

Original: English

EUROPEAN COMMUNITIES - MEASURES AFFECTING  
BUTTER PRODUCTS

Request for the Establishment of a Panel by New Zealand

The following communication, dated 6 November 1997, from the Permanent Mission of New Zealand to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have asked me to submit the following request on behalf of New Zealand for consideration at the next meeting of the Dispute Settlement Body.

The Commission of the European Communities (EC) has decided 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, pursuant to this decision, has excluded such butter from eligibility for New Zealand's country-specific tariff quota (CSTQ) established by the EC's WTO Schedule (annexed to General Agreement on Tariff and Trade 1994 (the GATT 1994)). These decisions, and related actions, were contained, though not necessarily exclusively, in the following documents:

- (i) a letter (dated 25 July 1996) from the United Kingdom's Customs and Excise Department (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, the Vice-President of the European Commission, to Dr. Lockwood Smith, the New Zealand Minister for International Trade.

New Zealand considers that, by reason of the EC decisions that New Zealand butter manufactured by the Ammix butter-making process and the spreadable butter-making process is not eligible for New Zealand's CSTQ and its related actions, the EC has nullified or impaired benefits accruing to New Zealand, within the meaning of Article XXIII:1(a) of the GATT 1994, as a result of its failure to carry out its obligations under the following provisions:

- (i) Article II:1(b) of the GATT 1994;
- (ii) Article X:1 of the GATT 1994;

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- (iii) Article XI:1 of the GATT 1994;
- (iv) Article 2, paragraphs 2, 9, 11 and 12 of the Agreement on Technical Barriers to Trade (the TBT Agreement); and
- (v) Article 3, paragraph 3 of the Agreement on Import Licensing Procedures (the ILP Agreement).

New Zealand also considers that these decisions and related actions have 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 the GATT 1994.

In a communication dated 3 April 1997 (WT/DS72/1), the Government of New Zealand requested consultations with the EC pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 14 of the TBT Agreement, Article 6 of the ILP Agreement and Article XXII:1 of the GATT 1994 with regard to the decisions by the EC 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 its related actions in excluding such butter from eligibility for New Zealand's CSTQ established by the EC's WTO Schedule. Consultations were held on 29 April 1997, but did not result in a resolution of the dispute.

Accordingly, New Zealand requests the establishment of a panel pursuant to Article 6 of the DSU, Article 14 of the TBT Agreement, Article 6 of the ILP Agreement and Article XXIII:2 of the GATT 1994 to examine the decisions and subsequent actions taken by the EC, with the standard terms of reference as set out in Article 7 of the DSU.

As indicated above, New Zealand asks that this request for the establishment of a panel be considered at the next meeting of the Dispute Settlement Body.