

**EUROPEAN COMMUNITIES - MEASURES AFFECTING
BUTTER PRODUCTS**

Report of the Panel

The report of the Panel on European Communities – Measures Affecting Butter Products is being circulated to all Members, pursuant to the DSU. The report is being circulated as an unrestricted document from 24 November 1999 pursuant to the Procedures for the Circulation and Derestriction of WTO Documents (WT/L/160/Rev.1).

1. On 24 March 1997, New Zealand requested consultations with the European Communities¹ pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "DSU"), Article 14 of the Agreement on Technical Barriers to Trade (hereinafter the "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) regarding some interpretations by the Commission of the European Communities (hereinafter the "EC Commission") and by the United Kingdom's Customs and Excise Department (hereinafter "HMC&E") to the effect that New Zealand butter manufactured by the Ammix butter-making process and the Spreadable butter-making process does not qualify for entry under the country-specific tariff quota for butter established for New Zealand in the European Communities' WTO Schedule of Concessions,² because butter manufactured by those processes is not "manufactured directly from milk or cream" as required by the terms of the tariff quota.

2. The EC Schedule of Concessions LXXX, which establishes a country-specific tariff quota for butter of New Zealand origin, provides as follows³:

Description of product	Tariff Item number (s)	Initial quota quantity and in-quota tariff rate	Final quota quantity and in-quota tariff rate	Implementation period from/to 1	Initial negotiating right 2	Other terms and conditions
Butter	ex 0405 00	76.667 t 86.88 ECU/100 kg	76.667 t 86.88 ECU/100 kg			Butter of New Zealand origin - at least 6 weeks old - with a fat content of not less than 80% but less than 82% by weight - manufactured directly from milk or cream Qualification for the quota is subject to conditions laid down in the relevant Community provisions.

¹ Throughout this report, the European Communities as a party to this case will be referred to as the "European Communities" (EC), as it appears in Article IX, paragraph 1 of the Marrakesh Agreement Establishing the World Trade Organization.

² The documents expressly referred to by New Zealand in its request consultations (WT/DS72/1) and in its request for the establishment of a panel (WT/DS72/2) were the following:

- (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 a Director at the European Court of Auditors;
- (ii) a letter (dated 23 January 1997) from Dr. 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, Vice-President of the European Commission, to Dr. Lockwood Smith, the New Zealand Minister for International Trade.

³ See WT/DS72/1.

3. Consultations were held between New Zealand and the European Communities on 29 April 1997, but did not lead to a resolution of the dispute.

4. As a result, in a communication dated 6 November 1997 (see WT/DS72/2), New Zealand requested the establishment of a panel. New Zealand considered that the EC decisions that New Zealand butter manufactured by the Ammix butter-making process and the Spreadable butter-making process was not eligible for New Zealand's country-specific tariff quota for butter as contained in the EC's WTO Schedule of Concessions annexed to the Marrakesh Protocol to GATT 1994 and the EC's related actions nullified or impaired benefits accruing to New Zealand, within the meaning of Article XXIII:1(a) of the GATT 1994, as a result of the EC failure to carry out its obligations under the following provisions:

- (a) Article II:1(b) of GATT 1994;
- (b) Article X:1 of GATT 1994;
- (c) Article XI:1 of GATT 1994;
- (d) Article 2, paragraphs 2, 9, 11 and 12 of the TBT Agreement; and
- (e) Article 3, paragraph 3 of the Agreement on Import Licensing Procedures.

5. New Zealand also considered that these decisions and related actions had otherwise nullified or impaired benefits accruing to New Zealand directly or indirectly under the Marrakesh Agreement Establishing the World Trade Organization pursuant to Article XXIII:1(b) of GATT 1994.

6. The Dispute Settlement Body (DSB), at its meeting of 18 November 1997, established a panel with the standard terms of reference as follows:

"To examine, in the light of the relevant provisions of the covered agreements cited by New Zealand in document WT/DS72/2, the matter referred to the DSB by New Zealand in that document and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements".

The United States reserved its right as a third party in the dispute, but did not participate in the Panel's proceedings.

7. The parties to the dispute agreed on 13 January 1998 to the following composition of the Panel⁴:

Chairman:	Mr. Attie Swart
Members:	Mr. Robert Hudec
	Ms. Claudia Orozco Jaramillo

8. On 18 February 1998, New Zealand requested a six-week suspension of the work of the Panel pursuant to Article 12.12 of the DSU following the outcome of the proceedings initiated by the New Zealand Dairy Board (NZDB)'s subsidiaries in the United Kingdom before the UK VAT & Duties Tribunal, in order to explore whether it would be possible to reach a mutually agreed solution

⁴ See WT/DS72/3.

with the EC on the basis of the Tribunal's decision. The Panel agreed to the suspension on 19 February 1998⁵. The Panel resumed its work on 30 March 1998.

9. The Panel met with the parties on 10 June 1998 and 15 July 1998.

10. On 2 September 1998, the Chairman of the Panel informed the DSB, under Article 12.9 of the DSU, that the Panel would not be able to issue its report within six months of the agreement on the composition and terms of reference of the Panel (Article 12.8 of the DSU). The reasons for the delay are set out in WT/DS72/5.

11. The Panel submitted its interim report to the parties on 7 December 1998. It submitted its final report to the parties on 23 December 1998.

12. On 24 February 1999, New Zealand requested the Panel to suspend its work in accordance with Article 12.12 of the DSU until 25 March 1999 (WT/DS72/6). On 24 March, New Zealand requested an extension of the suspension until 1 April 1999 (WT/DS72/6/Add.1). On 31 March, New Zealand requested an additional extension until 12 May 1999 (WT/DS72/6/Add.2). On 12 May, New Zealand requested an additional extension until 14 July 1999 (WT/DS72/6/Add.3). On 14 July, New Zealand requested an additional extension until 7 October 1999 (WT/DS72/6/Add.4). On 5 October, New Zealand requested an additional extension until 24 November (WT/DS72/6/Add.5).

13. On 11 November 1999, pursuant to Article 3.6 of the DSU, the parties notified the DSB and the relevant councils and Committees that they had reached a mutually agreed solution, which was circulated as document WT/DS72/7 on 18 November 1999.

14. The Panel takes note of the mutually agreed solution between the parties to the dispute and of the provisions of Article 12.7 of the DSU which provides that "Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached." Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.

⁵ See WT/DS72/4.