

# **GATT disputes: 1948-1995**

## **Volume 2: Dispute settlement procedures**



What is the purpose of this publication?

To mark the 70<sup>th</sup> anniversary of the General Agreement on Tariffs and Trade (GATT), this publication provides verified and factual information on 316 disputes brought by contracting parties to the GATT from 1948 to 1995, when the GATT was superseded by the World Trade Organization.

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What procedures governed GATT disputes?

The procedures to settle GATT disputes originally had as their basis two provisions of the GATT 1947: Articles XXII and XXIII. In their continued attempt to resolve emerging trade disputes, GATT contracting parties adapted these procedures to evolving needs and circumstances. Accordingly, an evolving set of rules and practices emerged over the almost 50 years of the provisional application of the GATT 1947, including the dedicated dispute settlement provisions of the Tokyo Round plurilateral codes. The present volume brings together, for the first time, all relevant publicly available texts containing procedures governing GATT dispute settlement, as well as a selection of other key documents of historical relevance and interest.

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Find out more and contact the authors

GATT disputes webpage on the WTO website: [www.wto.org/GATTdisputes](http://www.wto.org/GATTdisputes)  
e-mail address: [GATTdisputes@wto.org](mailto:GATTdisputes@wto.org)



# Contents

## 1. Relevant provisions of the GATT 1947

1.a Original GATT Article XXII .....	9
1.b GATT Article XXII, as amended on 7 October 1957 .....	9
1.c Original GATT Article XXIII .....	10
1.d GATT Article XXIII, as amended on 7 October 1957 .....	11

## 2. Procedures relating to disputes under the GATT 1947

2.a Panel on Complaints (terms of reference and procedures) .....	15
2.b Decision of 24 October 1953, Waiver granted to the United Kingdom .....	18
2.c Considerations Concerning Extended Use of Panels. Note by the Executive Secretary .....	23
2.d Procedures under Article XXII on Questions Affecting the Interests of a Number of Contracting Parties. Procedures adopted on 10 November 1958 .....	27
2.e Procedures under Article XXIII. Decision of 5 April 1966 .....	28
2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, adopted on 28 November 1979 .....	31
2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982...	41
2.h Dispute Settlement Procedures. Action taken on 30 November 1984 .....	57
2.i Derestriction of Future Panel Reports. Decision by the Council of 4 May 1988 .....	59
2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988 .....	60
2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of 12 April 1989 .....	69
2.l Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision .....	77
2.m April 1989 Decision on Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of 22 February 1994 .....	209
2.n Third Party Participation in Panels. Statement by the Chairman of the Council on 21 June 1994 .....	210

**3. Tokyo Round plurilateral agreements – provisions and procedures**

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3.a	1973 Arrangement regarding International Trade in Textiles, relevant provisions .....	<b>213</b>
3.b	1979 Agreement on Technical Barriers to Trade, relevant provisions.....	<b>219</b>
3.c	1979 Agreement on Government Procurement, relevant provisions.....	<b>226</b>
3.d	1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions .....	<b>232</b>
3.e	1979 Arrangement regarding Bovine Meat, relevant provisions .....	<b>242</b>
3.f	1979 International Dairy Arrangement, relevant provisions .....	<b>247</b>
3.g	1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, relevant provisions .....	<b>253</b>
3.h	1979 Agreement on Import Licensing Procedures, relevant provisions.....	<b>260</b>
3.i	1979 Agreement on Trade in Civil Aircraft, relevant provisions .....	<b>263</b>
3.j	1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, relevant provisions .....	<b>267</b>

**4. Documents of interest**

---

4.a	Import Restrictions. Procedures for Dealing with New Import Restrictions Applied for Balance of Payments Reasons and Residual Import Restrictions. Approved on 16 November 1960.....	<b>275</b>
4.b	Restrictive Business Practices. Arrangements for Consultations. Decision of 18 November 1960 .....	<b>278</b>
4.c	Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat.....	<b>281</b>
4.d	Notification and Surveillance. Proposal by the Director-General. Document C/111 of 14 March 1980.....	<b>309</b>
4.e	Uniform Interpretation and Effective Application of the Agreement. Report by the Chairman.....	<b>332</b>
4.f	Uniform Interpretation and Effective Application of the Agreement. Statement by the Chairman at the Meeting of 5 December 1984.....	<b>339</b>
4.g	Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement.....	<b>342</b>

## 5. Historical documents of disputes

5.a Working Party 7 on the Cuban Schedule, membership and terms of reference .....	381
5.b Working Party 7 on Brazilian Internal Taxes, membership and terms of reference.....	382
5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 .....	383
5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950.....	389
5.e Working Party 8 on Netherlands Action under Article XXIII:2, membership and terms of reference .....	393
5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958.....	394
5.g French Exports of Wheat and Flour, appointment of the Panel. Summary Record of the Eighth Meeting of the CONTRACTING PARTIES held on 23 October 1958.....	402
5.h Turkey - EEC Customs Union, terms of reference and membership of the Working Party. Summary Record of the Eleventh Meeting of the CONTRACTING PARTIES held on 25 March 1965 .....	403
5.i Working Party on United States Tobacco Subsidy, membership and terms of reference.....	405
5.j Greece – Preferential Tariff Quotas to the USSR, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 15 July 1970.....	406
5.k Canadian Import Quotas on Eggs, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 25 September 1975.....	408
5.l United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977 .....	411

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Despite the attempt to be complete and comprehensive, nothing in this publication should be interpreted as a definitive or authoritative account of the disputes that took place under the GATT 1947. Suggestions to improve the accuracy and completeness of this publication should be addressed to [GATTdisputes@wto.org](mailto:GATTdisputes@wto.org).



# GATT disputes: 1948-1995

## Volume 2: Dispute settlement procedures

### Introduction

Provisional application of the General Agreement on Tariffs and Trade (GATT 1947) began 70 years ago, in 1948, and the same year the first GATT dispute was initiated. In total, 316 disputes were brought under the GATT 1947 and related agreements in its almost 50 years of provisional application.

The procedures to resolve these disputes had as their basis two provisions of the GATT 1947: Articles XXII and XXIII, which were gradually complemented by an evolving set of rules and practices. In their continued attempt to resolve emerging trade disputes, GATT contracting parties adapted these procedures to evolving needs and circumstances. The experience gained in GATT dispute settlement directly informed the negotiations leading to the Dispute Settlement Understanding (DSU) of the WTO.

This second volume of the *GATT Disputes: 1948-1995* publication seeks to facilitate access to the primary sources of GATT dispute settlement procedures. It brings together, for the first time, all the relevant publicly available texts containing procedures governing GATT dispute settlement, as well as a selection of other key documents.

The volume is divided into five sections:

1. the text of Articles XXII and XXIII of the GATT 1947, as provisionally applied from 1 January 1948, and as amended on 7 October 1957;

2. the procedures related to disputes under the GATT 1947, contained in documents reflecting GATT decisions, actions and practices;
3. the dispute settlement provisions of the plurilateral agreements resulting from the Tokyo Round of Multilateral Trade Negotiations (1973-1979);
4. documents of interest concerning GATT dispute settlement procedures, such as analytical notes and descriptions prepared by the GATT Secretariat; and
5. a selection of historical documents on the composition of working parties and panels in GATT disputes.

One-stop information on these procedures may provide a better understanding of the background and outcomes of GATT disputes, some of which have continued relevance in the WTO context. The evolution of GATT procedures, including the different approaches tested over the years, may provide useful background to understanding the DSU, which is the cornerstone of the WTO dispute settlement system.

This volume complements the Overview and one-page case summaries contained in Volume 1 of the *GATT Disputes: 1948-1995* publication.



# 1

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## **Relevant provisions of the GATT 1947**





**1.a Original GATT Article XXII**

**Article XXII**

*Consultation*

Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other contracting party with respect to the operation of customs regulations and formalities, anti-dumping and countervailing duties, quantitative and exchange regulations, subsidies, state-trading operations, sanitary laws and regulations, for the protection of human, animal or plant life or health, and generally all matters affecting the operation of this Agreement.

Source: BISD I(unrevised)/50 and 55 UNTS 194, at p. 266.

**1.b GATT Article XXII, as amended on 7 October 1957**

**Article XXII**

*Consultation*

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

Source: BISD III/44 (also available in BISD IV/39) and 278 UNTS 168, at p. 200.

Note: As introduced by the Protocol Amending the Preamble and Parts II and III of the General Agreement on Tariffs and Trade, done at Geneva on 10 March 1955.

## 1.c Original GATT Article XXIII

## GENERAL AGREEMENT: ARTICLE XXIII

51

**Article XXIII***Nullification or Impairment*

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of (a) the failure of another contracting party to carry out its obligations under this Agreement, or (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or (c) the existence of any other situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1 (c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such obligations or concessions under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any obligation or concession is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to advise the Secretary-General of the United Nations in writing of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of such withdrawal is received by him.

## 1.d GATT Article XXIII, as amended on 7 October 1957

**Article XXIII***Nullification or Impairment*

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of (a) the failure of another contracting party to carry out its obligations under this Agreement, or (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or (c) the existence of any other situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1 (c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultation necessary.

If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken to give written notice to the Executive Secretary to the CONTRACTING PARTIES of its

**1.d GATT Article XXIII, as amended on 7 October 1957** (*continued*)

intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

Source: BISD III/45 (also available in BISD IV/39) and 278 UNTS 168, at p. 200.

Note: As introduced by the Protocol Amending the Preamble and Parts II and III of the General Agreement on Tariffs and Trade, done at Geneva on 10 March 1955.



# 2

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## **Procedures relating to disputes under the GATT 1947**



2.a Panel on Complaints (terms of reference and procedures)

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

W.7/20

14 October 1952

Special Distribution

PANEL ON COMPLAINTS

Chairman: Mr. C.M. Isbister (Canada)

Members: The representatives of Australia,  
Canada, Ceylon, Cuba, Finland,  
Netherlands.

Terms of Reference:

To consider, in consultation with representatives of the countries directly concerned and of other interested countries, complaints referred to the CONTRACTING PARTIES under Article XXIII, and such other complaints as the CONTRACTING PARTIES may expressly refer to the Panel, and to submit findings and recommendations to the CONTRACTING PARTIES.

Procedure:

This Panel should invite the parties directly concerned to present their respective cases and afford them the opportunity to discuss with the Panel the various points arising therefrom. The Panel should also hear the representatives of other contracting parties which have an interest in any matter under discussion.

The Panel should then consider the information and arguments laid before them and embody their findings and recommendations in a draft report. The Panel should communicate the draft report to representatives of the contracting parties directly concerned, and of other interested contracting parties, and should afford an opportunity for discussion of the draft report.

The Panel should then establish its final report for submission to the CONTRACTING PARTIES.

2.a Panel on Complaints (terms of reference and procedures) *(continued)*

**GENERAL AGREEMENT ON  
TARIFFS AND TRADE**

RESTRICTED

W.9/5

5 November 1954

Special Distribution

CONTRACTING PARTIES  
Ninth Session

PANEL ON COMPLAINTS

Chairman: Mr. L.K. Jha

Members:	Mr. J. Alvaro Muñoz	Mr. S. Salvador Ortiz
	Mr. C.E.P. Jayasuriya	Mr. Gunnar Seidenfaden
	Mr. J.P.D. Johnsen	Mr. G.J.J.F. Steyn

The terms of reference and procedures for panels on complaints were established at the Seventh Session (W.7/20) as follows:

Terms of Reference:

To consider, in consultation with representatives of the countries directly concerned and of other interested countries, complaints referred to the CONTRACTING PARTIES under Article XXIII, and such other complaints as the CONTRACTING PARTIES may expressly refer to the Panel, and to submit findings and recommendations to the CONTRACTING PARTIES.

Procedure:

This Panel should invite the parties directly concerned to present their respective cases and afford them the opportunity to discuss with the Panel the various points arising therefrom. The Panel should also hear the representatives of other contracting parties which have an interest in any matter under discussion.

The Panel should then consider the information and arguments laid before them and embody their findings and recommendations in a draft report. The Panel should communicate the draft report to representatives of the contracting parties directly concerned, and of other interested contracting parties, and should afford an opportunity for discussion of the draft report.

The Panel should then establish its final report for submission to the CONTRACTING PARTIES.



2.a Panel on Complaints (terms of reference and procedures) *(continued)*

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

W.9/5/Rev.1

20 January 1955

Special Distribution

CONTRACTING PARTIES  
Ninth Session

PANEL ON COMPLAINTS

Chairman: Mr. L.K. Jha

Membership: Mr. J. Alvaro Munoz	Mr. G.A. Rattigan
Mr. R.C.S. Koelmeyer	Mr. Gunnar Seidenfaden
Dr. H.E. Priester	Mr. G.J.J.F. Steyn

The terms of reference and procedures for panels on complaints were established at the Seventh Session (W.7/20) as follows:

Terms of Reference

To consider, in consultation with representatives of the countries directly concerned and of other interested countries, complaints referred to the CONTRACTING PARTIES under Article XXIII, and such other complaints as the CONTRACTING PARTIES may expressly refer to the Panel, and to submit findings and recommendations to the CONTRACTING PARTIES.

Procedure

This Panel should invite the parties directly concerned to present their respective cases and afford them the opportunity to discuss with the Panel the various points arising therefrom. The Panel should also hear the representatives of other contracting parties which have an interest in any matter under discussion.

The Panel should then consider the information and arguments laid before them and embody their findings and recommendations in a draft report. The Panel should communicate the draft report to representatives of the contracting parties directly concerned, and of other interested contracting parties, and should afford an opportunity for discussion of the draft report.

The Panel should then establish its final report for submission to the CONTRACTING PARTIES.

## 2.b Decision of 24 October 1953. Waiver granted to the United Kingdom

20

DECISIONS, RESOLUTIONS, ETC.

WAIVER TO THE UNITED KINGDOM IN CONNECTION  
WITH ITEMS  
TRADITIONALLY ADMITTED FREE OF DUTY FROM  
COUNTRIES OF THE COMMONWEALTH*Decision of 24 October 1953*

*Having received* from the Government of the United Kingdom of Great Britain and Northern Ireland a request for facilities, consistent with the objectives of the General Agreement, to relieve them of the requirements prescribed in paragraph 4 (b) of Article I of the Agreement as regards maximum margins of preference when they have occasion hereafter to impose or increase a most-favoured-nation rate of protective duty in respect of any class or description of goods, which has traditionally been admissible free of protective duty when imported into the United Kingdom from the territories listed in Annex A to the General Agreement,

*Apprehending* that the establishment or increase of a margin of preference incidental to the imposition or increase of a most-favoured-nation rate of protective duty in respect of a class or description of goods might have the effect of increasing imports into the United Kingdom of such goods from the territories listed in Annex A at the expense of imports of such goods from other sources so as to constitute a substantial diversion of trade; and that such diversion would be contrary to the objectives of Article I and would therefore constitute a nullification or impairment of benefits due to accrue to other contracting parties under that Article,

*Considering*, however, the explanations given by the Government of the United Kingdom regarding the circumstances which prevent them from resolving their difficulties by a general modification of existing tariff legislation to enable them to impose protective duties on products imported into the United Kingdom from the territories listed in Annex A,

*Taking note*, moreover, of the assurance of the Government of the United Kingdom that it is not their intention to use the aforesaid facilities in order to increase the advantage enjoyed in the United Kingdom market by products imported from the territories listed in Annex A over products imported from other sources, and of the declaration of the Government of the United Kingdom that they remain desirous of contributing to the objectives of the General Agreement through arrangements directed to the reduction of trade

2.b Decision of 24 October 1953. Waiver granted to the United Kingdom (*continued*)

## ARTICLE I

21

barriers including tariffs and that the grant of the facilities sought by them will not affect their continued readiness to participate in action by the CONTRACTING PARTIES to secure further reduction of tariffs,

*Noting*, furthermore, the assurances given by the Government of the United Kingdom with regard to the procedures for consultation to be followed before using the aforesaid facilities, as approved concurrently with, and as an integral part of, the present decision, and their agreement to make annual reports to the CONTRACTING PARTIES of all action taken by them in the use of these facilities,

The CONTRACTING PARTIES, pursuant to paragraph 5 (a) of Article XXV of the General Agreement, and in consideration of the assurances recorded above,

*Decide* that the provisions of paragraph 4 (b) of Article I shall not be so applied that, when the Government of the United Kingdom impose or increase a most-favoured-nation rate of protective duty in respect of a given class or description of goods for which they have not as of this date negotiated tariff concessions, they shall be required to impose a duty on goods of that class or description when imported from any of the territories listed in Annex A to the General Agreement; provided that the incidental establishment or increase of a margin of preference is not likely to lead to a substantial increase of imports of goods of that class or description from the aforesaid territories at the expense of imports from other sources; and provided further that protective duty has at no time since 1 January 1939 been chargeable in respect of that class or description of goods when imported into the United Kingdom from the aforesaid territories; and

*Declare* that, in deciding as aforesaid, it is not their intention to impede the attainment of the objectives of Article I of the General Agreement and that in no circumstances shall the present Decision be construed as impairing the principles of that Article.

