

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/4959

24 March 1980

Limited Distribution

NORWAY'S ARTICLE XIX ACTION ON CERTAIN TEXTILE PRODUCTS

Report of the Panel

I. Introduction

1. The Panel was established by the Council on 25 July 1979 with the following terms of reference (C/M/134, paragraph 7):

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United Kingdom, acting on behalf of Hong Kong, contained in document L/4815 relating to Norway's Article XIX action on certain textile products, and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2 and to report to the Council."

2. The composition of the Panel was as follows:

Chairman: Mr. R.J. Martin (Canada)

Members: Mr. P.-J. Dass (Trinidad and Tobago)
Mr. J.-D. Gerber (Switzerland)

3. In the course of its work the Panel heard representatives of the United Kingdom acting on behalf of Hong Kong (hereafter referred to as representative of Hong Kong) and Norway. Background documents and relevant information submitted by both parties, their replies to questions put by the Panel as well as relevant GATT documentation served as a basis for the examination of the matter.
4. During the proceedings the Panel encouraged efforts to develop a mutually satisfactory solution between the parties in the matter before it.

II. Factual aspects

5. The Panel based its deliberations principally on the following facts:

- (a) Until the end of 1977, exports from Hong Kong to Norway of most of the textile products covered by Norway's present global quota system were subject to a bilateral restraint agreement concluded under the Arrangement Regarding International Trade in Textiles (MFA). On 7 October 1977 Norway had requested Hong Kong to negotiate a further bilateral agreement for 1978. Consultations to this effect took place on 12 December 1977 but no agreement was reached.
- (b) Effective from 1 January 1978, Norway introduced temporary unilateral control measures on imports of certain textile products from a number of countries including Hong Kong. During the first four months of 1978 Norway, with the aim of acceding to the extended MFA, concluded long-term bilateral arrangements with six textile-supplying developing countries, providing for export restraints on a retroactive basis from 1 January 1978; Hong Kong and Norway held further consultations on 2-3 May 1978 but were unable to determine a level of textile exports acceptable to both sides.
- (c) Hong Kong brought the case to the attention of the Council at its meeting of 17 May 1978 (C/M/125). On 1 June 1978 it formally requested the CONTRACTING PARTIES to initiate the procedures under Article XXIII:2 (L/4671). At its meeting of 6 June 1978 the Council decided that its Chairman should establish a panel if no satisfactory solution was found bilaterally by 30 June 1978 (C/M/126).
- (d) As recommended by the Council, further consultations were held on 28-29 June 1978 but no mutually acceptable solution could be reached. On 20 July 1978 Norway informed the CONTRACTING PARTIES that it had decided to invoke Article XIX and that it was preparing the introduction of global import quotas on nine textile items for 1979 (L/4692). At the Council meeting of 24 July 1978, Hong Kong stated that, as a result of Norway's Article XIX invocation, the legal basis for its complaint had changed and that it might decide to seek consultations with Norway under Article XIX. The Chairman of the Council thereupon stated that he would not take any further steps towards the establishment of a Panel, it remaining open to either party to raise the matter again at a later meeting of the Council (C/M/127).

- (e) Consultations under Article XIX:2 were held between the parties on 6-8 September 1978 during which Hong Kong was informed of the modalities regarding Norway's Article XIX action, including the fact that imports from the EEC and EFTA countries, together with the six developing countries with which Norway had concluded long-term bilateral arrangements, would not be covered by the action. Hong Kong requested that as a substantial supplier of the products concerned it be allocated for 1979, in accordance with the provisions of Article XIII, a share of the global quotas "similar" to the shares which in the opinion of Hong Kong had been allotted to the six countries with which Norway had signed bilateral agreements; for the year 1978, Hong Kong requested compensation for export trade lost. Again, agreement could not be reached.
- (f) On 24 November 1978, Norway notified details of its global quota system for 1979 relating to the nine textile categories in question (L/4692/Add.1). The size of these quotas had been calculated on the basis of average imports in 1974-76 from the countries included in the quotas, i.e. all countries except the six developing countries as well as EEC and EFTA countries. The allocation of the quotas among importers was based on their import shares in 1976-77 from the countries included in the global quota system. Each importer is free to choose from which country (included in the system) he prefers to import.
- (g) As further consultations held on 29-31 May 1979 again did not lead to any results, Hong Kong on 13 July 1979 again took recourse to Article XXIII:2 (L/4815). The Council thereupon, at its meeting of 25 July 1979, established a Panel (C/M/134).
- (h) On 1 October 1979, Norway informed the CONTRACTING PARTIES that the system of global quotas would be extended beyond the end of 1979 by half a year, i.e. 30 June 1980 (L/4692/Add.3). A further extension of the system until the end of 1980 was notified on 22 February 1980 (L/4692/Add.4).

