TREATMENT OF IMPORTS OF SARDINES ("BRISTLING") BY GERMANY

Note by the Delegation of the Federal Republic of Germany

The Delegation of the Federal Republic of Germany has the following to say in reply to the Note by the Government of Norway on the treatment of imports of sprats and small herrings (referred to in the note as "Norwegian sardines") from Norway into the Federal Republic of Germany:

I. Customs Treatment

1) Under the old German customs tariff, all foodstuffs and stimulants (other than drinks) in hermetically sealed containers were grouped together under tariff item No. 219 and subject to the uniform unilateral rate of RM 75 per one hundred kilogrammes. The following contractual concessions were made on the preserved fish now under consideration:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Sardines, prepared</td>
<td>RM 30 per 100 kgs</td>
<td>Portugal/Yugoslavia</td>
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<tr>
<td>b) Sardines and sardelles, sardines in fillets, in oil</td>
<td>RM 30 per 100 kgs</td>
<td>France</td>
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<tr>
<td>c) Sardines (Clupea pilchardus), small Mediterranean sardines (Clupea papalina), genuine Mediterranean sardelles (Engraulis encrasicolus), in fillets or not, in oil or in pickle or sauce</td>
<td>RM 30 per 100 kgs</td>
<td>Italy, Yugoslavia</td>
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<tr>
<td>d) Brislings and herrings (the length of the live fish not having exceeded sixteen centimetres), prepared with salt, bay, sugar, or spices</td>
<td>RM 45 per 100 kgs</td>
<td>Estonia</td>
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<tr>
<td>e) Sea fish of all kinds (the length of the live fish not having exceeded sixteen centimetres), prepared with oil or tomatoes, whether or not with a slight admixture of oil, pepper or bay</td>
<td>RM 30 per 100 kgs</td>
<td>Norway</td>
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It had been agreed *ad e* that the concession on sea fish of all kinds, in oil, shall apply as long as Germany grants Portugal the contractual rate of RM 30 per 100 kgs on sardines in oil, produced in Portugal, and that the concession on sea fish of all kinds, prepared with tomatoes, shall apply as long as Germany grants Portugal or Italy or another country the contractual rate of RM 30 - on prepared sardines produced in Portugal, and on sardines *other* than in oil, produced in Italy.

2) Even under the old German customs tariff, sardines (Clupea pilchardus) had, accordingly, been distinguished from other small fish. This results also from the above-mentioned agreement, according to which the concession made to Norway which covered all kinds of sea fish of a certain size in certain preparations, was to apply only as long as Germany granted other countries a contractual rate of RM 30 per 100 kgs. on sardines in certain preparations. Thus it was recognized both by Norway and by Germany that, while sardines fall under the category of sea fish of all kinds, they were to enjoy special treatment in that the concession made to Norway could be proportionately narrowed as and when the tariff concessions limited to sardines were withdrawn.

3) The draft of a new German customs tariff on which the tariff negotiations at Torquay were based reads as follows under tariff item No. 1604:

<table>
<thead>
<tr>
<th>Rate of duty</th>
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<tr>
<td>p.c. ad valorem</td>
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</table>

1604 Prepared or preserved fish and fish products, including caviar, caviar substitutes and fish soup preparations:

C - other:

1 - In hermetically sealed containers:
   a - Fish of the salmon family .......... 30
   b - Sardine (Sardine pilchardus or Clupea pilchardus) .................. 30
   c - Sardelle (Anchovy, Engraulis encrasicholus) .................. 30
   d - Sprat (Clupea sprattus) ............. 30
   e - Herring ............................ 30*
   f - Other ............................. 30

2 - In other packings ..................... 30

This breakdown of preserved fish has been taken over, without any modification, from the Brussels Customs Tariff Nomenclature of 1949, in whose preparation Norway took part as a member of the "Study Group for the European Customs Union".

* In the course of the negotiations changed to 28 by unilateral action.
4) The Norwegian Government limited its requests in the customs tariff negotiations at Torquay to sub-items 1604 C1d, e and f, in particular to sprats and to "herring, the length of the live fish not having exceeded sixteen centimetres, prepared with oil or tomatoes or both, salted or not". On the latter a rate of 20 per cent, on sprats a rate of 25 per cent was agreed. The rate of duty on sardines remained unchanged at Torquay. The distinction made in the new German customs tariff between sardines (Sardina pilchardus or Clupea pilchardus), sprats (Clupea sprattus) and herring by the setting up of separate sub-items was not objected to during the Torquay negotiations.

5) When it was found out, shortly before the new German customs tariff came into force, that the tariff concession of RM 30 - per 100 kgs on sardines, which had been made to Portugal, had to be regarded as still valid, the same rate of duty continued to be applied even after the old customs tariff had been deprived of effect. This rate of duty was later on transformed into the corresponding ad valorem rate of 14 per cent. Accordingly, the present contractual rate of duty on sardines is 14 per cent, on sprats 25 per cent and on herrings, the length of the live fish not having exceeded sixteen centimetres, 20 per cent.