## PROCEDURES

(a) The United Kingdom, before taking action under the waiver, will simultaneously, in strict confidence, notify (i) contracting parties which appear to the United Kingdom likely to have a substantial interest in the trade in the item in question, and (ii) the GATT secretariat of their desire to act under the waiver in respect of that item. The United Kingdom will give figures for past trade in the product and, in the case of seasonal duties, will state the period in which it has been decided that the increased duty should operate. The GATT secretariat will immediately pass this information to all contracting parties, so that any contracting party not directly approached by the United Kingdom which might claim a substantial interest in the trade in the item may know what is proposed.

(b) The United Kingdom will enter into consultations with any contracting party which requests consultation within 30 days of notification under (a) on the grounds both (i) that it has a substantial interest in the trade in an item and (ii) that

2.b Decision of 24 October 1953. Waiver granted to the United Kingdom (*continued*)

the increase in the margin of preference incidental to an increase in the most-favoured-nation rate of duty would involve likelihood of substantial diversion of trade in that item from the aforesaid contracting party to suppliers within the preferential area as defined in Annex A. In the absence of any such request for consultation, the waiver shall apply after the expiry of thirty days from the date of notification under (a).

(c) Consultations under (b) shall, if the United Kingdom or one or more of the countries with which it is consulting so requests, take place at meetings organized and serviced by the GATT secretariat.

(d) In the event that a contracting party requests consultations on grounds which do not appear to the United Kingdom to satisfy the terms of (b) above, it shall be open to the United Kingdom to seek a speedy determination on the matter from the CONTRACTING PARTIES, through appropriate intersessional machinery if the case arises while the CONTRACTING PARTIES are not in session.

(e) If the United Kingdom enters into consultation under paragraph (b) above with any contracting party, or if the CONTRACTING PARTIES determine under paragraph (d) above that the grounds on which consultation is requested by any contracting party satisfy the terms of paragraph (b) above, the United Kingdom will inform, in strict confidence, such contracting party of the proposed rate of duty.

(f) If in consultation in accordance with paragraph (b) above it is agreed that there is no likelihood of substantial diversion of trade in the sense defined in that paragraph, the waiver shall apply.

(g) Failing such agreement, it shall be open to the United Kingdom to seek arbitration by the CONTRACTING PARTIES (through appropriate intersessional machinery if the matter should arise while the CONTRACTING PARTIES are not in session) as to the likelihood of substantial diversion.

(h) The CONTRACTING PARTIES or the appropriate intersessional body may reach one of the following three decisions:

- (i) that there is no likelihood of substantial diversion,
- (ii) that there is likelihood of substantial diversion, or
- (iii) that the evidence is not sufficient for them to determine whether or not there is likelihood of substantial diversion.

In case (i) the waiver shall apply. In case (ii) the waiver shall not apply. In case (iii) the waiver shall apply conditionally; that is to say, the waiver shall apply, but if the CONTRACTING PARTIES should determine, upon the representation of a contracting party affected, after a reasonable period of time (and not less than one year), that the increase in the margin of preference had in fact led to a substantial diversion of trade, the waiver shall cease to apply.

(i) It is recognized to be essential that there should be no disclosure of a proposed modification of duty before such modification is publicly announced by the United Kingdom. Accordingly, the CONTRACTING PARTIES agree to make provision for the observance of the utmost secrecy at every stage of the procedure set forth above.

(...)

2.b Decision of 24 October 1953. Waiver granted to the United Kingdom (*continued*)

## ARTICLE I

25

(...)

AMENDMENT OF THE WAIVER GRANTED TO THE UNITED  
KINGDOM IN CONNECTION WITH ITEMS TRADITIONALLY  
ADMITTED FREE OF DUTY FROM COUNTRIES OF THE  
COMMONWEALTH*Decision of 5 March 1955*<sup>1</sup>

*Whereas the* CONTRACTING PARTIES at their Eighth Session decided that, subject to certain conditions and procedures, the provisions of paragraph 4 (b) of Article I should not be so applied that, when the Government of the United Kingdom imposes or increases a most-favoured-nation rate of protective duty in respect of a given class or description of goods for which they had not as of 24 October 1953, being the date of the aforesaid Decision, negotiated tariff concessions, they should be required to impose a duty on such goods when imported from territories listed in Annex A to the General Agreement,

*Having received* from the Government of the United Kingdom of Great Britain and Northern Ireland a request that this Decision should be amended so as also to apply, subject to the same conditions and procedures, to most-favoured-nation rates of protective duty modified or withdrawn consistently with the provisions of the General Agreement,

*Noting* that this Decision, so amended, would not apply in respect of a modification or withdrawal of a most-favoured-nation rate of protective duty for which the Government of the United Kingdom had as of 24 October 1953 negotiated a tariff concession unless its application in that case was in conformity with the conditions and

<sup>1</sup> The title of the Decision of 24 October 1953, as appearing on page 20 of *BISD*, Second Supplement, should be amended by omitting the words "Not Bound in Schedule XIX and".



2.b Decision of 24 October 1953. Waiver granted to the United Kingdom (*continued*)

26

DECISIONS, ETC.

procedures agreed at the Eighth Session for providing other contracting parties with full safeguards as regards any likelihood of substantial increase of imports into the United Kingdom from territories listed in Annex A at the expense of imports from other sources,

*Decide* that, as from this date, the Decision of 24 October 1953 shall extend to the imposition or increase of a most-favoured-nation rate of protective duty in connection with the modification or withdrawal, consistently with the provisions of the General Agreement, of a tariff concession which the Government of the United Kingdom had negotiated as of 24 October 1953, and that, accordingly, the Decision of 24 October 1953 shall apply subject to the addition of the following:

(a) In the first paragraph at the end, and in the seventh paragraph after the word "concessions", the words:

"or for which, having negotiated concessions, they are nevertheless free, under the provisions of the Agreement, to increase the most-favoured-nation rate of duty".

(b) In the first and seventh paragraphs, before "paragraph 4 (b)", the words:

"paragraph 4 (a) or".

(...)

2.c Considerations Concerning Extended Use of Panels. Note by the Executive Secretary

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

L/392

22 August 1955

Limited Distribution

CONSIDERATIONS CONCERNING EXTENDED USE OF PANELS

Note by the Executive Secretary

1. When the provisions relating to the balance-of-payment consultations were reviewed at the Ninth Session, it was emphasized by several delegates that, if consultations carried out by the contracting parties were to be effective, improved arrangements for the competent and speedy conduct of the consultations would be necessary. This question was also discussed in connexion with the continuing administration of the Agreement, and the Danish delegation submitted a suggestion for the appointment of panels of qualified representatives to assist in carrying out consultations under Articles XII to XIV and in the consideration of complaints under Article XXIII, as well as other commercial policy matters which are the subject of regular reports for examination by the CONTRACTING PARTIES (see Third Supplement, pages 179 and 247). There was no general agreement on the suggestion put forward by the Danish delegation, and no other specific proposal was submitted, but it was agreed that the Executive Secretary should consider the problem and, if possible, put forward concrete proposals for consideration at the Tenth Session.

The normal working party procedure

2. With the exception of the panel that the CONTRACTING PARTIES have established for the consideration of complaints lodged under Article XXIII, the normal procedure for dealing with matters of the sort referred to by the Danish representative has been the same as that used for the consideration of all substantive problems, namely, initial consideration in plenary followed usually by consideration in a working party, and finally, adoption of the working party report by the CONTRACTING PARTIES. The working party has consisted of a number of delegations, varying from five to eighteen according to the importance of the question or the interests involved. A delegation which is a member of the working party is free to appoint any individual in its delegation and to change this representative as it thinks fit. All members of the working party occupy the same status, including the contracting party which is being consulted or whose report is under consideration.

3. The report of such a working party must either represent the views of all its members or record any minority views. Since the tendency has been to strive for unanimity, there has usually been some measure of negotiation and compromise between the consulting government and the rest of the working party in determining the form the report shall take.

## 2.c Considerations Concerning Extended Use of Panels. Note by the Executive Secretary (continued)

L/392  
Page 2

4. Although this traditional method of dealing with consultations, reports and even complaints has the advantage of permitting a frank exchange of views under conditions in which all delegations meet on an equal footing, experience has revealed that it also has disadvantages. In the case of complaints, for example, it often proved embarrassing for the representative of a country against which a complaint was lodged to associate himself with the working party report. On the other hand, it was often equally embarrassing for him to dissent from the report and to file a minority statement. Furthermore, the majority of the working party themselves were frequently inhibited in a frank expression of views in their report to the CONTRACTING PARTIES because of their desire to reach unanimous agreement in the working party. These difficulties became so apparent during the early sessions of the CONTRACTING PARTIES that by their Seventh Session they adopted a radically different procedure and established a Panel on Complaints.

### The Panel on Complaints

5. The Panel on Complaints, as it has been developed in successive sessions, differs substantially from the ordinary working party both in its composition and in its manner of working. Instead of selecting delegations as members of the Panel, the Chairman nominates individuals. In making this selection he takes into account not only nationality but personal qualifications and special knowledge of the General Agreement and of the matters to be dealt with by the Panel. While the individual selected would in most cases be the person who would have been designated by the delegation under the traditional working party procedure, the selection of individuals has provided a greater assurance that the Panel will include individuals with the necessary knowledge of the subject concerned. Furthermore, it has assured continuity in the work of the Panel by preventing delegations from substituting one member for another. Perhaps most important of all, this method of constituting the Panel has emphasized the fact that the primary function of the Panel is to prepare an objective analysis for consideration by the contracting parties, in which the special interests of individual governments are subordinated to the basic objective of applying the Agreement impartially and for the benefit of the contracting parties in general.

6. Differences between the working methods of the Panel on Complaints and those of the normal working party have further emphasized the importance of objectivity. The contracting parties immediately concerned with a complaint are not represented on the Panel. They appear before the Panel in a capacity that is similar to that of the plaintiff and the defendant before a court of law. After having heard the parties and any other contracting party which might have an interest in the case, the members of the Panel meet in closed session and arrive at their own conclusions. The report is then drafted under their individual responsibility and does not prejudice the attitude of the parties to the dispute. Nor does it prejudice the later position that may be taken by governments during the subsequent consideration of the report by the CONTRACTING PARTIES. In practice the draft report is shown to the parties immediately concerned before it is circulated. The Panel meets again, with those parties and any other observers, hears their comments, and finally meets to approve the text. The report is then submitted to the CONTRACTING PARTIES and discussed in the same manner as the report of an ordinary working party.



2.c Considerations Concerning Extended Use of Panels. Note by the Executive Secretary  
(continued)

L/392  
Page 3

Use of panels in other cases

7. Although the disadvantages of the working party technique have not been as apparent in the other cases in which the CONTRACTING PARTIES have been called upon to deal with a problem in which one or more contracting parties are especially concerned, there have been instances which suggest the desirability of extending the panel technique to such cases. The discussion which took place during the Ninth Session in the working party which considered the Second Annual Report of the Member States of the European Coal and Steel Community raised a number of problems similar to those referred to in connexion with complaints. The working party which was called upon to consider that report included representatives of those governments which were themselves responsible for the report. Some members of the working party felt that the report could have been considered more objectively if the reporting members had appeared before the working party in a different capacity. It was also the feeling of some that the discussion would have been more fruitful if the representatives of other delegations taking part had had more specialized knowledge of the highly technical points which were under consideration. This experience suggests that at least in the case where a report involves a subject calling for special individual competence a panel procedure modelled after that followed in the case of complaints would be worthy of consideration.

8. At the Ninth Session the contracting parties expressed a general desire to make the procedure of consultations under the balance-of-payment provisions of the General Agreement more meaningful and effective. While this does not necessarily suggest the use of a panel procedure for these consultations, the CONTRACTING PARTIES will presumably want to consider whether such a procedure might not aid in achieving the desired result. It would appear that the basic condition that dictated the use of panels in the case of complaints is also present in the case of balance-of-payment consultations, namely, that the contracting party directly concerned must deal with the CONTRACTING PARTIES under circumstances in which its own interests may, for the time being, differ from the interests of the CONTRACTING PARTIES as a whole. There may also be occasions when it is desirable for the working party or panel to receive information in confidence from the contracting party concerned and for it to meet privately to consider what use it can properly make of such confidential information in its report. It is suggested that a guiding consideration for the CONTRACTING PARTIES in deciding whether and to what extent the panel technique might be extended to cases other than complaints, should be a determination of the sort of case in which it may be especially desirable to obtain an objective and technical consideration of the issues involved before the CONTRACTING PARTIES are called upon to reach their final judgment. Most consultations with individual governments and the consideration of special reports by individual governments under waivers, are cases in which the CONTRACTING PARTIES are entitled to a preliminary objective consideration of this kind and in which such an objective consideration is difficult to obtain through the normal working party technique.

2.c Considerations Concerning Extended Use of Panels. Note by the Executive Secretary  
(continued)

L/392  
Page 4

9. At the Ninth Session the Danish representative suggested that the experience of the OEEC in dealing with similar cases had proved the usefulness of a procedure like that of the Panel on Complaints. In all cases in which the OEEC is called upon to consider the action of individual member governments in connexion with the maintenance of quantitative restrictions, the detailed consultations and examination of the facts are conducted by bodies of limited composition whose members are selected as individuals for their personal qualifications. The reports of these panels or committees are then submitted to commissions of broader composition the members of which are governments and not individuals. The nature of the material dealt with in this way by the OEEC would appear to be comparable with much of that ordinarily dealt with by the CONTRACTING PARTIES through the usual working parties. If contracting parties which are members of the OEEC have found the OEEC procedures successful, it would suggest that the CONTRACTING PARTIES might well use the same technique in place of one that has not proved entirely satisfactory.

Recommendation

10. Although the rather limited experience available is not sufficient to permit the unqualified conclusion that the panel technique should be adopted in all cases mentioned above, it would appear that the CONTRACTING PARTIES would find it worth while to experiment on a broader basis with this technique. It is suggested therefore that the CONTRACTING PARTIES consider:

- (i) the renewal for the Tenth Session of the panel procedure for dealing with complaints; and
- (ii) the experimental use during the Tenth Session of a similar procedure wherever possible for dealing with other matters for which working parties have been used in the past.



2.d Procedures under Article XXII on Questions Affecting the Interests of a Number of Contracting Parties. Procedures adopted on 10 November 1958

**GENERAL AGREEMENT ON  
TARIFFS AND TRADE**

RESTRICTED

L/928

21 November 1958

Limited Distribution

CONSULTATIONS UNDER ARTICLE XXII

Procedures adopted on 10 November 1958

As a matter of convenience, and in order to facilitate the observance of the basic principles and objectives of the General Agreement, the CONTRACTING PARTIES have agreed upon the following procedures for consultations under Article XXII on questions affecting the interests of a number of contracting parties:

- (a) any contracting party seeking such a consultation under Article XXII shall, at the same time, so inform the Executive Secretary for the information of all contracting parties;
- (b) any other contracting party asserting a substantial trade interest in the matter shall, within forty-five days of the notification by the Executive Secretary of the request for consultation, advise the consulting countries and the Executive Secretary of its desire to be joined in the consultation;
- (c) such contracting party shall be joined in the consultation provided that the contracting party or parties to which the request for consultation is addressed agree that the claim of substantial interest is well founded; in that event they shall so inform the contracting parties concerned and the Executive Secretary;
- (d) if the claim to be joined in the consultation is not accepted, the applicant contracting party shall be free to refer its claim to the CONTRACTING PARTIES;
- (e) at the close of the consultation, the consulting countries shall advise the Executive Secretary for the information of all contracting parties of the outcome;
- (f) the Executive Secretary shall provide such assistance in these consultations as the parties may request.

