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EEC - COUNTERVAILING CHARGE ON APPLES

Statement by the Representative of Chile

At the Council meeting on 24 March 1993 Chile expressed its concern at the application of Commission Regulation (EEC) No. 384/93, and its fear that the licensing system established therein might lead, as had occurred in 1988, to quantitative restrictions and to a suspension of the issuance of import licences. Chile recalled that the Panel established at that time had found the regulations and measures applied by the EEC to be inconsistent with the General Agreement.

At the Council meeting on 12 May last, we referred to the consultations that we had requested with the EEC, concerning the licensing system, and pointed out that we had received no reply. As Chile and other countries here represented feared, the aim of the measures adopted by the EEC in February was not solely to monitor apple imports. On 7 April 1993, the EEC adopted a further Regulation (EEC) No. 846/93 which came into effect on 9 April, establishing a countervailing charge on imports of apples from Chile of 1.84 ECUs per 100 kilogrammes. On 19 April the charge rose to 5.40 ECUs and after a series of further increases reached 16.97 ECUs on 6 May, a rise of over 800 per cent in one month. Although the charge was reduced to 6.43 ECUs on 8 June, these measures have caused our exports to plummet with severe consequences for our apple producers whose estimated losses amount to tens of millions of dollars.

The countervailing charge is aimed at implementing the "reference price" (or minimum price), established in Community Regulation 1035 of 1972, which constitutes a restriction to trade and operates, in practice, as a kind of "minimum customs value" that the EEC applies unilaterally to imports which it regards as threatening domestic production.

The system for fixing the countervailing charge is technically complex. I shall try to explain it briefly to the meeting, but would ask the Council to place on record as part of my statement a note on the functioning of the system.

* This document replaces Spec(93)22 which was circulated earlier in the English version without the Annex.

¹ Attached as Annex to this document.

If the "entry price" (which is linked to the market price) of a product (in this case, apples) remains below the "reference price" for two consecutive market days, a countervailing charge is introduced, equal to the difference between the reference price and the average entry price of the product from the exporting country concerned.

The "entry price" is not simply the price at which the importer sells to the wholesaler, but the foregoing price less the countervailing charge. Consequently, when the mechanism goes into operation it has a spiral or "inertia" effect, since it can only be halted when there are no prices in respect of the country concerned for six consecutive days or when entry prices are considerably higher than the reference price for several days.

The system of countervailing charges has other negative features:

- It discriminates between exporting countries because the quality and quantity of the apples from certain exporting countries are such that they are sold below the reference price.

While discriminating between exporting countries, the system makes no distinction between consignments from the same country. Thus, the reference prices established for Chile apply to exports sold both below and above the reference price.

- It is also unfair in that the sales of certain exporters affect both other exporters making later sales and the country as a whole.
- It impairs trade predictability, since the conditions applying at the time of shipment (e.g. no countervailing charge) may be changed up on arrival of the consignment by the imposition of a countervailing charge. This is particularly serious for Chile in view of the distance involved. In practice, many of our exports have been thus affected.
- It disregards the principal of proportionality between action and effect. Although the system may be aimed solely at achieving parity of price between imported products and community products, its effect is more far reaching and means a virtual prohibition on imports during certain periods. The outcome is that the EEC has obtained the same result with this complex system as it obtained in 1988 with the suspension of licences which, after a time, virtually halted the sale of Chilean apples in the Community market. The method has changed, the levying of special charges has replaced the suspension of licences, but the trade effect is the same.

Weekly sales, which reached an average of 1,060,000 crates per week between 11 and 28 April this year, dropped to only 40,000 crates in the first week of May, and the average for the whole of May was only 244,000. In June, apple imports dropped to 240,000 crates per week, as compared to 780,000 for the same period last year.

It can be concluded from a preliminary legal analysis that these countervailing charges, because of their similarity to a minimum customs value, are inconsistent with the provisions of Article VII of the General Agreement and the Customs Valuation Code. Furthermore, they exceed the EEC's maximum bound tariff (8 per cent) and are therefore incompatible with Article II of the General Agreement.

When the EEC bound its tariffs, it made no reservations nor any mention of applying a system of reference prices. Accordingly, it should be concluded that the system does not apply to GATT CONTRACTING PARTIES and its application alone, regardless of the amounts involved, is therefore inconsistent with Article II of the GATT.

We also consider that it violates Article I, as well as other Articles to which we reserve the right to return in due course.

Article I establishes the principal of non-discrimination, in the most-favoured-nation clause. The countervailing duties applied to Chile are discriminatory for several reasons: they affect only Chile, and they include Chilean exporters who sell above the reference price; in other words all Chilean exporters are penalized, whether they export below or above the reference price. To justify its use of the system, the EEC relies solely on the fact that it has been in force since 1972. This argument has no legal merit, because duration alone cannot give legitimacy to such a system of countervailing duties.