6) The Norwegian Government feels it is a discrimination that the fish preserves of sprats and small herring, referred to in the note as "Norwegian sardines", are subject to other customs treatment than sardines (Sardina pilchardus and Clupea pilchardus). They invoke in this connection Article I of the General Agreement on Tariffs and Trade, under which "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties".

The Norwegian Government consider, accordingly, sardines (Sardina pilchardus or Clupea pilchardus), sprats (Clupea sprattus) and small herrings (Clupea harengus) as like products.

7) The term "like" has been the subject of discussions both in the Economic Committee of the League of Nations and in the Preparatory Committee of the United Nations for the Havana Charter, but no firm definition was arrived at. It was merely expressed that it would have to be decided in each particular case which products were to be deemed "like" products, that, however, the very classification of products under different items - in the case of the fish preserves classified under the German customs tariff - precluded in itself the treatment of such goods as like products. This principle appears also from the report of a working party of the General Agreement on Tariffs and Trade on the question of Australian subsidy on ammonium sulphate (Report of Working Party G on the Australian Subsidy on
8) The fish preserves referred to in the Norwegian note as "Norwegian sardines" are not sardines of the species Sardina pilchardus or Clupea pilchardus but prepared herrings (the length of the live fish not having exceeded sixteen centimetres) of the species Clupea harengus and prepared sprats of the species Clupea sprattus. These species are biologically different from each other and cannot be given equal status.

There are economic differences, too. In the Federal Republic, traders and consumer distinguish clearly between herring or sprat preserves and sardines. Under the unfair competition legislation of the Federal Republic, prepared sprats and small herrings may not be termed "sardines". Even the sprat and small herring preserves referred to in the Norwegian note as "Norwegian sardines" cannot be considered as like products; not only do they fall within different tariff items, there were even different rates of duty agreed on them in the tariff negotiations with Norway conducted at Torquay.

9) Also in other countries, for example, France, are the products now under consideration subject to different rates, but so far no equal customs treatment has been requested in application of the most-favoured-nation rule.

10) The German Federal Government regrets, therefore, to have to refuse, for the reasons mentioned above, to apply the most-favoured-nation clause to rates of duty on sardines and on sprats and small herrings.

II. Turnover Countervailing Tax
(Umsatzausgleichsteuer)

11) The note of the Norwegian Government, with reference to Article I of the General Agreement on Tariffs and Trade, sees, furthermore, discrimination in the fact that the turnover countervailing tax on sardines is 4 per cent and on the Norwegian fish preserves 6 per cent.

12) The German turnover tax is a multiple-phase-tax, i.e. it is levied on the turnover in every phase of transformation of the raw material into the finished product. The rate of that tax is generally 4 per cent. Where a calculation of the overall incidence of the turnover tax on the domestic production shows that the incidence is 6 per cent or more, the turnover countervailing tax imposed upon importation is raised to 6 per cent in order to counteract the overall incidence of the turnover tax on domestic production.

13) There is no domestic production of sardine preserves. In its absence, the turnover countervailing tax was fixed at the generally
applicable rate of 4 per cent. In contrast, small herrings and sprats are processed domestically at a not inconsiderable rate. A precise calculation of the incidence of the turnover tax on the internal production has revealed that the internal taxation exceeds 6 per cent. Therefore, a turnover countervailing tax of 6 per cent has been fixed to apply to imported products of that kind.

14) For this reason, which arises from the very nature of the turnover countervailing tax, the difference in the rates of duty on fish preserves cannot be considered as constituting discrimination. In particular, there is no discrimination within the meaning of Article I, paragraph 1 of the General Agreement on Tariffs and Trade, because - as mentioned above - the preserves of sardines and those of sprats or small herrings are not like products within the meaning of that Article.

15) The German Federal Government regrets, therefore, to have to refuse to fix the turnover countervailing tax on preserves of sardines and those of sprats and small herring at the same rate by way of most-favoured-nation treatment.

III. Liberalization

16) The note of the Norwegian Government sees, furthermore, a discrimination in the fact that sardines (Sardina pilchardus and Clupea pilchardus) have been on the German list of liberalized imports since 1 April, 1952, whereas preserves of sprats and small herrings are still subject to import restrictions. The note invokes Article XIII, paragraph 1, of the General Agreement on Tariffs and Trade with a view to obtaining the same treatment for these products.

17) Like Article I of the General Agreement on Tariffs and Trade, the provisions of Article XIII, paragraph 1, refer to import restrictions relating to "like products". It has been pointed out above that sardines (Sardina pilchardus and Clupea pilchardus) and preserves of sprats or small herrings cannot be deemed to be like products.

18) The German Federal Government is not, therefore, in a position to lift the import restrictions on preserves of sprats and small herrings by way of most-favoured-nation treatment.