## 2.e Procedures under Article XXIII. Decision of 5 April 1966

18

DECISIONS AND CONCLUSIONS

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(...)

### CONCILIATION

#### PROCEDURES UNDER ARTICLE XXIII

*Decision of 5 April 1966*<sup>1</sup>

The CONTRACTING PARTIES,

*Recognizing* that the prompt settlement of situations in which a contracting party considers that any benefits accruing to it directly or indirectly from the General Agreement are being impaired by measures taken by another contracting party, is essential to the effective functioning of the General Agreement and the maintenance of a proper balance between the rights and obligations of all contracting parties;

*Recognizing further* that the existence of such a situation can cause severe damage to the trade and economic development of the less-developed contracting parties; and

*Affirming* their resolve to facilitate the solution of such situations while taking fully into account the need for safeguarding both the present and potential trade of less-developed contracting parties affected by such measures;

*Decide that :*

1. If consultations between a less-developed contracting party and a developed contracting party in regard to any matter falling under paragraph 1 of Article XXIII do not lead to a satisfactory settlement, the less-developed

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<sup>1</sup> The Decision is referred to in paragraphs 41-47 of the Report of the Committee on Trade and Development. See pages 139 and 140.

2.e Procedures under Article XXIII. Decision of 5 April 1966 (*continued*)

## CONCILIATION

19

contracting party complaining of the measure may refer the matter which is the subject of consultations to the Director-General so that, acting in an *ex officio* capacity, he may use his good offices with a view to facilitating a solution.

2. To this effect the contracting parties concerned shall, at the request of the Director-General, promptly furnish all relevant information.

3. On receipt of this information, the Director-General shall consult with the contracting parties concerned and with such other contracting parties or inter-governmental organizations as he considers appropriate with a view to promoting a mutually acceptable solution.

4. After a period of two months from the commencement of the consultations referred to in paragraph 3 above, if no mutually satisfactory solution has been reached, the Director-General shall, at the request of one of the contracting parties concerned, bring the matter to the attention of the CONTRACTING PARTIES or the Council, to whom he shall submit a report on the action taken by him, together with all background information.

5. Upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith appoint a panel of experts to examine the matter with a view to recommending appropriate solutions. The members of the panel shall act in a personal capacity and shall be appointed in consultation with, and with the approval of, the contracting parties concerned.

6. In conducting its examination and having before it all the background information, the panel shall take due account of all the circumstances and considerations relating to the application of the measures complained of, and their impact on the trade and economic development of affected contracting parties.

7. The panel shall, within a period of sixty days from the date the matter was referred to it, submit its findings and recommendations to the CONTRACTING PARTIES or to the Council, for consideration and decision. Where the matter is referred to the Council, it may, in accordance with Rule 8 of the Intersessional Procedures adopted by the CONTRACTING PARTIES at their thirteenth session<sup>1</sup>, address its recommendations directly to the interested contracting parties and concurrently report to the CONTRACTING PARTIES.

8. Within a period of ninety days from the date of the decision of the CONTRACTING PARTIES or the Council, the contracting party to which a recommendation is directed shall report to the CONTRACTING PARTIES or the Council on the action taken by it in pursuance of the decision.

<sup>1</sup> BISD, Seventh Supplement, page 7.



2.e Procedures under Article XXIII. Decision of 5 April 1966 (*continued*)

20

DECISIONS AND CONCLUSIONS

9. If on examination of this report it is found that a contracting party to which a recommendation has been directed has not complied in full with the relevant recommendation of the CONTRACTING PARTIES or the Council, and that any benefit accruing directly or indirectly under the General Agreement continues in consequence to be nullified or impaired, and that the circumstances are serious enough to justify such action, the CONTRACTING PARTIES may authorize the affected contracting party or parties to suspend, in regard to the contracting party causing the damage, application of any concession or any other obligation under the General Agreement whose suspension is considered warranted, taking account of the circumstances.

10. In the event that a recommendation to a developed country by the CONTRACTING PARTIES is not applied within the time-limit prescribed in paragraph 8, the CONTRACTING PARTIES shall consider what measures, further to those undertaken under paragraph 9, should be taken to resolve the matter.

11. If consultations, held under paragraph 2 of Article XXXVII, relate to restrictions for which there is no authority under any provisions of the General Agreement, any of the parties to the consultations may, in the absence of a satisfactory solution, request that consultations be carried out by the CONTRACTING PARTIES pursuant to paragraph 2 of Article XXIII and in accordance with the procedures set out in the present decision, it being understood that a consultation held under paragraph 2 of Article XXXVII in respect of such restrictions will be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII if the parties to the consultations so agree.

(...)

2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

L/4907  
3 December 1979  
Limited Distribution

UNDERSTANDING REGARDING NOTIFICATION,  
CONSULTATION, DISPUTE SETTLEMENT AND SURVEILLANCE

Adopted on 28 November 1979

1. The CONTRACTING PARTIES reaffirm their adherence to the basic GATT mechanism for the management of disputes based on Articles XXII and XXIII.<sup>1</sup> With a view to improving and refining the GATT mechanism, the CONTRACTING PARTIES agree as follows:

Notification

2. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.<sup>2</sup>

3. Contracting parties moreover undertake, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement, it being understood that such notification would of itself be without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement. Contracting parties should endeavour to notify such measures in advance of implementation. In other cases, where prior notification has not been possible, such measures should be notified promptly *ex post facto*. Contracting parties which have reason to believe that such trade measures have been adopted by another contracting party may seek information on such measures bilaterally, from the contracting party concerned.

Consultations

4. Contracting parties reaffirm their resolve to strengthen and improve the effectiveness of consultative procedures employed by contracting parties. In that connexion, they undertake to respond to requests for consultations promptly and to attempt to conclude consultations expeditiously, with a view to reaching mutually satisfactory conclusions. Any requests for consultations should include the reasons therefor.

5. During consultations, contracting parties should give special attention to the particular problems and interests of less-developed contracting parties.

6. Contracting parties should attempt to obtain satisfactory adjustment of the matter in accordance with the provisions of Article XXIII:1 before resorting to Article XXIII:2.

<sup>1</sup> It is noted that Article XXV may, as recognized by the CONTRACTING PARTIES, *inter alia*, when they adopted the report of the Working Party on particular difficulties connected with trade in primary products (L/930), also afford an appropriate avenue for consultation and dispute settlement in certain circumstances.

<sup>2</sup> See secretariat note, 'Notifications required from contracting parties (MTN/FR/W/17, dated 1 August 1978).

2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979 (*continued*)

L/4907  
Page 2

Dispute settlement

7. The CONTRACTING PARTIES agree that the customary practice of the GATT in the field of dispute settlement, described in the Annex, should be continued in the future, with the improvements set out below. They recognize that the efficient functioning of the system depends on their will to abide by the present understanding. The CONTRACTING PARTIES reaffirm that the customary practice includes the procedures for the settlement of disputes between developed and less-developed countries adopted by the CONTRACTING PARTIES in 1966 (BISD, fourteenth supplement, page 18) and that these remain available to less-developed contracting parties wishing to use them.

8. If a dispute is not resolved through consultations the contracting parties concerned may request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences between the parties. If the unresolved dispute is one in which a less-developed contracting party has brought a complaint against a developed contracting party, the less-developed contracting party may request the good offices of the Director-General who, in carrying out his tasks, may consult with the Chairman of the CONTRACTING PARTIES and the Chairman of the Council.

9. It is understood that requests for conciliation and the use of the dispute settlement procedures of Article XXIII:2 should not be intended or considered as contentious acts and that, if disputes arise, all contracting parties will engage in these procedures in good faith in an effort to resolve the disputes. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

10. It is agreed that if a contracting party invoking Article XXIII:2 requests the establishment of a panel to assist the CONTRACTING PARTIES to deal with the matter, the CONTRACTING PARTIES would decide on its establishment in accordance with standing practice. It is also agreed that the CONTRACTING PARTIES would similarly decide to establish a working party if this were requested by a contracting party invoking the Article. It is further agreed that such requests would be granted only after the contracting party concerned had had an opportunity to study the complaint and respond to it before the CONTRACTING PARTIES.

11. When a panel is set up, the Director-General, after securing the agreement of the contracting parties concerned, should propose the composition of the panel, of three or five members depending on the case, to the CONTRACTING PARTIES for approval. The members of a panel would preferably be governmental. It is understood that citizens of countries whose governments<sup>1</sup> are parties to the dispute would not be members of the panel concerned with

<sup>1</sup>In the case customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.



2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979 (*continued*)

L/4907  
Page 3

that dispute. The panel should be constituted as promptly as possible and normally not later than thirty days from the decision by the CONTRACTING PARTIES.

12. The parties to the dispute would respond within a short period of time, i.e., seven working days, to nominations of panel members by the Director-General and would not oppose nominations except for compelling reasons.

13. In order to facilitate the constitution of panels, the Director-General should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement, and who could be available for serving on panels. For this purpose, each contracting party would be invited to indicate at the beginning of every year to the Director-General the name of one or two persons who would be available for such work.<sup>1</sup>

14. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

15. Any contracting party having a substantial interest in the matter before a panel, and having notified this to the Council, should have an opportunity to be heard by the panel. Each panel should have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a State it shall inform the government of that State. Any contracting party should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided should not be revealed without formal authorization from the contracting party providing the information.

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<sup>1</sup>The coverage of travel expenses should be considered within the limits of budgetary possibilities.

<sup>2</sup>A statement is included in the Annex describing the current practice with respect to inclusion on panels of persons from developing countries.

2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979 (*continued*)

L/4907  
Page 4

16. The function of panels is to assist the CONTRACTING PARTIES in discharging their responsibilities under Article XXIII:2. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the General Agreement and, if so requested by the CONTRACTING PARTIES, make such other findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2. In this connexion, panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

17. Where the parties have failed to develop a mutually satisfactory solution, the panel should submit its findings in a written form. The report of a panel should normally set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

18. To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the CONTRACTING PARTIES.

19. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any contracting party with an interest in the matter has a right to enquire about and be given appropriate information about that solution in so far as it relates to trade matters.

20. The time required by panels will vary with the particular case.<sup>1</sup> However, panels should aim to deliver their findings without undue delay, taking into account the obligation of the CONTRACTING PARTIES to ensure prompt settlement. In cases of urgency the panel would be called upon to deliver its findings within a period normally of three months from the time the panel was established.

21. Reports of panels and working parties should be given prompt consideration by the CONTRACTING PARTIES. The CONTRACTING PARTIES should take appropriate action on reports of panels and working parties within a reasonable period of time. If the case is one brought by a less-developed contracting party, such action should be taken in a specially convened meeting, if necessary. In such cases, in considering what appropriate action might be taken the CONTRACTING PARTIES shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of less-developed contracting parties concerned.

<sup>1</sup>An explanation is included in the Annex that "in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months."

2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979 (*continued*)

L/4907  
Page 5

22. The CONTRACTING PARTIES shall keep under surveillance any matter on which they have made recommendations or given rulings. If the CONTRACTING PARTIES' recommendations are not implemented within a reasonable period of time, the contracting party bringing the case may ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution.

23. If the matter is one which has been raised by a less-developed contracting party, the CONTRACTING PARTIES shall consider what further action they might take which would be appropriate to the circumstances.

Surveillance

24. The CONTRACTING PARTIES agree to conduct a regular and systematic review of developments in the trading system. Particular attention would be paid to developments which affect rights and obligations under the GATT, to matters affecting the interests of less-developed contracting parties, to trade measures notified in accordance with this understanding and to measures which have been subject to consultation, conciliation or dispute settlement procedures laid down in this understanding.

Technical assistance

25. The technical assistance services of the GATT secretariat shall, at the request of a less-developed contracting party, assist it in connexion with matters dealt with in this understanding.

2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979 (*continued*)

L/4907  
Page 6

ANNEX

Agreed Description of the Customary Practice of the GATT in the  
Field of Dispute Settlement (Article XXIII:2)

1. Any dispute which has not been settled bilaterally under the relevant provisions of the General Agreement may be referred to the CONTRACTING PARTIES<sup>1</sup> which are obliged, pursuant to Article XXIII:2, to investigate matters submitted to them and make appropriate recommendations or give a ruling on the matter as appropriate. Article XXIII:2 does not indicate whether disputes should be handled by a working party or by a panel.<sup>2</sup>

2. The CONTRACTING PARTIES adopted in 1966 a decision establishing the procedure to be followed for Article XXIII consultations between developed and less-developed contracting parties (BISD, 14th Supplement, page 18). This procedure provides, *inter alia*, for the Director-General to employ his good offices with a view to facilitating a solution, for setting up a panel with the task of examining the problem in order to recommend appropriate solutions, and for time-limits for the execution of the different parts of this procedure.

3. The function of a panel has normally been to review the facts of a case and the applicability of GATT provisions and to arrive at an objective assessment of these matters. In this connexion, panels have consulted regularly with the parties to the dispute and have given them adequate opportunity to develop a mutually satisfactory solution. Panels have taken appropriate account of the particular interests of developing countries. In cases of failure of the parties to reach a mutually satisfactory settlement, panels have normally given assistance to the CONTRACTING PARTIES in making recommendations or in giving rulings as envisaged in Article XXIII:2.

4. Before bringing a case, contracting parties have exercised their judgment as to whether action under Article XXIII:2 would be fruitful. Those cases which have come before the CONTRACTING PARTIES under this provision have, with few exceptions, been brought to a satisfactory conclusion. The

<sup>1</sup>The Council is empowered to act for the CONTRACTING PARTIES, in accordance with normal GATT practice.

<sup>2</sup>At the Review Session (1955) the proposal to institutionalize the procedures of panels was not adopted by CONTRACTING PARTIES mainly because they preferred to preserve the existing situation and not to establish judicial procedures which might put excessive strain on the GATT.



2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, adopted on 28 November 1979 (*continued*)L/4907  
Page 7

aim of the CONTRACTING PARTIES has always been to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the CONTRACTING PARTIES is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the General Agreement. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measures which are inconsistent with the General Agreement. The last resort which Article XXIII provides to the country invoking this procedure is the possibility of suspending the application of concessions or other obligations on a discriminatory basis vis-à-vis the other contracting party, subject to authorization by the CONTRACTING PARTIES of such measures. Such action has only rarely been contemplated and cases taken under Article XXIII:2 have led to such action in only one case.

5. In practice, contracting parties have had recourse to Article XXIII only when in their view a benefit accruing to them under the General Agreement was being nullified or impaired. In cases where there is an infringement of the obligations assumed under the General Agreement, the action is considered prima facie to constitute a case of nullification or impairment. A prima facie case of nullification or impairment would ipso facto require consideration of whether the circumstances are serious enough to justify the authorization of suspension of concessions or obligations, if the contracting party bringing the complaint so requests. This means that there is normally a presumption that a breach of the rules has an adverse impact on other contracting parties, and in such cases, it is up to the contracting parties against whom the complaint has been brought to rebut the charge. Paragraph 1(b) permits recourse to Article XXIII if nullification or impairment results from measures taken by other contracting parties whether or not these conflict with the provisions of the General Agreement, and paragraph 1(c) if any other situation exists. If a contracting party bringing an Article XXIII case claims that measures which do not conflict with the provisions of the General Agreement have nullified or impaired benefits accruing to it under the General Agreement, it would be called upon to provide a detailed justification.

6. Concerning the customary elements of the procedures regarding working parties and panels, the following elements have to be noted:

- (i) working parties are instituted by the Council upon the request of one or several contracting parties. The terms of reference of working parties are generally "to examine the matter in the light of the relevant provisions of the General Agreement and to report to the Council". Working parties set up their own working procedures. The practice for working parties has been to hold

2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979 (*continued*)L/4907  
Page 8

one or two meetings to examine the matter and a final meeting to discuss conclusions. Working parties are open to participation of any contracting party which has an interest in the matter. Generally working parties consist of a number of delegations varying from about five to twenty according to the importance of the question and the interests involved. The countries who are parties to the dispute are always members of the Working Party and have the same status as other delegations. The report of the Working Party represents the views of all its members and therefore records different views if necessary. Since the tendency is to strive for consensus, there is generally some measure of negotiation and compromise in the formulation of the Working Party's report. The Council adopts the report. The reports of working parties are advisory opinions on the basis of which the CONTRACTING PARTIES may take a final decision.

