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EUROPEAN COMMUNITIES - MEASURES AFFECTING
BUTTER PRODUCTS

Request for Consultations by New Zealand

The following communication, dated 24 March 1997, from the Permanent Mission of New Zealand to the Permanent Delegation of the European Commission and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the European Communities (EC) pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 14 of the Agreement on Technical Barriers to Trade (TBT Agreement), Article 6 of the Agreement on Import Licensing Procedures and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) with regard to the recent decisions by the European Commission and the United Kingdom's Customs and Excise Department (HMC&E) that New Zealand butter manufactured by the AMMIX butter-making process and the spreadable butter-making process is not "manufactured directly from milk or cream" and with regard to their related actions excluding such butter from eligibility for New Zealand's country-specific tariff quota (CSTQ) established by the EC's WTO schedule. These decisions are contained, though not necessarily exclusively, in the following documents¹:

- (i) a letter (dated 25 July 1996) from HMC&E to KPMG which attached correspondence between the Director of DG VI of the European Commission and the Director of the European Court of Auditors;
- (ii) a letter (dated 23 January 1997) from Franz Fischler, the European Commissioner for Agriculture, to Dr Lockwood Smith, the New Zealand Minister for International Trade; and
- (iii) a letter (dated 24 January 1997) from Sir Leon Brittan, the Vice-President of the European Commission, to Dr Lockwood Smith, the New Zealand Minister for International Trade.

¹Copies of which are available to any interested WTO Members from the Council Division of the Secretariat.

New Zealand considers that these decisions and related actions by the European Commission and HMC&E nullify or impair benefits accruing to New Zealand under its CSTQ for butter as contained in the EC's WTO schedule (annexed to the Marrakesh Protocol to GATT 1994) and is of the view that they are inconsistent, *inter alia*, with the GATT 1994, the TBT Agreement and the Agreement on Import Licensing Procedures. The provisions of these agreements with which the decisions and related actions would appear to be inconsistent include the following:

- (i) Articles II, III, X and XI of the GATT 1994;
- (ii) Article 2 of the TBT Agreement; and
- (iii) Article 3 of the Agreement on Import Licensing Procedures.

New Zealand also considers that these decisions and related actions nullify or impair benefits accruing to New Zealand directly or indirectly under GATT 1994 within the meaning of Article XXIII:1(b) of GATT 1994.

New Zealand reserves the right to raise additional factual matters and legal claims during the course of consultations.

We look forward to receiving your reply to the present request and to setting a mutually convenient date for the consultations. We would suggest that such consultations could be held some time during the week beginning 21 April 1997.