

Original: English

CANADA/EUROPEAN COMMUNITIES - ARTICLE XXVIII RIGHTS

Recourse to Arbitration

The following joint notification, dated 16 July 1990, has been received from the Permanent Delegations of Canada and of the Commission of the European Communities.

Canada and the European Communities have agreed to have recourse to the arbitration procedure as provided by the Mid-Term agreement on Dispute Settlement (Decision by the CONTRACTING PARTIES of 12 April 1989, document L/6489) on the basis of the following terms of reference:

Canada and the European Communities reached agreement in Article XXIV:6 negotiations on 29 March 1962 (BISD Supplement No. 11, 1963, pages 7 and following). On the same date, the parties concluded two separate agreements:

- (1) an Agreement with respect to Quality Wheat; and
- (2) an Agreement with respect to Ordinary Wheat.

In 1984, by verbal note, the European Communities stressed that "les droits de négociation du Canada concernant le blé de qualité résultant de l'Accord de 1962 (...) restent valables au delà du 31 décembre 1984".

More recently, in the 1988-1990 period, both parties were unable to reach agreement as to the interpretation of Canada's rights and this has inhibited the negotiation of a mutually satisfactory settlement.

Canada and the European Communities hereby request that the following question be examined by an expert (arbitrator) to be nominated by common agreement of the parties:

"Does Canada maintain, through the bilateral agreement of 29 March 1962 with respect to quality wheat (hereby annexed), all the negotiating rights provided for in Article XXVIII?

What kind of rights under the General Agreement does Canada maintain through the bilateral agreement of 29 March 1962 on ordinary wheat (hereby annexed)?"

Canada and the European Communities will transmit all relevant information to the arbitrator. Both parties agree that they may provide to the arbitrator any material related to this issue. The parties shall meet with the arbitrator once, and additionally as the arbitrator might require. The parties agree to abide by the arbitration award.

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At the request of Canada and the European Communities, Mr. Gardner Patterson, former Deputy Director-General of GATT, has agreed to act as an arbitrator in this matter.

AGREEMENT WITH RESPECT TO QUALITY WHEAT

Agreement entered into with respect to quality wheat (Common External Tariff Item Number ex 10.01) between the European Economic Community (hereinafter called the Community), the Member States of the European Economic Community (hereinafter called the Member States) and the non-European Economic Community countries signatory to this agreement (hereinafter called the Third Countries).

Considering that the national wheat tariffs of the Member States will be unbound and that the Common Tariff for wheat is not being bound, the Community and the Member States subscribe to the following obligations:

- A. Until the putting into operation of the Common Agricultural Policy on wheat (application of a levy or levies to imports):
- (i) The national wheat tariffs of Member States as bound on 1 September 1960 shall not be increased.
  - (ii) No new system or measures to restrict or regulate imports shall be introduced and in continuing existing measures within national systems the Member States shall endeavour to avoid any adverse change in the level of imports.
- B. From the date of the decision of the Community to introduce the common policy for wheat until completion of negotiations with the Third Countries:
- (i) Negotiations shall commence as soon as the EEC Council of Ministers has decided to introduce the common policy for wheat and at the latest by 30 June 1963.
  - (ii) The Community undertakes to enter into negotiations on the subject of the consequences on imports from Third Countries of the common agricultural policy to be applied. It does not exclude negotiation on the maximum level of the levy or levies. This negotiation shall take into account the importance of international trade in wheat and shall be such as to provide for the evolution of this trade with the Community under fair and reasonable conditions.
  - (iii) The negotiations shall deal with quality wheat.
  - (iv) The negotiations shall be in accordance with the procedures of Article XXVIII of the GATT. In these negotiations the Third Countries shall have all the contractual rights held by them on quality wheat on 1 September 1960.

- (v) Consultations shall take place if imports from non-EEC Contracting Parties show any appreciable decline in any period below the average of the corresponding period of the last three years. If the decline is related to the implementation of the common policy for wheat the Community and the Member States will take appropriate measures to remedy the decline.

General Understandings

- (i) While this agreement is in force, the Community and the Member States undertake to consult at any time with the Third Countries regarding its operations.
- (ii) The Third Countries do not in any way limit their rights under GATT, or otherwise, to press for the removal or adjustment of systems or practices of the Member States which have the effect of limiting the possible purchase or importation of wheat from such Third Countries.

Done at Geneva this twenty-ninth day of March 1962, in the English and French languages, both authentic.

AGREEMENT WITH RESPECT TO ORDINARY WHEAT

Agreement entered into with respect to ordinary wheat (ex 10.01 of the Common External Tariff).

Canada, the European Economic Community and its Member States agree as follows:

- A. Until the putting into operation of the Common Agricultural Policy for ordinary wheat (application of the levy or levies), the Member States undertake not to modify their national import systems in such a way as to make them more restrictive.
- B. Upon adoption of the agricultural policy for ordinary wheat, the Community undertakes to enter into negotiations with Canada on the situation of exports of these products by Canada.

The negotiations provided for under this paragraph will take place on the basis of the negotiating rights which Canada held under the General Agreement for these products as of 1 September 1960.

- C. The parties signatory to this agreement in no way limit their rights under GATT or on any other basis.

Done at Geneva this twenty-ninth day of March 1962, in the English and French languages, both authentic.