- (ii) In the case of disputes, the CONTRACTING PARTIES have established panels (which have been called by different names) or working parties in order to assist them in examining questions raised under Article XXIII:2. Since 1952, panels have become the usual procedure. However, the Council has taken such decisions only after the party concerned has had an occasion to study the complaint and prepare its response before the Council. The terms of reference are discussed and approved by the Council. Normally, these terms of reference are "to examine the matter and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII". When a contracting party having recourse to Article XXIII:2 raised questions relating to the suspension of concessions or other obligations, the terms of reference were to examine the matter in accordance with the provisions of Article XXIII:2. Members of the panel are usually selected from permanent delegations or, less frequently, from the national administrations in the capitals amongst delegates who participate in GATT activities on a regular basis. The practice has been to appoint a member or members from developing countries when a dispute is between a developing and a developed country.
- (iii) Members of panels are expected to act impartially without instructions from their governments. In a few cases, in view of the nature and complexity of the matter, the parties concerned have agreed to designate non-government experts. Nominations are proposed to the parties concerned by the GATT secretariat. The composition of panels (three or five members depending on the case) has been agreed upon

2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979 (*continued*)

L/4907  
Page 9

by the parties concerned and approved by the GATT Council. It is recognized that a broad spectrum of opinion has been beneficial in difficult cases, but that the number of panel members has sometimes delayed the composition of panels, and therefore the process of dispute settlement.

- (iv) Panels set up their own working procedures. The practice for the panels has been to hold two or three formal meetings with the parties concerned. The panel invited the parties to present their views either in writing and/or orally in the presence of each other. The panel can question both parties on any matter which it considers relevant to the dispute. Panels have also heard the views of any contracting party having a substantial interest in the matter, which is not directly party to the dispute, but which has expressed in the Council a desire to present its views. Written memoranda submitted to the panel have been considered confidential, but are made available to the parties to the dispute. Panels often consult with and seek information from any relevant source they deem appropriate and they sometimes consult experts to obtain their technical opinion on certain aspects of the matter. Panels may seek advice or assistance from the secretariat in its capacity as guardian of the General Agreement, especially on historical or procedural aspects. The secretariat provides the secretary and technical services for panels.
- (v) Where the parties have failed to develop a mutually satisfactory solution, the panel has submitted its findings in a written form. Panel reports have normally set out findings of fact, the applicability of relevant provisions, and the basic rationale behind any findings and recommendations that it has made. Where a bilateral settlement of the matter has been found, the report of the panel has been confined to a brief description of the case and to reporting that a solution has been reached.
- (vi) The reports of panels have been drafted in the absence of the parties in the light of the information and the statements made.
- (vii) To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel has normally first submitted the descriptive part of its report to the parties concerned, and also their conclusions, or an outline thereof, a reasonable period of time before they have been circulated to the CONTRACTING PARTIES.

2.f Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance,  
adopted on 28 November 1979 (*continued*)

L/4907  
Page 10

(viii) In accordance with their terms of reference established by the CONTRACTING PARTIES panels have expressed their views on whether an infringement of certain rules of the General Agreement arises out of the measure examined. Panels have also, if so requested by the CONTRACTING PARTIES, formulated draft recommendations addressed to the parties. In yet other cases panels were invited to give a technical opinion on some precise aspect of the matter (e.g. on the modalities of a withdrawal or suspension in regard to the volume of trade involved). The opinions expressed by the panel members on the matter are anonymous and the panel deliberations are secret.

(ix) Although the CONTRACTING PARTIES have never established precise deadlines for the different phases of the procedure, probably because the matters submitted to panels differ as to their complexity and their urgency, in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months.

The 1966 decision by the CONTRACTING PARTIES referred to in paragraph 2 above lays down in its paragraph 7 that the Panel shall report within a period of sixty days from the date the matter was referred to it.



2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982

**GENERAL AGREEMENT ON  
TARIFFS AND TRADE**

L/5424  
29 November 1982  
Limited Distribution

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CONTRACTING PARTIES  
Thirty-Eighth Session

MINISTERIAL DECLARATION

Adopted on 29 November 1982

1. The CONTRACTING PARTIES to the General Agreement on Tariffs and Trade have met at Ministerial level on 24-29 November 1982. They recognize that the multilateral trading system, of which the General Agreement is the legal foundation, is seriously endangered. In the current crisis of the world economy, to which the lack of convergence in national economic policies has contributed, protectionist pressures on governments have multiplied, disregard of GATT disciplines has increased and certain shortcomings in the functioning of the GATT system have been accentuated. Conscious of the role of the GATT system in furthering economic well-being and an unprecedented expansion of world trade, and convinced of the lasting validity of the basic principles and objectives of the General Agreement in a world of increasing economic interdependence, the CONTRACTING PARTIES are resolved to overcome these threats to the system.

2. The deep and prolonged crisis of the world economy has severely depressed levels of production and trade. In many countries growth rates are low or negative; there is growing unemployment and a climate of uncertainty, exacerbated by persistent inflation, high rates of interest and volatile exchange rates, which seriously inhibit investment and structural adjustment and intensify protectionist pressures. Many countries, and particularly developing countries, now face critical difficulties created by the combination of uncertain and limited access to export markets, declining external demand, a sharp fall in commodity prices and the high cost of borrowing. The import capacity of developing countries, which is essential to their economic growth and development, is being impaired and is no longer serving as a dynamic factor sustaining the exports of the developed world. Acute problems of debt servicing threaten the stability of the financial system.

3. In the field of trade, the responses of governments to the challenges of the crisis have too often been inadequate and inward-looking. Import restrictions have increased and a growing proportion of them have for various reasons been applied outside GATT disciplines, thus undermining the multilateral trading system. Trade patterns have also been adversely affected by certain forms of economic assistance for production and exports and by some restrictive trade measures applied for non-economic purposes. In the depressed economic circumstances these measures, together with continuing pressures for further protective action, have contributed to further delays in necessary structural adjustment, increased economic uncertainty and discouraged productive investment.

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 2

4. The results of the Tokyo Round, including in particular the implementation on schedule of the tariff reductions, have provided some impetus to the functioning of the trading system. However, despite the strength and resilience which it has shown, the stresses on the system, which are reflected in the growing number and intensity of disputes between contracting parties, many of which remain unresolved, have made more pronounced certain shortcomings in its functioning. Existing strains have been aggravated by differences of perception regarding the balance of rights and obligations under the GATT, the way in which these rights and obligations have been implemented and the extent to which the interests of different contracting parties have been met by the GATT. There are also concerns over the manner in which rights are being pursued as well as the manner in which obligations are being fulfilled. Disagreements persist over the interpretation of some important provisions and over their application. Disciplines governing the restriction of trade through safeguard measures are inadequate; there is widespread dissatisfaction with the application of GATT rules and the degree of liberalization in relation to agricultural trade, even though such trade has continued to expand; trade in textiles and clothing continues to be treated under an Arrangement which is a major derogation from the General Agreement – a matter of critical importance to developing countries in particular. Such differences and imbalances are particularly detrimental to the stability of the international trading system when they concern access to the markets of major trading countries or when, through the use of export subsidies, competition among major suppliers is distorted.

5. The CONTRACTING PARTIES recognize that the interdependence of national economies means that no country can solve its trade problems in isolation and also that solutions would be greatly facilitated by parallel efforts in the financial and monetary fields. In this light, they commit themselves to reduce trade frictions, overcome protectionist pressures, avoid using export subsidies inconsistent with Article XVI of the GATT and promote the liberalization and expansion of trade. They are therefore determined to create, through concerted action, a renewed consensus in support of the GATT system, so as to restore and reinforce confidence in its capacity to provide a stable and predictable trading environment and respond to new challenges.

6. The CONTRACTING PARTIES have accordingly decided:

- to reaffirm their commitment to abide by their GATT obligations and to support and improve the GATT trading system, so that it may contribute vigorously to the further liberalization and expansion of trade based on mutual commitment, mutual advantage and overall reciprocity, and the most-favoured-nation clause;

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 3

- to preserve, in the operation and functioning of GATT instruments, the unity and consistency of the GATT system; and
- to ensure that GATT provides a continuing forum for negotiation and consultation, in which an appropriate balance of rights and obligations can be assured for all contracting parties and the rules and procedures of the system are effectively and fairly applied, on the basis of agreed interpretations, for the economic development and benefit of all.

7. In drawing up the work programme and priorities for the 1980's, the contracting parties undertake, individually and jointly:

- (i) to make determined efforts to ensure that trade policies and measures are consistent with GATT principles and rules and to resist protectionist pressures in the formulation and implementation of national trade policy and in proposing legislation; and also to refrain from taking or maintaining any measures inconsistent with GATT and to make determined efforts to avoid measures which would limit or distort international trade;
- (ii) to give fullest consideration, in the application of measures falling within the GATT framework, and in the general exercise of their GATT rights, to the trading interests of other contracting parties and the shared objective of trade liberalization and expansion;
- (iii) to abstain from taking restrictive trade measures, for reasons of a non-economic character, not consistent with the General Agreement;
- (iv)(a) to ensure the effective implementation of GATT rules and provisions and specifically those concerning the developing countries, thereby furthering the dynamic role of developing countries in international trade;
- (b) to ensure special treatment for the least-developed countries, in the context of differential and more favourable treatment for developing countries, in order to ameliorate the grave economic situation of these countries;

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 4

- (v) to bring agriculture more fully into the multilateral trading system by improving the effectiveness of GATT rules, provisions and disciplines and through their common interpretation; to seek to improve terms of access to markets; and to bring export competition under greater discipline. To this end a major two-year work programme shall be undertaken.
- (vi) to bring into effect expeditiously a comprehensive understanding on safeguards to be based on the principles of the General Agreement;
- (vii) to ensure increased transparency of trade measures and the effective resolution of disputes through improvements in the operation of the pertinent procedures, supported by a determination to comply with rulings and respect recommendations;
- (viii) to examine ways and means of, and to pursue measures aimed at, liberalizing trade in textiles and clothing, including the eventual application of the General Agreement, after the expiry of the 1981 Protocol extending the Arrangement Regarding International Trade in Textiles, it being understood that in the interim the parties to the Arrangement shall adhere strictly to its rules;
- (ix) to give continuing consideration to changes in the trading environment so as to ensure that the GATT is responsive to these changes.

SAFEGUARDS

The CONTRACTING PARTIES decide:

1. That, having regard to the objectives and disciplines of the General Agreement, there is need for an improved and more efficient safeguard system which provides for greater predictability and clarity and also greater security and equity for both importing and exporting countries, so as to preserve the results of trade liberalization and avoid the proliferation of restrictive measures; and

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 5

2. That to this end, effect should be given to a comprehensive understanding to be based on the principles of the General Agreement which would contain, inter alia, the following elements:

- (i) Transparency;
- (ii) Coverage;
- (iii) Objective criteria for action including the concept of serious injury or threat thereof;
- (iv) Temporary nature, degressivity and structural adjustment;
- (v) Compensation and retaliation; and
- (vi) Notification, consultation, multilateral surveillance and dispute settlement with particular reference to the role and functions of the Safeguards Committee.

3. That such an understanding should be drawn up by the Council for adoption by the CONTRACTING PARTIES not later than their 1983 Session.

GATT RULES AND ACTIVITIES RELATING TO DEVELOPING COUNTRIES

The CONTRACTING PARTIES:

1. Instruct the Committee on Trade and Development bearing in mind particularly the special responsibility of the developed contracting parties in this regard, to consult on a regular basis with contracting parties individually or collectively, as appropriate to examine how individual contracting parties have responded to the requirements of Part IV.
2. Urge contracting parties to implement more effectively Part IV and the Decision of 28 November 1979 regarding "differential and more favourable treatment, reciprocity and fuller participation of developing countries";
3. Urge contracting parties to work towards further improvement of GSP or MFN treatment for products of particular export interest to least-developed countries, and the elimination or reduction of non-tariff measures affecting such products;
4. Agree to strengthen the technical co-operation programme of GATT;



2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 6

5. Instruct the Committee on Trade and Development to carry out an examination of the prospects for increasing trade between developed and developing countries and the possibilities in GATT for facilitating this objective;

To this effect, the CONTRACTING PARTIES are also taking the decisions annexed and decide to review the action taken in these areas at their 1984 Session.

DISPUTE SETTLEMENT PROCEDURES

The CONTRACTING PARTIES:

Agree that the Understanding on Notification, Consultation, Surveillance and Dispute Settlement negotiated during the Tokyo Round (hereinafter referred to as the "Understanding") provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end;

And agree further that:

- (i) With reference to paragraph 8 of the Understanding, if a dispute is not resolved through consultations, any party to a dispute may, with the agreement of the other party, seek the good offices of the Director-General or of an individual or group of persons nominated by the Director-General. This conciliatory process would be carried out expeditiously, and the Director-General would inform the Council of the outcome of the conciliatory process. Conciliation proceedings, and in particular positions taken by the parties to the dispute during conciliation, shall be confidential, and without prejudice to the rights of either party in any further proceedings under Article XXIII:2. It would remain open at any time during any conciliatory process for either party to the dispute to refer the matter to the CONTRACTING PARTIES.
- (ii) In order to ensure more effective compliance with the provisions of paragraphs 11 and 12 of the Understanding, the Director-General shall inform the Council of any case in which it has not been found possible to meet the time-limits for the establishment of a panel.

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 7

- (iii) With reference to paragraph 13 of the Understanding, contracting parties will co-operate effectively with the Director-General in making suitably qualified experts available to serve on panels. Where experts are not drawn from Geneva, any expenses, including travel and subsistence allowance, shall be met from the GATT budget.
- (iv) The secretariat of GATT has the responsibility of assisting the panel, especially on the legal, historical and procedural aspects of the matters dealt with.
- (v) The terms of reference of a panel should be formulated so as to permit a clear finding with respect to any contravention of GATT provisions and/or on the question of nullification and impairment of benefits. In terms of paragraph 16 of the Understanding, and after reviewing the facts of the case, the applicability of GATT provisions and the arguments advanced, the panel should come to such a finding. Where a finding establishing a contravention of GATT provisions or nullification and impairment is made, the panel should make such suggestions as appropriate for dealing with the matter as would assist the CONTRACTING PARTIES in making recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate.
- (vi) Panels would aim to deliver their findings without undue delay, as provided in paragraph 20 of the Understanding. If a complete report cannot be made within the period foreseen in that paragraph, panels would be expected to so advise the Council and the report should be submitted as soon as possible thereafter.
- (vii) Reports of panels should be given prompt consideration by the CONTRACTING PARTIES. Where a decision on the findings contained in a report calls for a ruling or recommendation by the Council, the Council may allow the contracting party concerned a reasonable specified time to indicate what action it proposes to take with a view to a satisfactory settlement of the matter, before making any recommendation or ruling on the basis of the report.
- (viii) The recommendation or ruling made by the CONTRACTING PARTIES shall be aimed at achieving a satisfactory settlement of the matter in accordance with GATT obligations. In furtherance of the provisions of paragraph 22 of the Understanding the Council shall periodically review the action taken pursuant to such recommendations. The contracting party to which such a recommendation has been addressed, shall report within a reasonable specified period on action taken or on its reasons for

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 8

not implementing the recommendation or ruling by the CONTRACTING PARTIES. The contracting party bringing the case may also ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution as provided in paragraph 22 of the Understanding.

- (ix) The further action taken by the CONTRACTING PARTIES in the above circumstances might include a recommendation for compensatory adjustment with respect to other products or authorization for the suspension of such concessions or other obligations as foreseen in Article XXIII:2, as the CONTRACTING PARTIES may determine to be appropriate in the circumstances.
- (x) The Parties to a dispute would fully participate in the consideration of the matter by the CONTRACTING PARTIES under paragraph (vii) above, including the consideration of any rulings or recommendations the CONTRACTING PARTIES might make pursuant to Article XXIII:2 of the General Agreement, and their views would be fully recorded. They would likewise participate and have their views recorded in the considerations of the further actions provided for under paragraphs (viii) and (ix) above. The CONTRACTING PARTIES reaffirmed that consensus will continue to be the traditional method of resolving disputes; however, they agreed that obstruction in the process of dispute settlement shall be avoided.<sup>1</sup> It is understood that decisions in this process cannot add to or diminish the rights and obligations provided in the General Agreement.