III. Main arguments

Hong Kong

6. Hong Kong considered that the unilateral action taken by Norway on 1 January 1978 constituted a violation of GATT principles because Norway had neither invoked a GATT provision nor the MFA to justify it. In 1978 Norway was at any rate no longer a member of the MFA and even if it had been, the unilateral action could not have been justified under its provisions. Concerning the subsequent invocation of Article XIX, Hong Kong argued that

while it was prepared to assume that Norway had the necessary justification for taking this action, the latter was nevertheless inconsistent with the General Agreement and in particular Article XIII. Norway had excluded from the global quotas not only the EEC and EFTA countries but also the six countries with which it had concluded bilateral agreements. For the first point, while stating that it did not agree with Norway's explanation for the exclusion of the EEC and EFTA countries, Hong Kong believed that the basis of its complaint did not necessitate a finding by the Panel on this point. For the second point, Hong Kong contended that its benefits under the General Agreement had been nullified or impaired as a result of Norway's failure to carry out its obligations under Article XIII. Hong Kong maintained that the six bilateral agreements were neither concluded under the MFA nor under any provision of the General Agreement, and since Article XI prohibits import restrictions, these agreements had no standing under the GATT. The maintenance of these agreements outside Norway's global quotas had adversely affected Hong Kong's interests because the size of the global quotas had as a result been reduced. To make the quotas established under the six agreements consistent with GATT, they must be regarded as part of Norway's Article XIX action and as country shares allotted under Article XIII:2(d). In view of its substantial interest in supplying the products concerned, Hong Kong requested that Norway should either immediately terminate its Article XIX action or make it consistent with Article XIII:2(d) by allotting an appropriate quota to Hong Kong. Hong Kong stressed, however, that in making this request, Hong Kong had no intention of questioning Norway's motive in maintaining the six bilateral agreements with the developing countries nor was Hong Kong asking Norway to suspend those agreements.

7. Hong Kong further stated that it had more than met its obligations vis-à-vis Norway under the MFA. The restraints covered by bilateral agreements entered into by the two parties under the MFA had expanded rapidly in scope so that by 1977, the final year of the original MFA, Hong Kong's last bilateral agreement with Norway covered fifteen broad groups of products representing 73 per cent of Hong Kong's total exports of textiles and clothing to Norway. Furthermore, Hong Kong had accepted, between 1975 and 1977, annual growth rates of only token amounts (one piece) in respect of certain products in which Hong Kong had a significant export interest, and this was done in a situation where Norway's imports of other than "low-price" products, i.e. mainly imports which had been excluded from any action so far taken by Norway, had increased at the rate of 120 per cent from 1973 to 1977, which was not much lower than the rate of increase of "low-price" imports in the same period. Hong Kong contended that its textile exports in 1974-1977 had therefore not been inequitable and unforeseen. At any rate, cut-backs as requested by Norway of a magnitude of 25.5 per cent to 76.9 per cent on existing restraint limits could not be considered "reasonable departures" from the MFA which provided for an annual growth rate of not less than 6 per cent. Under these circumstances it had not been possible to reach an agreement with Norway.

8. Hong Kong finally stated that the latest twelve-month period should be used as a representative base period both for establishing the size of the global quotas and for allocating country shares. In Hong Kong's view, the latest period in which imports of the products in question from Hong Kong into Norway had taken place within a legitimate framework was the year 1977.

9. On this basis, Hong Kong summed up its position that

"(a) Norway's Article XIX action is not consistent with the General Agreement, and in particular Article XIII;

"(b) as a result of Norway's failure to carry out its obligations under Article XIII, Hong Kong's benefits under the General Agreement have been, and continue to be, nullified or impaired;

"(c) the CONTRACTING PARTIES should recommend that the Government of Norway should either immediately terminate its Article XIX action, or immediately make it consistent with the provisions of Article XIII:2(d) by allotting an appropriate quota to Hong Kong."

Norway

10. As to the general background of its import restrictions, Norway stated that total low-priced imports of clothing had gone up from Nkr 225 million in 1973 to Nkr 581 million in 1977, representing an increase of 159 per cent and threatening its "minimum viable production of textiles" (MFA Article 1, paragraph 2). For Hong Kong the corresponding figures were Nkr 93 million and Nkr 307 million, an increase of 230 per cent and an annual growth of 35 per cent; Hong Kong's share of clothing imports had risen from 41.5 per cent in 1973 to 52.9 per cent in 1977. Under these circumstances temporary unilateral import restrictions effective from 1 January 1978 had proved to be necessary in order to limit the injury to Norway's textile industry while pursuing further bilateral consultations.

11. Norway contested the allegation that these restrictions had been illegal. As a member of the MFA and according to the procedures set out in COM.TEX/W/44 of 24 July 1977 which had been accepted by many participants of the MFA, Norway was entitled to take the unilateral measures put into force with effect from 1 January 1978. Norway stated that this was done on the basis of the provisions of the MFA and of the Protocol extending the MFA which gave the possibility of "jointly agreed reasonable departures from particular elements in particular cases.". With the firm intention of acceding to the extended MFA, Norway was at that time still involved in bilateral consultations with a number of textile-supplying countries, aimed

at concluding the necessary agreements allowing such an accession. Many countries were at that time in a similar situation, and the MFA was considered tacitly prolonged for that purpose. Norway did, therefore, not specify the provisions on which its import restrictions were based until it became evident that the possibility of reaching a bilateral solution on the basis of the extended MFA for 1978 with Hong Kong had vanished. Norway had felt that Article XIX should not be invoked before all relevant measures provided under the Protocol extending the MFA had been exhausted. Only after a final attempt to reach a bilateral solution with Hong Kong in June 1978 had failed, did Norway invoke Article XIX.

