in the Federal Republic of Germany during that period.

9. It was the Panel's view that, in the absence of such quantitative restrictions, United States exports would have had a larger share of the existing German market. Moreover, the unrestricted entry of lower-priced United States poultry would have brought about an increase in German consumption and United States exports would also have had a share in this increase. The Panel then attempted to assess what the United States could reasonably have expected that the value of their exports would have been in the reference period had there been no discriminatory quantitative restrictions.

10. The Panel considered that it could not reasonably be argued that the whole of the increase in German consumption of poultry would have been taken up by United States exports. It was certainly to be expected that the other supplying countries would adjust their price policies in an endeavour to maintain their share of the market. Account also had to be taken of the additional sources of supply resulting from new production in certain European countries. The Panel felt, moreover, that the shares in the reference period of the various exporting countries in the Swiss market, which was free and competitive, afforded a fair guide as to the proportion of the increased German poultry consumption likely to be taken up by United States exports.

11. Having taken account of these factors, and basing itself entirely on information which could have been known on 1 September 1960, the Panel came to the conclusion that the advisory opinion it should render to the two parties concerned was that a figure of \$26 million would reasonably represent the value to be ascribed, as of 1 September 1960, in the context of the unbindings concerning this product, to United States exports of poultry to the Federal Republic of Germany. As a matter of some interest, and in order to have a check on its conclusion, the Panel also made calculations which took into account the actual experience in the German market during the period 1 May 1961 to 30 April 1962, when there were no quantitative restrictions, and these calculations gave results which were substantially the same as the figure quoted above.