TRADE IN AGRICULTURE

With the purpose of accelerating the achievement of the objectives of the General Agreement, including Part IV, and recognizing that there is an urgent need to find lasting solutions to the problems of trade in agricultural products, the CONTRACTING PARTIES decide:

1. That the following matters be examined, in the light of the objectives, principles and relevant provisions of the General Agreement and also taking into account the effects of national agricultural policies, with the purpose of making appropriate recommendations. The examination shall cover all measures affecting trade, market access and competition and supply in agricultural products, including subsidies and other forms of assistance.

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<sup>1</sup>This does not prejudice the provisions on decision making in the General Agreement.



2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 9

- (i) Trade measures affecting market access and supplies, with a view to achieving greater liberalization in the trade of agricultural products, with respect to tariffs and non-tariff measures, on a basis of overall reciprocity and mutual advantage under the General Agreement.
- (ii) The operation of the General Agreement as regards subsidies affecting agriculture, especially export subsidies, with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of the General Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties. Other forms of export assistance will be included in this examination.
- (iii) Trade measures affecting agriculture maintained under exceptions or derogations without prejudice to the rights of contracting parties under the General Agreement.

2. That in carrying out the tasks enumerated above, full account shall be taken of the need for a balance of rights and obligations under the GATT, and of the special needs of developing countries in the light of the GATT provisions providing for differential and more favourable treatment for such contracting parties. Full account shall also be taken of specific characteristics and problems in agriculture, of the scope for improving the operation of GATT rules, provisions and disciplines and agreed interpretations of its provisions.

3. That for the purpose of carrying out this work, an improved and unified system of notifications shall be introduced so as to ensure full transparency.

4. That a Committee on Trade in Agriculture shall be established, open to all contracting parties, for the purpose of carrying out the tasks enumerated above and of making recommendations with a view to achieving greater liberalization in the trade of agricultural products. The Committee will report periodically on the results achieved and make appropriate recommendations to the Council and the CONTRACTING PARTIES for consideration not later than their 1984 Session.

TROPICAL PRODUCTS

The CONTRACTING PARTIES decide to carry out, on the basis of the work programme pursued by the Committee on Trade and Development, consultations and appropriate negotiations aimed at further liberalization of trade in tropical products, including in their processed and semi-processed forms, and to review the progress achieved in eliminating or reducing existing obstacles to trade in tropical products at their 1984 Session.

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 10

QUANTITATIVE RESTRICTIONS AND OTHER NON-TARIFF MEASURES

The CONTRACTING PARTIES decide:

1. To review, in a group created for the purpose, existing quantitative restrictions and other non-tariff measures, the grounds on which these are maintained, and their conformity with the provisions of the General Agreement, so as to achieve the elimination of quantitative restrictions which are not in conformity with the General Agreement or their being brought into conformity with the General Agreement, and also to achieve progress in liberalizing other quantitative restrictions and non-tariff measures, adequate attention being given to the need for action on quantitative restrictions and other measures affecting products of particular export interest to developing countries; and
2. That the group should make progress reports to the Council and that its complete report containing its findings and conclusions should be available for consideration by the CONTRACTING PARTIES at their 1984 Session.

TARIFFS

The CONTRACTING PARTIES decide:

1. That prompt attention should be given to the problem of escalation of tariffs on products with increased processing with a view to effective action towards the elimination or reduction of such escalation where it inhibits international trade, taking into account the concerns relating to exports of developing countries; and agree
2. That wide acceptance of a common system for classifying products for tariff and statistical purposes would facilitate world trade and therefore recommend prompt action towards the introduction of such a system. They take note of the ongoing work to this end in the Customs Co-operation Council. They further agree that, if such a system is introduced, the general level of benefits provided by GATT concessions must be maintained, that existing concessions should normally remain unchanged and that any negotiations that may prove necessary should be initiated promptly so as to avoid any undue delay in the implementation of a system. They also agree that technical support shall be provided by the GATT secretariat to developing contracting parties in order to fully assist their participation in such a process.

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 11

MTN AGREEMENTS AND ARRANGEMENTS

The CONTRACTING PARTIES decide to review the operation of the MTN Agreements and Arrangements, taking into account reports from the Committees or Councils concerned, with a view to determining what action if any is called for, in terms of their decision of November 1979. The CONTRACTING PARTIES further agree that, for this purpose, the review should focus on the adequacy and effectiveness of these Agreements and Arrangements and the obstacles to the acceptance of these Agreements and Arrangements by interested parties.

STRUCTURAL ADJUSTMENT AND TRADE POLICY

The CONTRACTING PARTIES decide to continue the work on structural adjustment and trade policy in order to focus on the interaction between structural adjustment and the fulfillment of the objectives of the General Agreement, and to review the results of this work at their 1983 Session.

TRADE IN COUNTERFEIT GOODS

The CONTRACTING PARTIES instruct the Council to examine the question of counterfeit goods with a view to determining the appropriateness of joint action in the GATT framework on the trade aspects of commercial counterfeiting and, if such joint action is found to be appropriate, the modalities for such action, having full regard to the competence of other international organizations. For the purposes of such examination, the CONTRACTING PARTIES request the Director-General to hold consultations with the Director-General of WIPO in order to clarify the legal and institutional aspects involved.

EXPORT OF DOMESTICALLY PROHIBITED GOODS

The CONTRACTING PARTIES decide that contracting parties shall, to the maximum extent feasible, notify GATT of any goods produced and exported by them but banned by their national authorities for sale on their domestic markets on grounds of human health and safety. At their 1984 Session, the CONTRACTING PARTIES will consider in the light of experience gained with this notification procedure, the need for study of problems relevant to the GATT in relation to exports of domestically prohibited goods and of any action that may be appropriate to deal with such problems.

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 12

EXPORT CREDITS FOR CAPITAL GOODS

The CONTRACTING PARTIES:

1. Are aware that official export credit provisions on capital goods which apply to developing countries may pose problems for the expansion of imports into these countries consistent with their trade and development needs;
2. Therefore recommend that contracting parties, members of those international arrangements concerning official export credit matters, when reviewing or revising their various international undertakings, give special attention to relevant credit provisions, including specific terms and conditions, in order to facilitate the expansion of developing countries' imports of capital goods consistent with their trade and development needs; and
3. Request the Director-General of the GATT to consult with the contracting parties concerned and report to the 39th Session.

TEXTILES AND CLOTHING

The CONTRACTING PARTIES decide:

1. To carry out on a priority basis a study of:
  - (i) the importance of textiles and clothing in world trade and particularly for the trade prospects of developing countries;
  - (ii) the impact on economic activity and prospects of countries participating in textiles trade, of the existing systems of restraints and restrictions relating to textiles and clothing, principally the MFA;
  - (iii) consequences for economic and trade prospects in these countries of a phasing out on the basis of the provisions of the General Agreement, or of the continued maintenance, of the restraints and restrictions applied under the existing textile and clothing regimes, principally the MFA; and
2. To examine expeditiously, taking into account the results of such a study, modalities of further trade liberalization in textiles and clothing

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 13

including the possibilities for bringing about the full application of GATT provisions to this sector of trade.

3. This work should be completed for consideration by the CONTRACTING PARTIES at their 1984 Session.

PROBLEMS OF TRADE IN CERTAIN NATURAL RESOURCE PRODUCTS

The CONTRACTING PARTIES decide:

1. That problems relating to trade in the following natural resource products including in their semi-processed and processed forms, falling under the competence of the General Agreement relating to tariffs, non-tariff measures and other factors affecting trade, should be examined with a view to recommending possible solutions:

- (a) Non-ferrous metals and minerals
- (b) Forestry products
- (c) Fish and fisheries products

2. That for this purpose the Council should decide, for each of these three items, the terms of reference, time frame and procedures.

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 14

EXCHANGE RATE FLUCTUATIONS AND THEIR EFFECT ON TRADE

The CONTRACTING PARTIES decide:

To request the Director-General to consult the Managing Director of the International Monetary Fund on the possibility of a study of the effects of erratic fluctuations in exchange rates on international trade, to report to the Council on the results of these consultations and to forward any such study to the Council so that it may consider any implications for the General Agreement.

DUAL PRICING AND RULES OF ORIGIN

The CONTRACTING PARTIES decide:

To request the Council to make arrangements for studies of dual-pricing practices and rules of origin; and

To consider what further action may be necessary with regard to these matters when the results of these studies are available.

SERVICES

The CONTRACTING PARTIES decide:

1. To recommend to each contracting party with an interest in services of different types to undertake, as far as it is able, national examination of the issues in this sector.

2. To invite contracting parties to exchange information on such matters among themselves, inter alia through international organizations such as GATT. The compilation and distribution of such information should be based on as uniform a format as possible.

3. To review the results of these examinations, along with the information and comments provided by relevant international organizations, at their 1984 Session and to consider whether any multilateral action in these matters is appropriate and desirable.



2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 15

ANNEX

GATT RULES AND ACTIVITIES RELATING TO DEVELOPING COUNTRIES

The CONTRACTING PARTIES:

1. Decide, in order to improve the review and surveillance procedures in regard to the implementation of Part IV, that:

- (a) the Committee on Trade and Development, bearing in mind particularly the special responsibility of the developed contracting parties in this regard, shall adopt a programme of consultations with contracting parties individually or collectively, as appropriate, to examine how individual contracting parties have responded to the requirements of Part IV;
- (b) each such consultation shall be based on information supplied by the contracting party or parties in question and additional factual material prepared by the secretariat;
- (c) the Committee on Trade and Development shall also examine other aspects of existing procedures for reviewing the implementation of Part IV and for dealing with problems relating to the application of its provisions, and prepare guidelines for their improvement.

2. Invite the Committee on Trade and Development to review the operation of the Enabling Clause as provided for in its paragraph 9, with a view to its more effective implementation, inter alia, with respect to objectivity and transparency of modifications to GSP schemes and the operation of consultative provisions relating to differential and more favourable treatment for developing countries;

3. Invite contracting parties to pursue action as follows towards facilitating trade of least-developed countries and reducing tariff and non-tariff obstacles to their exports:

- (a) further improve GSP or m.f.n. treatment for products of particular export interest to least-developed countries, with the objective of providing fullest possible duty-free access to such products;
- (b) use, upon request and where feasible, of more flexible requirements for rules of origin for products of particular export interest to least-developed countries;

2.g Decision on Dispute Settlement contained in the Ministerial Declaration, adopted on 29 November 1982 (*continued*)

L/5424  
Page 16

- (c) eliminate or reduce non-tariff measures affecting products of particular export interest to least-developed countries;
- (d) facilitate the participation of least-developed countries in MTN Agreements and Arrangements;
- (e) strengthen the technical assistance facilities of the GATT secretariat targeted to the special requirements of least-developed countries;
- (f) strengthen trade promotion activities, through the ITC and other initiatives, such as by encouraging the establishment of import promotion offices in importing countries;
- (g) give more emphasis to the discussion and examination of policy issues of interest to least-developed countries in the context of further efforts to liberalize trade.

4. Decide to strengthen the Technical Co-operation programme of the GATT with a view to facilitating the more effective participation of developing countries in the GATT trading system:

- (a) by responding to increasing requests for seminars and other technical assistance activities;
- (b) by permitting increased participation in the GATT Commercial Policy Courses, and the inclusion in the training programme of a regular course in the Spanish language;
- (c) by encouraging, in the context of this programme, appropriate contributions from individual contracting parties.

5. Invite contracting parties individually to grant new voluntary contributions or provide other forms of assistance to the ITC.

2.h Dispute Settlement Procedures. Action taken on 30 November 1984

**GENERAL AGREEMENT ON  
TARIFFS AND TRADE**

L/ 5752  
20 December 1984  
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DISPUTE SETTLEMENT PROCEDURES

Fortieth Session of the CONTRACTING PARTIES

Action taken on 30 November 1984

I. The CONTRACTING PARTIES adopted the following proposal in L/5718/Rev.1:

At the 1982 Ministerial it was agreed that the Dispute Settlement "Understanding" provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end.

However, if improvement in the whole system is to be achieved, it is necessary not only to make specific procedural improvements, but also to obtain a clear cut understanding by and commitment from the CONTRACTING PARTIES (or Signatories to the Codes) with respect to the nature and time-frame of (a) the panel process; (b) the decision on the dispute matter to be taken by the CONTRACTING PARTIES (or the Code Committee) on the basis of the panel's report; and (c) the follow-up to be given to that decision by the parties to the dispute.

A number of procedural problems related to the panel process have been encountered which can be addressed within the existing framework. Such problems include the formation of panels in a timely manner, and the timely completion of panel work. Although the "Understanding" provides guidelines for these procedures (thirty days for the formation of a panel and three to nine months to complete the panel's work), experience has shown these time targets are seldom met. These are only a couple of difficulties related to the dispute settlement mechanism, so addressing them alone will not cure all its deficiencies. However, procedural improvements can lead to improvements in the quality of panel reports. Therefore, the CONTRACTING PARTIES agree that, as a first step, the following approach should be adopted, on a trial basis, for a period of one year in order to continue the process of improving the operation of the system.

2.h Dispute Settlement Procedures. Action taken on 30 November 1984 (*continued*)

L/ 5752  
Page 2

Formation of panels

1. Contracting parties should indicate to the Director-General the names of persons they think qualified to serve as panelists, who are not presently affiliated with national administrations but who have a high degree of knowledge of international trade and experience of the GATT. These names should be used to develop a short roster of non-governmental panelists to be agreed upon by the CONTRACTING PARTIES in consultation with the Director-General. The roster should be as representative as possible of contracting parties.
2. The Director-General should continue the practice of proposing panels composed preferably of governmental representatives but may also draw as necessary on persons on the approved roster. The parties should retain the ability to respond to the Director-General's proposal, but shall not oppose nominations except for compelling reasons.
3. In the event that panel composition cannot be agreed within thirty days after a matter is referred by the CONTRACTING PARTIES, the Director-General shall, at the request of either party and in consultation with the Chairman of the Council, complete the panel by appointing persons from the roster of non-governmental panelists to resolve the deadlock, after consulting both parties.

Completion of panel work

1. Panels should continue to set their own working procedures and, where possible, panels should provide the parties to the dispute at the outset with a proposed calendar for the panel's work.
2. Where written submissions are requested from the parties, panels should set precise deadlines, and the parties to a dispute should respect those deadlines.

II. The CONTRACTING PARTIES referred proposals by Canada (L/5720) and Nicaragua (L/5731) to the Council for any appropriate action.

2.i Derestriction of Future Panel Reports. Decision by the Council of 4 May 1988

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DERESTRICTION OF FUTURE PANEL REPORTS

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331

DERESTRICTION OF FUTURE PANEL REPORTS

*Decision by the Council of 4 May 1988  
(Extract from C/M/220)*

The Council *agreed* that in future, panel reports would be derestricted upon their adoption by the Council or the CONTRACTING PARTIES unless, prior to adoption, a party to the dispute had informed the Council Chairman or CONTRACTING PARTIES' Chairman that it opposed derestriction in that particular case. The Secretariat would check with the parties to a dispute prior to the Council meeting or CONTRACTING PARTIES' Session in this connection.

(...)

2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED

MTN.TNC/7(MIN)  
9 December 1988  
Special Distribution

Trade Negotiations Committee

TRADE NEGOTIATIONS COMMITTEE MEETING  
AT MINISTERIAL LEVEL

Montreal, December 1988

The Trade Negotiations Committee meeting at Montreal at Ministerial level decides that:

- the Committee will hold a meeting at the level of high officials in the first week of April 1989;
- the results achieved at its Montreal meeting as reflected in the present document are put "on hold" until that meeting;
- during the period up to April 1989, Mr. Arthur Dunkel, in his capacity as Chairman of the Committee at official level should conduct high level consultations on the four items (Textiles and Clothing; Agriculture; Safeguards; and Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods) which require further consideration;
- the entire package of subjects, the results achieved in Montreal and the other items, should be reviewed at the meeting of the Trade Negotiations Committee in April 1989.

The Committee declares its determination to press forward and complete the negotiations as foreseen in 1990.