12. Norway maintained that its Article XIX action was in full conformity with the GATT. Imports from EEC and EFTA countries had been excluded because Norway had entered into agreements with these countries under Article XXIV of the GATT. The six bilateral agreements with the developing countries had been concluded before a decision to invoke Article XIX had been taken; and Norway stated that, on inquiry, all six countries had expressed their firm wish to maintain the agreements. Furthermore a suspension of these agreements would not facilitate Norway's accession to the extended MFA and in addition would not be in conformity with the spirit and objectives of Part IV of the GATT. Against this background Norway stated that the bilateral quotas under these agreements were not to be considered as country shares within the meaning of Article XIII:2(d). If, however, the CONTRACTING PARTIES found that imports from the six countries should be included in the global quota system, Norway would act accordingly and suspend these agreements.

13. On this basis, Norway summed up its position that

- "(a) Norway's Article XIX action is in conformity with the GATT;
- "(b) the global quota system will be terminated as soon as an acceptable bilateral arrangement with Hong Kong based on the provisions of the extended MFA is concluded;
- "(c) Norway will then accede to the Protocol extending the MFA, and will be ready to negotiate MFA-based arrangements with other countries;
- "(d) Norway hopes that the Panel will, in addition to its examination of the Norwegian Article XIX action, encourage and support all efforts to bring about a bilateral arrangement between the two parties concerned based on the provisions of the extended MFA."

IV. Conclusions

14. The Panel based its consideration of the case on Articles XIX and XIII of the GATT:

- (a) The Panel noted that while both parties had advanced extensive data and arguments concerning the history of the case, i.e. especially the situation during 1978 prior to the invocation of Article XIX by Norway, Hong Kong had limited its formal request to a finding on Norway's Article XIX action. The Panel at the same time noted and consequently based its decision on the statements by Hong Kong that the latter was prepared to assume that Norway had the necessary justification for taking this action and that a finding concerning the exclusion from the quotas of the EEC and EFTA countries was not necessary.
- (b) The Panel was of the view that the type of action chosen by Norway, i.e. the quantitative restrictions limiting the importation of the nine textile categories in question, as the form of emergency action under Article XIX was subject to the provisions of Article XIII which provides for non-discriminatory administration of quantitative restrictions. In this connexion, the Panel noted the introductory part of paragraph 2 which stipulates that in applying an import restriction on a product, a contracting party "shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions ...". To this end, paragraph 2(a) of Article XIII further prescribes that wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed.

15. In the case before the Panel, Norway had in early 1978 concluded long-term bilateral arrangements with six textile-supplying countries. The Panel noted that Norway had concluded these agreements with the intention of acceding to the MFA and notifying the agreements to the TSB pursuant to the appropriate Article of the MFA. The Panel noted also, however, that in the event Norway had not acceded to the MFA and that for these arrangements no derogation or provision of Parts I-III of GATT had ever been invoked by Norway. While noting that provision for some developing exporting countries of assured increase in access to Norway's textile and clothing markets might be consistent for those countries with the spirit and objectives of Part IV of the GATT, this cannot be cited as justification for actions which would be inconsistent with a country's obligations under Part II of the GATT. The Panel held that Norway's reservation of market shares for these six countries

therefore represented a partial allocation of quotas under an existing régime of import restrictions of the products in question and that Norway must therefore be considered to have acted under Article XIII:2(d). The Panel noted that had the reservation of market shares for the six countries been entered into pursuant to Article XIII:2(d), Norway could have been presumed to have acted under the first sentence of that provision.

16. Since Hong Kong has a substantial interest in supplying eight of the nine product categories in question to the Norwegian market, it had the right to expect the allocation of a share of the quotas in accordance with Article XIII:2(d). The Panel was of the view that to the extent that Norway had acted with effect to allocate import quotas for these products to six countries but had failed to allocate a share to Hong Kong, its Article XIX action was not consistent with Article XIII.

17. In accordance with established GATT practice (see BISD 11 S.100), the Panel held that where a measure had been taken which was judged to be inconsistent with the provisions of the General Agreement, this measure would prima facie constitute a case of nullification or impairment of benefits which other contracting parties were entitled to expect under the General Agreement.

18. On the basis of the conclusions reached above, the Panel finds that Norway should immediately either terminate its action taken under Article XIX or make it consistent with the provisions of Article XIII.

19. The Panel expresses the hope that in the light of this report the parties will be able to arrive at a mutually acceptable agreement.