Another reason adduced by the EEC in its attempt to justify the measures is that the current apple production season is exceptional: much higher production than in the past few years, falling prices, excessive stocks and the possible effects of imports in this context.

We understand the difficulties; we too are affected by falling prices. What we fail to understand and cannot accept is that the EEC should address the problem by taking unilateral measures which, in our opinion, are not consistent with the General Agreement. We consider that the surveillance measures and the imposition of countervailing charges linked to reference prices are complementary elements of a system which aims to protect the Community markets in a manner which is not consistent with the agreement entered into by the EEC in the GATT. The aim is even stated in the preamble to Regulation 384/93. It was for this reason that, at the meeting of the Surveillance Body of 10 June, when Chile confirmed its notification concerning the EEC's failure to fulfil the standstill commitments set out in the Ministerial Declaration on the Uruguay Round, it referred to the countervailing charges in question.

Lastly, we wish to point out that Chile has continued to hold bilateral meetings throughout this period through its Mission to the European Community, but unfortunately to no avail. Furthermore, on 24 May last, our Minister of Agriculture sent a letter to the EEC Commissioner for Agriculture, the Minister of Agriculture of Denmark and the President of the EEC Committee on Agriculture and his counterparts in the member countries, requesting that the countervailing charges be suspended by

applying to imports of Chilean apples the exception provided for in Article 25 of Regulation No. 1035/72. A similar request was made at the meeting of the EEC - Chile Joint Committee for Co-Operation of 27 May last. Chile save ample time for the EEC to respond and the deadline set was today.

For the foregoing reasons, Chile submits a request to the Council for formal consultations with the European Communities under Article XXIII:1 and in accordance with the procedures laid down in the CONTRACTING PARTIES' Decision on Improvements to the GATT Dispute Settlement Rules and Procedures of 12 April 1989, particularly those set out in paragraphs 4 and F5, and in other relevant paragraphs. The consultations are to address Commission Regulation (EEC) No. 846/93 of 7 April 1993, and subsequent Regulations, introducing a countervailing charge on apple imports from Chile.

The above Regulations are inconsistent with Articles I, II, VII and XI of the GATT. The EEC has also infringed other provisions of the General Agreement, Decisions or the CONTRACTING PARTIES, codes of conduct and of GATT-based law in general, to which we reserve the right to return. We shall continue to do our utmost to find with the Community a solution which is satisfactory for Chile at the earliest possible date.

ANNEX

Note on the Functioning of the Reference Price

The legal basis of the reference price is Regulation 1035/72 and more specifically Article 22 et seq:

Member States inform the EC Commission daily of market prices. These data enable the Commission to follow the trend of average prices for products imported from third countries on the most representative import markets of the Member States. The prices are grouped together by exporting country. Member States may also record significant prices on other markets for larger quantities not available on the representative markets.

The entry price for a given exporting country to be compared with the reference price is equal to the average of the lowest representative prices recorded for at least 30 per cent of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available. The prices recorded must be net of customs duties and any countervailing charges (this is the cause of the spiral effect).

If the entry price, calculated as explained above, for an imported product remains at least 0.6 ECUs below the reference price for two consecutive market days, a countervailing charge shall be introduced in respect of the exporting country concerned. The charge shall be equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country. The countervailing charge may also be introduced if, for five to seven successive market days the entry prices of a given product from a given exporting country are alternatively above and below the reference price. In this case, a countervailing charge may also be introduced if, during the period, three entry prices fall below the reference price, provided that one of the three is at least 0.6 ECUs below the reference price. The charge shall be equal to the difference between the reference price and the last available entry price which is at least 0.6 ECUs below the reference price.

In order for the countervailing charge to be withdrawn, the entry price must be equal to the reference price plus the countervailing charge. It can also be withdrawn if there have been no prices in respect of the country concerned for six consecutive days. If, for example, prices below the reference price have been recorded for Monday and Tuesday, the Commission will calculate the countervailing charge on Wednesday, there will then be a free day for publication in the Official Journal, and it will be put into effect on Friday. However, if Monday, Tuesday and Wednesday are the three consecutive market days that trigger an alteration in the charge, the Committee's decision will take place on Thursday for entry into force on Friday.

If the countervailing charge is introduced when entry prices are alternatively below and above the reference price for five to seven successive market days, it applies for six days. However it can be withdrawn before the end of that period if prices for three consecutive days indicate that a higher countervailing charge should be fixed.