(...)



2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988  
(continued)

(...)

MTN.TNC/7(MIN)  
Page 26

DISPUTE SETTLEMENT

1. Ministers recommend approval by the CONTRACTING PARTIES of the improvements of the GATT dispute settlement rules and procedures set out below and their application on a trial basis from 1 January 1989 to the end of the Uruguay Round.
2. Ministers decide that the Negotiating Group on Dispute Settlement shall continue its work for the full achievement of the negotiating objective, taking into account proposals which have been presented and without prejudice to positions taken by participants. Such work would include, *inter alia*, further examination of improved and strengthened procedures concerning the implementation of recommendations or rulings of the CONTRACTING PARTIES, as well as of the definition, determination and modalities of compensation, and the issues raised in paragraphs A.2 and G.3 of the Dispute Settlement text in Section III of MTN.GNG/13.

Improvements to the GATT Dispute Settlement Rules and Procedures

A. General Provisions

1. Contracting parties recognize that the dispute settlement system of GATT serves to preserve the rights and obligations of contracting parties under the General Agreement and to clarify the existing provisions of the General Agreement. It is a central element in providing security and predictability to the multilateral trading system.
2. Contracting parties agree that all solutions to matters formally raised under the GATT dispute settlement system under Articles XXII, XXIII and arbitration awards shall be consistent with the General Agreement and shall not nullify or impair benefits accruing to any contracting party under the General Agreement, nor impede the attainment of any objective of the General Agreement.
3. Contracting parties agree that the existing rules and procedures of the GATT in the field of dispute settlement shall continue. It is further agreed that the improvements set out below, which aim to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, shall be applied on a trial basis from 1 January 1989 to the end of the Uruguay Round in respect of complaints brought during that period under Article XXII or XXIII; it is also agreed to keep the application of these improvements under review during the remainder of the Round and to decide on their adoption before the end of the Round; to continue negotiations with the aim of further improving and strengthening the GATT dispute settlement system taking into account the experience gained in the application of these improvements.

2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988  
(continued)

MTN.TNC/7(MIN)  
Page 27

4. All the points set out in this document shall be applied without prejudice to any provision on special and differential treatment for developing contracting parties in the existing instruments on dispute settlement including the CONTRACTING PARTIES' Decision of 5 April 1966.

B. Notification

Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII, as well as arbitration awards within GATT, must be notified to the Council where any contracting party may raise any point relating thereto.

C. Consultations

1. If a request is made under Article XXII:1 or XXIII:1, the contracting party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the contracting party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the contracting party that requested the holding of consultations may proceed directly to request the establishment of a panel or a working party.

2. If the consultations under Article XXII:1 or XXIII:1 fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel or a working party under Article XXIII:2. The complaining party may request a panel or a working party during the sixty day period if the parties jointly consider that consultations have failed to settle the dispute.

3. Requests for consultations under Article XXII:1 or XXIII:1 shall be notified to the GATT Council by the party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

4. In cases of urgency, including those which concern perishable goods en route, parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have failed to settle the dispute within a period of thirty days after the request, the complaining party may request the establishment of a panel or a working party.

2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988  
(continued)

MTN.TNC/7(MIN)  
Page 28

D. Good Offices, Conciliation, Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can then proceed with a request for the establishment of a panel or a working party under Article XXIII:2. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel or working party. The complaining party may request a panel or a working party during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel or working party process proceeds.

3. The Director-General may, acting in an ex officio capacity, offer his good offices, conciliation or mediation with the view to assisting contracting parties to settle a dispute.

E. Arbitration

1. Expeditious arbitration within GATT as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all GATT contracting parties sufficiently in advance of the actual commencement of the arbitration process.

3. Other contracting parties may become party to an arbitration proceeding upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award.

F. Panel and Working Party Procedures

(a) Establishment of a Panel or a Working Party

The request for a panel or a working party shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel or a working party

2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988  
(continued)

MTN.TNC/7(MIN)  
Page 29

with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. If the complaining party so requests, a decision to establish a panel or working party shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise.\*

(b) Standard Terms of Reference

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty days from the establishment of the panel:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of contracting party) in document L/... and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2".

2. In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be circulated to all contracting parties. If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council.

(c) Composition of Panels

1. Contracting parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

2. Panels shall be composed of well-qualified governmental and/or non-governmental individuals.

3. The roster of non-governmental panelists shall be expanded and improved. To this end, contracting parties may nominate individuals to serve on panels and shall provide relevant information on their nominee's knowledge of international trade and of the GATT.

\*References to the Council, made in this paragraph as well as in the following paragraphs, are without prejudice to the competence of the CONTRACTING PARTIES, for which the Council is empowered to act in accordance with normal GATT practice (BISD 26S/215).



2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988  
(continued)

MTN.TNC/7(MIN)  
Page 30

4. Panels shall be composed of three members unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five members.

5. If there is no agreement on the members within twenty days from the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the Council, shall form the panel by appointing the panelists whom he considers most appropriate, after consulting both parties. The Director-General shall inform the contracting parties of the composition of the panel thus formed no later than ten days from the date he receives such a request.

(d) Procedures for Multiple Complainants

1. Where more than one contracting party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all parties concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel will organize its examination and present its findings to the Council so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

(e) Third Contracting Parties

1. The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.

2. Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. At the request of the third contracting party, the panel may grant the third contracting party access to the written submissions to

2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988  
(continued)

MTN.TNC/7(MIN)  
Page 31

the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third contracting party.

(f) Time Devoted to Various Phases of a Panel

1. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

2. Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.

3. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

4. Each party to the dispute shall deposit its written submissions with the secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in the second paragraph of this section and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

5. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to provide its report to the parties within three months.

6. When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission of the report to the contracting parties exceed nine months.



2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988  
(continued)

MTN.TNC/7(MIN)  
Page 32

7. In the context of consultations involving a measure taken by a developing contracting party, the parties may agree to extend the periods established in paragraphs 2 and 4 of Section C. If, after the relevant period has elapsed, the parties cannot agree that the consultations have concluded, the Chairman of the Council shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation. The provisions of paragraph 4 of Section G are not affected by any action pursuant to this paragraph.

G. Adoption of Panel Reports

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until thirty days after they have been issued to the contracting parties.

2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided.

4. The period from the request under Article XXII:1 or Article XXIII:1 until the Council takes a decision on the panel report shall not, unless agreed to by the parties, exceed fifteen months. The provisions of this paragraph shall not affect the provisions of paragraph 6 of Section F(f).

H. Technical Assistance

1. While the secretariat assists contracting parties in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing contracting parties. To this end, the secretariat shall make available a qualified legal expert within the Technical Co-operation Division to any developing contracting party which so requests. This expert shall assist the developing contracting party in a manner ensuring the continued impartiality of the secretariat.

2.j Trade Negotiations Committee Meeting at Ministerial Level, Montreal, December 1988  
(continued)

MTN.TNC/7(MIN)  
Page 33

2. The secretariat shall conduct special training courses for interested contracting parties concerning GATT dispute settlement procedures and practices so as to enable contracting parties' experts to be better informed in this regard.

I. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

2. The contracting parties concerned shall inform the Council of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the contracting party concerned shall have a reasonable period of time in which to do so.

3. The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each such Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the panel recommendations or rulings.

4. In cases brought by developing contracting parties, the Council shall consider what further action it might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding on Dispute Settlement.

2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of 12 April 1989

**GENERAL AGREEMENT ON**

L/6489

13 April 1989

**TARIFFS AND TRADE**

Limited Distribution

IMPROVEMENTS TO THE GATT DISPUTE SETTLEMENT RULES AND PROCEDURES

Decision of 12 April 1989

Following the meetings of the Trade Negotiations Committee at Ministerial level in December 1988 and at the level of high officials in April 1989, the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade

Approve the improvements of the GATT dispute settlement rules and procedures set out below and their application on the basis set out in this Decision:

A. General Provisions

1. Contracting parties recognize that the dispute settlement system of GATT serves to preserve the rights and obligations of contracting parties under the General Agreement and to clarify the existing provisions of the General Agreement. It is a central element in providing security and predictability to the multilateral trading system.

2. Contracting parties agree that all solutions to matters formally raised under the GATT dispute settlement system under Articles XXII, XXIII and arbitration awards shall be consistent with the General Agreement and shall not nullify or impair benefits accruing to any contracting party under the General Agreement, nor impede the attainment of any objective of the General Agreement.

3. Contracting parties agree that the existing rules and procedures of the GATT in the field of dispute settlement shall continue. It is further agreed that the improvements set out below, which aim to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, shall be applied on a trial basis from 1 May 1989 to the end of the Uruguay Round in respect of complaints brought during that period under Article XXII or XXIII; it is also agreed to keep the application of these improvements under review during the remainder of the Round and to decide on their adoption before the end of the Round; to continue negotiations with the aim of further improving and strengthening the GATT dispute settlement system taking into account the experience gained in the application of these improvements.

**2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of 12 April 1989** (*continued*)

L/6489  
Page 2

4. All the points set out in this Decision shall be applied without prejudice to any provision on special and differential treatment for developing contracting parties in the existing instruments on dispute settlement including the CONTRACTING PARTIES' Decision of 5 April 1966 (BISD 14S/18).

**B. Notification**

Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII, as well as arbitration awards within GATT, must be notified to the Council where any contracting party may raise any point relating thereto.

**C. Consultations**

1. If a request is made under Article XXII:1 or XXIII:1, the contracting party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the contracting party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the contracting party that requested the holding of consultations may proceed directly to request the establishment of a panel or a working party.

2. If the consultations under Article XXII:1 or XXIII:1 fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel or a working party under Article XXIII:2. The complaining party may request a panel or a working party during the sixty-day period if the parties jointly consider that consultations have failed to settle the dispute.

3. Requests for consultations under Article XXII:1 or XXIII:1 shall be notified to the Council by the party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

4. In cases of urgency, including those which concern perishable goods en route, parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have failed to settle the dispute within a period of thirty days after the request, the complaining party may request the establishment of a panel or a working party.

2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of  
12 April 1989 (*continued*)

L/6489

Page 3

D. Good Offices, Conciliation, Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can then proceed with a request for the establishment of a panel or a working party under Article XXIII:2. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel or working party. The complaining party may request a panel or a working party during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel or working party process proceeds.

3. The Director-General may, acting in an ex officio capacity, offer his good offices, conciliation or mediation with the view to assisting contracting parties to settle a dispute.

E. Arbitration

1. Expeditious arbitration within GATT as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all contracting parties sufficiently in advance of the actual commencement of the arbitration process.

3. Other contracting parties may become party to an arbitration proceeding upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award.

F. Panel and Working Party Procedures

(a) Establishment of a Panel or a Working Party

The request for a panel or a working party shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the



2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of  
12 April 1989 (*continued*)

L/6489  
Page 4

applicant requests the establishment of a panel or a working party with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. If the complaining party so requests, a decision to establish a panel or working party shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise.\*

(b) Standard Terms of Reference

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty days from the establishment of the panel:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of contracting party) in document L/... and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2".

2. In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be circulated to all contracting parties. If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council.

(c) Composition of Panels

1. Contracting parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

2. Panels shall be composed of well-qualified governmental and/or non-governmental individuals.

3. The roster of non-governmental panelists shall be expanded and improved. To this end, contracting parties may nominate individuals to serve on panels and shall provide relevant information on their nominee's knowledge of international trade and of the GATT.

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\*References to the Council, made in this paragraph as well as in the following paragraphs, are without prejudice to the competence of the CONTRACTING PARTIES, for which the Council is empowered to act in accordance with normal GATT practice (BISD 26S/215).



2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of  
12 April 1989 (*continued*)

L/6489  
Page 5

4. Panels shall be composed of three members unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five members.

5. If there is no agreement on the members within twenty days from the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the Council, shall form the panel by appointing the panelists whom he considers most appropriate, after consulting both parties. The Director-General shall inform the contracting parties of the composition of the panel thus formed no later than ten days from the date he receives such a request.

(d) Procedures for Multiple Complainants

1. Where more than one contracting party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all parties concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel will organize its examination and present its findings to the Council so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

(e) Third Contracting Parties

1. The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.

2. Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. At the request of the third contracting party, the panel may grant the third contracting party access to the written submissions to the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third contracting party.

2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of  
12 April 1989 (*continued*)

L/6489  
Page 6

(f) Time Devoted to Various Phases of a Panel

1. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.
2. Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.
3. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.
4. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in the second paragraph of this section and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.
5. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to provide its report to the parties within three months.
6. When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission of the report to the contracting parties exceed nine months.

2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of  
12 April 1989 (*continued*)

L/6489  
Page 7

7. In the context of consultations involving a measure taken by a developing contracting party, the parties may agree to extend the periods established in paragraphs 2 and 4 of Section C. If, after the relevant period has elapsed, the parties cannot agree that the consultations have concluded, the Chairman of the Council shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation. The provisions of paragraph 4 of Section G are not affected by any action pursuant to this paragraph.

G. Adoption of Panel Reports

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until thirty days after they have been issued to the contracting parties.
2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.
3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided.
4. The period from the request under Article XXII:1 or Article XXIII:1 until the Council takes a decision on the panel report shall not, unless agreed to by the parties, exceed fifteen months. The provisions of this paragraph shall not affect the provisions of paragraph 6 of Section F(f).

H. Technical Assistance

1. While the Secretariat assists contracting parties in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing contracting parties. To this end, the Secretariat shall make available a qualified legal expert within the Technical Co-operation Division to any developing contracting party which so requests. This expert shall assist the developing contracting party in a manner ensuring the continued impartiality of the Secretariat.

2.k Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of  
12 April 1989 (*continued*)

L/6489  
Page 8

2. The Secretariat shall conduct special training courses for interested contracting parties concerning GATT dispute settlement procedures and practices so as to enable contracting parties' experts to be better informed in this regard.

I. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

2. The contracting party concerned shall inform the Council of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the contracting party concerned shall have a reasonable period of time in which to do so.

3. The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each such Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the panel recommendations or rulings.

4. In cases brought by developing contracting parties, the Council shall consider what further action it might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/214).

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision

#### MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

RESTRICTED  
MTN.GNG/NG13/W/4/Rev.1  
10 November 1989  
Special Distribution

Group of Negotiations on Goods (GATT)  
Negotiating Group on Dispute Settlement

#### GATT DISPUTE SETTLEMENT SYSTEM

Note by the Secretariat

Revision

At the meeting of the Negotiating Group on Dispute Settlement on 6 April 1987, the secretariat was requested to prepare a factual background paper in order to assist the Group in its analytical assessment of the functioning of the dispute settlement process (MTN.GNG/NG13/1). It was suggested that such a background paper should include: a compilation of all GATT and Code provisions and procedures relating to dispute settlement; the standard internal procedures customarily adopted by panels; an updating of the tabular list of GATT disputes contained in the Analytical Index; a factual analysis of the various dispute cases brought before the GATT Council and MTN Committees; and an assessment of the causes of unresolved disputes, especially after 1979. The relevant texts were compiled and the requested information set out in MTN.GNG/NG13/W/4 of 10 June 1987.

This note revises MTN.GNG/NG13/W/4 by incorporating the text of the Decision by CONTRACTING PARTIES of 12 April 1989 on "Improvements to the GATT Dispute Settlement Rules and Procedures"; a revised "Note by the Secretariat for the attention of newly established Panels"; updates of the tabular lists of GATT Article XXIII complaints and recourses to dispute settlement under the Tokyo Round Agreements. Parts V and VI have not been modified.

#### TABLE OF CONTENTS

	<u>Page</u>
I. <u>Compilation of texts</u>	4
1. Introductory note	4
2. GATT Article XXII	4
2.1 Text of Article XXII	4
2.2 Procedures adopted in respect of Article XXII	4
3. GATT Article XXIII	5
3.1 Text of Article XXIII	5
3.2 Procedures under Article XXIII	6
GATT SECRETARIAT	
UR-89-0351	



**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 2

4.	Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance	8
5.	Ministerial Declaration adopted on 29 November 1982, section on "Dispute Settlement Procedures"	18
6.	Dispute Settlement Procedures. Action taken on 30 November 1984	21
7.	Decision by the CONTRACTING PARTIES of 12 April 1989 on Improvements to the GATT Dispute Settlement Rules and Procedures	22
8.	1979 Agreement on Technical Barriers to Trade, Article 14 and Annexes 2 and 3	30
9.	1979 Agreement on Government Procurement, Article VII:6-14	36
10.	1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Articles 12, 13, 17 and 18	38
11.	1979 International Dairy Arrangement, Article IV:5 and 6	42
12.	1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, Articles 19, 20 and Annex III	43
13.	1979 Agreement on Import Licensing Procedures, Article 4	46
14.	1979 Agreement on Trade in Civil Aircraft, Article 8	47
15.	1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Article 15	48
16.	1973 Arrangement Regarding International Trade in Textiles, Articles 1:6, 11:4-10, and paragraphs 5 and 23 of the Conclusions of the Textiles Committee adopted on 22 December 1981	50
II.	<u>Internal working procedures adopted by panels established under Article XXIII:2 of the General Agreement</u>	52
1.	Introductory note	52
2.	Note by the secretariat for the attention of newly established panels	52



**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 3

	<u>Page</u>
III. <u>Tabular lists of GATT Article XXIII complaints</u>	60
1. Chronological list of Article XXIII complaints	60
2. List of Article XXIII complaints by countries complained against	98
IV. <u>Dispute settlement under the Tokyo Round Agreements</u>	121
1. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement	121
2. Agreement on Implementation of Article VI of the General Agreement	123
3. Agreement on Technical Barriers to Trade	124
4. Agreement on Import Licensing Procedures	125
5. Agreement on Government Procurement	125
6. Agreement on Trade in Civil Aircraft	126
7. International Dairy Arrangement	126
8. Arrangement Regarding Bovine Meat	126
V. <u>Factual Analysis of the Work of Panels Established under GATT Article XXIII:2 since 1979</u>	127
1. Additional Factual Data on Article XXIII Panels Established since 1979	127
(a) Terms of reference	127
(b) Average time passed for the various phases of the panel proceedings	128
(c) GATT Articles examined and areas of dispute	129
2. Assessment of the Causes of the Non-Adoption of Panel Reports since 1979	129
VI. <u>Concluding Remarks</u>	130
1. Overall Assessment of GATT Article XXIII Dispute Settlement Proceedings	130
2. Overall Assessment of Dispute Settlement Proceedings under the 1979 Tokyo Round Agreements	131

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 4

**I. COMPILATION OF TEXTS**

**1. Introductory note**

1. There exists no official classification of a "GATT dispute" or a "GATT dispute settlement procedure". The General Agreement contains some thirty provisions requiring contracting parties to hold bilateral or multilateral consultations on restrictive trade measures in specific instances (e.g. Articles VI:7, XII:4, XVI:1, XIX:2, XXII, XXIII:1, XXVIII), or providing for other multilateral procedures that can be used for the settlement of disputes (e.g. Articles XII:4, XIX:3, XXIII:2, XXIV:7, 10, XXV:5, XXVIII:4). Since 1948, more than 100 formal complaints under the central dispute settlement provision of GATT Article XXIII were notified to GATT. But these formal Article XXIII complaints are only the tip of the iceberg. A large number of additional complaints were dealt with in consultations under GATT Articles XXII or XXIII without notification to GATT. Since 1980, some twenty formal complaints have been submitted under the dispute settlement provisions of the various MTN Agreements concluded at the end of the GATT Tokyo Round in 1979.

**2. GATT Article XXII**

**2.1 Text of Article XXII (BISD IV/39)**

**Consultation**

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

**2.2 Procedures adopted in respect of Article XXII (BISD 7S/24)**

**PROCEDURES UNDER ARTICLE XXII ON QUESTIONS AFFECTING  
THE INTERESTS OF A NUMBER OF CONTRACTING PARTIES**

**Procedures adopted on 10 November 1958**

1. Any contracting party seeking a consultation under Article XXII shall, at the same time, so inform the Executive Secretary for the information of all contracting parties.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 5

2. Any other contracting party asserting a substantial trade interest in the matter shall, within forty-five days of the notification by the Executive Secretary of the request for consultation, advise the consulting countries and the Executive Secretary of its desire to be joined in the consultation.
  3. Such contracting party shall be joined in the consultation provided that the contracting party or parties to which the request for consultation is addressed agree that the claim of substantial interest is well-founded; in that event they shall so inform the contracting parties concerned and the Executive Secretary.
  4. If the claim to be joined in the consultation is not accepted, the applicant contracting party shall be free to refer its claim to the CONTRACTING PARTIES.
  5. At the close of the consultation, the consulting countries shall advise the Executive Secretary for the information of all contracting parties of the outcome.
  6. The Executive Secretary shall provide such assistance in these consultations as the parties may request.
3. GATT Article XXIII
- 3.1 Text of Article XXIII (BISD IV/39)

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of:
  - (a) the failure of another contracting party to carry out its obligations under this Agreement, or
  - (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
  - (c) the existence of any other situation,the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 6

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate intergovernmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary<sup>1</sup> to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

**3.2 Procedures under Article XXIII (BISD 14S/18)**

**PROCEDURES UNDER ARTICLE XXIII**

Decision of 5 April 1966<sup>2</sup>

The CONTRACTING PARTIES,

Recognizing that the prompt settlement of situations in which a contracting party considers that any benefits accruing to it directly or indirectly from the General Agreement are being impaired by measures taken by another contracting party, is essential to the effective functioning of the General Agreement and the maintenance of a proper balance between the rights and obligations of all contracting parties;

Recognizing further that the existence of such a situation can cause severe damage to the trade and economic development of the less-developed contracting parties; and

<sup>1</sup>See Preface to BISD Vol. IV

<sup>2</sup>The Decision is referred to in paragraphs 41-47 of the Report of the Committee on Trade and Development. See pages 139 and 140 of BISD, Fourteenth Supplement.

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 7

Affirming their resolve to facilitate the solution of such situations while taking fully into account the need for safeguarding both the present and potential trade of less-developed contracting parties affected by such measures;

Decide that:

1. If consultations between a less-developed contracting party and a developed contracting party in regard to any matter falling under paragraph 1 of Article XXIII do not lead to a satisfactory settlement, the less-developed contracting party complaining of the measure may refer the matter which is the subject of consultations to the Director-General so that, acting in an ex officio capacity, he may use his good offices with a view to facilitating a solution.
2. To this effect the contracting parties concerned shall, at the request of the Director-General, promptly furnish all relevant information.
3. On receipt of this information, the Director-General shall consult with the contracting parties concerned and with such other contracting parties or intergovernmental organizations as he considers appropriate with a view to promoting a mutually acceptable solution.
4. After a period of two months from the commencement of the consultations referred to in paragraph 3 above, if no mutually satisfactory solution has been reached, the Director-General shall, at the request of one of the contracting parties concerned, bring the matter to the attention of the CONTRACTING PARTIES or the Council, to whom he shall submit a report on the action taken by him, together with all background information.
5. Upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith appoint a panel of experts to examine the matter with a view to recommending appropriate solutions. The members of the panel shall act in a personal capacity and shall be appointed in consultation with, and with the approval of, the contracting parties concerned.
6. In conducting its examination and having before it all the background information, the panel shall take due account of all the circumstances and considerations relating to the application of the measures complained of, and their impact on the trade and economic development of affected contracting parties.
7. The panel shall, within a period of sixty days from the date the matter was referred to it, submit its findings and recommendations to the CONTRACTING PARTIES or to the Council, for consideration and decision. Where the matter is referred to the Council, it may, in accordance with Rule 8 of the Inter-Sessional Procedures adopted by the CONTRACTING PARTIES at their thirteenth session<sup>1</sup>, address its recommendations directly to the interested contracting parties and concurrently report to the CONTRACTING PARTIES.

<sup>1</sup>BISD, Seventh Supplement, page 7

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 8

8. Within a period of ninety days from the date of the decision of the CONTRACTING PARTIES or the Council, the contracting party to which a recommendation is directed shall report to the CONTRACTING PARTIES or the Council on the action taken by it in pursuance of the decision.

9. If on examination of this report it is found that a contracting party to which a recommendation has been directed has not complied in full with the relevant recommendation of the CONTRACTING PARTIES or the Council, and that any benefit accruing directly or indirectly under the General Agreement continues in consequence to be nullified or impaired, and that the circumstances are serious enough to justify such action, the CONTRACTING PARTIES may authorize the affected contracting party or parties to suspend, in regard to the contracting party causing the damage, application of any concession or any other obligation under the General Agreement whose suspension is considered warranted, taking account of the circumstances.

10. In the event that a recommendation to a developed country by the CONTRACTING PARTIES is not applied within the time-limit prescribed in paragraph 8, the CONTRACTING PARTIES shall consider what measures, further to those undertaken under paragraph 9, should be taken to resolve the matter.

11. If consultations, held under paragraph 2 of Article XXXVII, relate to restrictions for which there is no authority under any provisions of the General Agreement, any of the parties to the consultations may, in the absence of a satisfactory solution, request that consultations be carried out by the CONTRACTING PARTIES pursuant to paragraph 2 of Article XXIII and in accordance with the procedures set out in the present decision, it being understood that a consultation held under paragraph 2 of Article XXXVII in respect of such restrictions will be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII if the parties to the consultations so agree.

4. Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210)

UNDERSTANDING REGARDING NOTIFICATION,  
CONSULTATION, DISPUTE SETTLEMENT AND SURVEILLANCE

Adopted on 28 November 1979  
(L/4907)

1. The CONTRACTING PARTIES reaffirm their adherence to the basic GATT mechanism for the management of disputes based on Articles XXII and XXIII.<sup>1</sup>

<sup>1</sup>It is noted that Article XXV may, as recognized by the CONTRACTING PARTIES, *inter alia*, when they adopted the report of the Working Party on particular difficulties connected with trade in primary products (L/930), also afford an appropriate avenue for consultation and dispute settlement in certain circumstances.



### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1

Page 9

With a view to improving and refining the GATT mechanism, the CONTRACTING PARTIES agree as follows:

#### Notification

2. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.

3. Contracting parties moreover undertake, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement, it being understood that such notification would of itself be without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement. Contracting parties should endeavour to notify such measures in advance of implementation. In other cases, where prior notification has not been possible, such measures should be notified promptly ex post facto. Contracting parties which have reason to believe that such trade measures have been adopted by another contracting party may seek information on such measures bilaterally, from the contracting party concerned.

#### Consultations

4. Contracting parties reaffirm their resolve to strengthen and improve the effectiveness of consultative procedures employed by contracting parties. In that connection, they undertake to respond to requests for consultations promptly and to attempt to conclude consultations expeditiously, with a view to reaching mutually satisfactory conclusions. Any requests for consultations should include the reasons therefor.

5. During consultations, contracting parties should give special attention to the particular problems and interests of less-developed contracting parties.

6. Contracting parties should attempt to obtain satisfactory adjustment of the matter in accordance with the provisions of Article XXIII:1 before resorting to Article XXIII:2.

#### Dispute settlement

7. The CONTRACTING PARTIES agree that the customary practice of the GATT in the field of dispute settlement, described in the Annex, should be continued in the future, with the improvements set out below. They recognize that the efficient functioning of the system depends on their will to abide by the present understanding. The CONTRACTING PARTIES reaffirm that the customary practice includes the procedures for the settlement of disputes between developed and less-developed countries adopted by the CONTRACTING PARTIES in 1966<sup>1</sup> and that these remain available to less-developed contracting parties wishing to use them.

<sup>1</sup>BISD 14S/18

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 10

8. If a dispute is not resolved through consultations the contracting parties concerned may request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences between the parties. If the unresolved dispute is one in which a less-developed contracting party has brought a complaint against a developed contracting party, the less-developed contracting party may request the good offices of the Director-General who, in carrying out his tasks, may consult with the Chairman of the CONTRACTING PARTIES and the Chairman of the Council.

9. It is understood that requests for conciliation and the use of the dispute settlement procedures of Article XXIII:2 should not be intended or considered as contentious acts and that, if disputes arise, all contracting parties will engage in these procedures in good faith in an effort to resolve the disputes. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

10. It is agreed that if a contracting party invoking Article XXIII:2 requests the establishment of a panel to assist the CONTRACTING PARTIES to deal with the matter, the CONTRACTING PARTIES would decide on its establishment in accordance with standing practice. It is also agreed that the CONTRACTING PARTIES would similarly decide to establish a working party if this were requested by a contracting party invoking the Article. It is further agreed that such requests would be granted only after the contracting party concerned had had an opportunity to study the complaint and respond to it before the CONTRACTING PARTIES.

11. When a panel is set up, the Director-General, after securing the agreement of the contracting parties concerned, should propose the composition of the panel, of three or five members depending on the case, to the CONTRACTING PARTIES for approval. The members of a panel would preferably be governmental. It is understood that citizens of countries whose governments<sup>1</sup> are parties to the dispute would not be members of the panel concerned with that dispute. The panel should be constituted as promptly as possible and normally not later than thirty days from the decision by the CONTRACTING PARTIES.

12. The parties to the dispute would respond within a short period of time, i.e. seven working days, to nominations of panel members by the Director-General and would not oppose nominations except for compelling reasons.

13. In order to facilitate the constitution of panels, the Director-General should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade

<sup>1</sup>In the case customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 11

relations, economic development, and other matters covered by the General Agreement, and who could be available for serving on panels. For this purpose, each contracting party would be invited to indicate at the beginning of every year to the Director-General the name of one or two persons who would be available for such work.<sup>1</sup>

14. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

15. Any contracting party having a substantial interest in the matter before a panel, and having notified this to the Council, should have an opportunity to be heard by the panel. Each panel should have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a State it shall inform the government of that State. Any contracting party should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided should not be revealed without formal authorization from the contracting party providing the information.

16. The function of panels is to assist the CONTRACTING PARTIES in discharging their responsibilities under Article XXIII:2. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the General Agreement and, if so requested by the CONTRACTING PARTIES, make such other findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2. In this connection, panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

17. Where the parties have failed to develop a mutually satisfactory solution, the panel should submit its findings in a written form. The report of a panel should normally set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

18. To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned,

<sup>1</sup>The coverage of travel expenses should be considered within the limits of budgetary possibilities.

<sup>2</sup>A statement is included in the Annex describing the current practice with respect to inclusion on panels of persons from developing countries.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 12

and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the CONTRACTING PARTIES.

19. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any contracting party with an interest in the matter has a right to enquire about and be given appropriate information about that solution in so far as it relates to trade matters.

20. The time required by panels will vary with the particular case.<sup>1</sup> However, panels should aim to deliver their findings without undue delay, taking into account the obligation of the CONTRACTING PARTIES to ensure prompt settlement. In cases of urgency the panel would be called upon to deliver its findings within a period normally of three months from the time the panel was established.

21. Reports of panels and working parties should be given prompt consideration by the CONTRACTING PARTIES. The CONTRACTING PARTIES should take appropriate action on reports of panels and working parties within a reasonable period of time. If the case is one brought by a less-developed contracting party, such action should be taken in a specially convened meeting, if necessary. In such cases, in considering what appropriate action might be taken the CONTRACTING PARTIES shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of less-developed contracting parties concerned.

22. The CONTRACTING PARTIES shall keep under surveillance any matter on which they have made recommendations or given rulings. If the CONTRACTING PARTIES' recommendations are not implemented within a reasonable period of time, the contracting party bringing the case may ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution.

23. If the matter is one which has been raised by a less-developed contracting party, the CONTRACTING PARTIES shall consider what further action they might take which would be appropriate to the circumstances.

Surveillance

24. The CONTRACTING PARTIES agree to conduct a regular and systematic review of developments in the trading system. Particular attention would be paid to developments which affect rights and obligations under the GATT, to matters affecting the interests of less-developed contracting parties, to trade measures notified in accordance with this understanding and to measures which have been subject to consultation, conciliation or dispute settlement procedures laid down in this understanding.

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<sup>1</sup> An explanation is included in the Annex that "in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months".

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 13

Technical assistance

25. The technical assistance services of the GATT secretariat shall, at the request of a less-developed contracting party, assist it in connection with matters dealt with in this understanding.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 14

ANNEX

Agreed Description of the Customary Practice of the GATT  
in the Field of Dispute Settlement (Article XXIII:2)

1. Any dispute which has not been settled bilaterally under the relevant provisions of the General Agreement may be referred to the CONTRACTING PARTIES<sup>1</sup> which are obliged, pursuant to Article XXIII:2, to investigate matters submitted to them and make appropriate recommendations or give a ruling on the matter as appropriate. Article XXIII:2 does not indicate whether disputes should be handled by a working party or by a panel.<sup>2</sup>
2. The CONTRACTING PARTIES adopted in 1966 a decision establishing the procedure to be followed for Article XXIII consultations between developed and less-developed contracting parties.<sup>3</sup> This procedure provides, *inter alia*, for the Director-General to employ his good offices with a view to facilitating a solution, for setting up a panel with the task of examining the problem in order to recommend appropriate solutions, and for time-limits for the execution of the different parts of this procedure.
3. The function of a panel has normally been to review the facts of a case and the applicability of GATT provisions and to arrive at an objective assessment of these matters. In this connection, panels have consulted regularly with the parties to the dispute and have given them adequate opportunity to develop a mutually satisfactory solution. Panels have taken appropriate account of the particular interests of developing countries. In cases of failure of the parties to reach a mutually satisfactory settlement, panels have normally given assistance to the CONTRACTING PARTIES in making recommendations or in giving rulings as envisaged in Article XXIII:2.
4. Before bringing a case, contracting parties have exercised their judgment as to whether action under Article XXIII:2 would be fruitful. Those cases which have come before the CONTRACTING PARTIES under this provision have, with few exceptions, been brought to a satisfactory

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<sup>1</sup>The Council is empowered to act for the CONTRACTING PARTIES, in accordance with normal GATT practice.

<sup>2</sup>At the Review Session (1955) the proposal to institutionalize the procedures of panels was not adopted by CONTRACTING PARTIES mainly because they preferred to preserve the existing situation and not to establish judicial procedures which might put excessive strain on the GATT.

<sup>3</sup>BISD 14S/18



## 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 15

conclusion. The aim of the CONTRACTING PARTIES has always been to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the CONTRACTING PARTIES is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the General Agreement. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measures which are inconsistent with the General Agreement. The last resort which Article XXIII provides to the country invoking this procedure is the possibility of suspending the application of concessions or other obligations on a discriminatory basis vis-à-vis the other contracting party, subject to authorization by the CONTRACTING PARTIES of such measures. Such action has only rarely been contemplated and cases taken under Article XXIII:2 have led to such action in only one case.

5. In practice, contracting parties have had recourse to Article XXIII only when in their view a benefit accruing to them under the General Agreement was being nullified or impaired. In cases where there is an infringement of the obligations assumed under the General Agreement, the action is considered prima facie to constitute a case of nullification or impairment. A prima facie case of nullification or impairment would ipso facto require consideration of whether the circumstances are serious enough to justify the authorization of suspension of concessions or obligations, if the contracting party bringing the complaint so requests. This means that there is normally a presumption that a breach of the rules has an adverse impact on other contracting parties, and in such cases, it is up to the contracting parties against whom the complaint has been brought to rebut the charge. Paragraph 1(b) permits recourse to Article XXIII if nullification or impairment results from measures taken by other contracting parties whether or not these conflict with the provisions of the General Agreement, and paragraph 1(c) if any other situation exists. If a contracting party bringing an Article XXIII case claims that measures which do not conflict with the provisions of the General Agreement have nullified or impaired benefits accruing to it under the General Agreement, it would be called upon to provide a detailed justification.

6. Concerning the customary elements of the procedures regarding working parties and panels, the following elements have to be noted:

- (i) working parties are instituted by the Council upon the request of one or several contracting parties. The terms of reference of working parties are generally "to examine the matter in the light of the relevant provisions of the General Agreement and to report to the Council". Working parties set up their own working procedures. The practice for working parties has been to hold one or two meetings to examine the matter and a final meeting to discuss conclusions. Working parties are open to participation of any contracting party which has an interest in the matter.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 16

Generally working parties consist of a number of delegations varying from about five to twenty according to the importance of the questions and the interests involved. The countries who are parties to the dispute are always members of the Working Party and have the same status as other delegations. The report of the Working Party represents the views of all its members and therefore records different views if necessary. Since the tendency is to strive for consensus, there is generally some measure of negotiation and compromise in the formulation of the Working Party's report. The Council adopts the report. The reports of working parties are advisory opinions on the basis of which the CONTRACTING PARTIES may take a final decision.

- (ii) In the case of dispute, the CONTRACTING PARTIES have established panels (which have been called by different names) or working parties in order to assist them in examining questions raised under Article XXIII:2. Since 1952, panels have become the usual procedure. However, the Council has taken such decisions only after the party concerned has had an occasion to study the complaint and prepare its response before the Council. The terms of reference are discussed and approved by the Council. Normally, these terms of reference are "to examine the matter and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII". When a contracting party having recourse to Article XXIII:2 raised questions relating to the suspension of concessions or other obligations, the terms of reference were to examine the matter in accordance with the provisions of Article XXIII:2. Members of the panel are usually selected from permanent delegations or, less frequently, from the national administrations in the capitals amongst delegates who participate in GATT activities on a regular basis. The practice has been to appoint a member or members from developing countries when a dispute is between a developing and a developed country.
- (iii) Members of panels are expected to act impartially without instructions from their governments. In a few cases, in view of the nature and complexity of the matter, the parties concerned have agreed to designate non-government experts. Nominations are proposed to the parties concerned by the GATT secretariat. The composition of panels (three or five members depending on the case) has been agreed upon by the parties concerned and approved by the GATT Council. It is recognized that a broad spectrum of opinion has been beneficial in difficult cases, but that the number of panel members has sometimes delayed the composition of panels, and therefore the process of dispute settlement.

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 17

- (iv) Panels set up their own working procedures. The practice for the panels has been to hold two or three formal meetings with the parties concerned. The panel invited the parties to present their views either in writing and/or orally in the presence of each other. The panel can question both parties on any matter which it considers relevant to the dispute. Panels have also heard the views of any contracting party having a substantial interest in the matter, which is not directly party to the dispute, but which has expressed in the Council a desire to present its views. Written memoranda submitted to the panel have been considered confidential, but are made available to the parties to the dispute. Panels often consult with and seek information from any relevant source they deem appropriate and they sometimes consult experts to obtain their technical opinion on certain aspects of the matter. Panels may seek advice or assistance from the secretariat in its capacity as guardian of the General Agreement, especially on historical or procedural aspects. The secretariat provides the secretary and technical services for panels.
- (v) Where the parties have failed to develop a mutually satisfactory solution, the panel has submitted its findings in a written form. Panel reports have normally set out findings of fact, the applicability of relevant provisions, and the basic rationale behind any findings and recommendations that it has made. Where a bilateral settlement of the matter has been found, the report of the panel has been confined to a brief description of the case and to reporting that a solution has been reached.
- (vi) The reports of panels have been drafted in the absence of the parties in the light of the information and the statements made.
- (vii) To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel has normally first submitted the descriptive part of its report to the parties concerned, and also their conclusions, or an outline thereof, a reasonable period of time before they have been circulated to the CONTRACTING PARTIES.
- (viii) In accordance with their terms of reference established by the CONTRACTING PARTIES panels have expressed their views on whether an infringement of certain rules of the General Agreement arises out of the measure examined. Panels have also, if so requested by the CONTRACTING PARTIES, formulated draft recommendations addressed to the parties. In yet other cases panels were invited to give a technical opinion

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 18

on some precise aspect of the matter (e.g. on the modalities of a withdrawal or suspension in regard to the volume of trade involved). The opinions expressed by the panel members on the matters are anonymous and the panel deliberations are secret.

- (ix) Although the CONTRACTING PARTIES have never established precise deadlines for the different phases of the procedure, probably because the matters submitted to panels differ as to their complexity and their urgency, in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months.

The 1966 decision by the CONTRACTING PARTIES referred to in paragraph 2 above lays down in its paragraph 7 that the Panel shall report within a period of sixty days from the date the matter was referred to it.

- 5. Ministerial Declaration adopted on 29 November 1982 (BISD 29S/9), section on "Dispute Settlement Procedures" (BISD 29S/13)

Dispute Settlement Procedures

The CONTRACTING PARTIES:

Agree that the Understanding on Notification, Consultation, Surveillance and Dispute Settlement negotiated during the Tokyo Round (hereinafter referred to as the "Understanding") provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end;

And agree further that:

- (i) With reference to paragraph 8 of the Understanding, if a dispute is not resolved through consultations, any party to a dispute may, with the agreement of the other party, seek the good offices of the Director-General or of an individual or group of persons nominated by the Director-General. This conciliatory process would be carried out expeditiously, and the Director-General would inform the Council of the outcome of the conciliatory process. Conciliation proceedings, and in particular positions taken by the parties to the dispute during conciliation, shall be confidential, and without prejudice to the rights of either party in any further proceedings under Article XXIII:2. It would remain open at any time during any conciliatory process for either party to the dispute to refer the matter to the CONTRACTING PARTIES.

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1

Page 19

- (ii) In order to ensure more effective compliance with the provisions of paragraphs 11 and 12 of the Understanding, the Director-General shall inform the Council of any case in which it has not been found possible to meet the time-limits for the establishment of a panel.
- (iii) With reference to paragraph 13 of the Understanding, contracting parties will co-operate effectively with the Director-General in making suitably qualified experts available to serve on panels. Where experts are not drawn from Geneva, any expenses, including travel and subsistence allowance, shall be met from the GATT budget.
- (iv) The secretariat of GATT has the responsibility of assisting the panel, especially on the legal, historical and procedural aspects of the matters dealt with.
- (v) The terms of reference of a panel should be formulated so as to permit a clear finding with respect to any contravention of GATT provisions and/or on the question of nullification and impairment of benefits. In terms of paragraph 16 of the Understanding, and after reviewing the facts of the case, the applicability of GATT provisions and the arguments advanced, the panel should come to such a finding. Where a finding establishing a contravention of GATT provisions or nullification and impairment is made, the panel should make such suggestions as appropriate for dealing with the matter as would assist the CONTRACTING PARTIES in making recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate.
- (vi) Panels would aim to deliver their findings without undue delay, as provided in paragraph 20 of the Understanding. If a complete report cannot be made within the period foreseen in that paragraph, panels would be expected to so advise the Council and the report should be submitted as soon as possible thereafter.
- (vii) Reports of panels should be given prompt consideration by the CONTRACTING PARTIES. Where a decision on the findings contained in a report calls for a ruling or recommendation by the Council, the Council may allow the contracting party concerned a reasonable specified time to indicate what action it proposes to take with a view to a satisfactory settlement of the matter, before making any recommendation or ruling on the basis of the report.
- (viii) The recommendation or ruling made by the CONTRACTING PARTIES shall be aimed at achieving a satisfactory settlement of the

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 20

matter in accordance with GATT obligations. In furtherance of the provisions of paragraph 22 of the Understanding the Council shall periodically review the action taken pursuant to such recommendations. The contracting party to which such a recommendation has been addressed, shall report within a reasonable specified period on action taken or on its reasons for not implementing the recommendation or ruling by the CONTRACTING PARTIES. The contracting party bringing the case may also ask the CONTRACTING PARTIES to make suitable efforts with a view to finding an appropriate solution as provided in paragraph 22 of the Understanding.

- (ix) The further action taken by the CONTRACTING PARTIES in the above circumstances might include a recommendation for compensatory adjustment with respect to other products or authorization for the suspension of such concessions or other obligations as foreseen in Article XXIII:2, as the CONTRACTING PARTIES may determine to be appropriate in the circumstances.
- (x) The Parties to a dispute would fully participate in the consideration of the matter by the CONTRACTING PARTIES under paragraph (vii) above, including the consideration of any rulings or recommendations the CONTRACTING PARTIES might make pursuant to Article XXIII:2 of the General Agreement, and their views would be fully recorded. They would likewise participate and have their views recorded in the considerations of the further actions provided for under paragraphs (viii) and (ix) above. The CONTRACTING PARTIES reaffirmed that consensus will continue to be the traditional method of resolving disputes; however, they agreed that obstruction in the process of dispute settlement shall be avoided.<sup>1</sup> It is understood that decisions in this process cannot add to or diminish the rights and obligations provided in the General Agreement.

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<sup>1</sup> This does not prejudice the provisions on decision making in the General Agreement.



2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 21

6. Dispute settlement procedures. Action taken on 30 November 1984  
(BISD 31S/9)

Dispute Settlement Procedures

Fortieth Session of the CONTRACTING PARTIES

Action taken on 30 November 1984

I. The CONTRACTING PARTIES adopted the following proposal in  
L/5718/Rev.1:

At the 1982 Ministerial it was agreed that the Dispute Settlement "Understanding" provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end.

However, if improvement in the whole system is to be achieved, it is necessary not only to make specific procedural improvements, but also to obtain a clear cut understanding by and commitment from the CONTRACTING PARTIES (or Signatories to the Codes) with respect to the nature and time-frame of (a) the panel process; (b) the decision on the dispute matter to be taken by the CONTRACTING PARTIES (or the Code Committee) on the basis of the panel's report; and (c) the follow-up to be given to that decision by the parties to the dispute.

A number of procedural problems related to the panel process have been encountered which can be addressed within the existing framework. Such problems include the formation of panels in a timely manner, and the timely completion of panel work. Although the "Understanding" provides guidelines for these procedures (thirty days for the formation of a panel and three to nine months to complete the panel's work), experience has shown these time targets are seldom met. These are only a couple of difficulties related to the dispute settlement mechanism, so addressing them alone will not cure all its deficiencies. However, procedural improvements can lead to improvements in the quality of panel reports. Therefore, the CONTRACTING PARTIES agree that, as a first step, the following approach should be adopted, on a trial basis, for a period of one year in order to continue the process of improving the operation of the system.<sup>1</sup>

Formation of panels

1. Contracting parties should indicate to the Director-General the names of persons they think qualified to serve as panelists, who are not presently affiliated with national administrations but who have a high degree of knowledge of international trade and experience of the GATT.

<sup>1</sup>In November 1986, the GATT Council agreed to extend the list of non-governmental panelists in L/5906 for an additional year (C/M/204, p.27).

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 22

These names should be used to develop a short roster of non-governmental panelists to be agreed upon by the CONTRACTING PARTIES in consultation with the Director-General. The roster should be as representative as possible of contracting parties.

2. The Director-General should continue the practice of proposing panels composed preferably of governmental representatives but may also draw as necessary on persons on the approved roster. The parties should retain the ability to respond to the Director-General's proposal, but shall not oppose nominations except for compelling reasons.

3. In the event that panel composition cannot be agreed within thirty days after a matter is referred by the CONTRACTING PARTIES, the Director-General shall, at the request of either party and in consultation with the Chairman of the Council, complete the panel by appointing persons from the roster of non-governmental panelists to resolve the deadlock, after consulting both parties.

Completion of panel work

1. Panels should continue to set their own working procedures and, where possible, panels should provide the parties to the dispute at the outset with a proposed calendar for the panel's work.

2. Where written submissions are requested from the parties, panels should set precise deadlines, and the parties to a dispute should respect those deadlines.

II. The CONTRACTING PARTIES referred proposals by Canada (L/5720) and Nicaragua (L/5731) to the Council for any appropriate action.

7. Decision by the CONTRACTING PARTIES of 12 April 1989 on "Improvements to the GATT Dispute Settlement Rules and Procedures" (L/6489)

Improvements to the GATT Dispute Settlement Rules and Procedures

Decision of 12 April 1989

Following the meetings of the Trade Negotiations Committee at Ministerial level in December 1988 and at the level of high officials in April 1989, the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade

Approve the improvements of the GATT dispute settlement rules and procedures set out below and their application on the basis set out in this Decision:

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 23

**A. General provisions**

1. Contracting parties recognize that the dispute settlement system of GATT serves to preserve the rights and obligations of contracting parties under the General Agreement and to clarify the existing provisions of the General Agreement. It is a central element in providing security and predictability to the multilateral trading system.
2. Contracting parties agree that all solutions to matters formally raised under the GATT dispute settlement system under Articles XXII, XXIII and arbitration awards shall be consistent with the General Agreement and shall not nullify or impair benefits accruing to any contracting party under the General Agreement, nor impede the attainment of any objective of the General Agreement.
3. Contracting parties agree that the existing rules and procedures of the GATT in the field of dispute settlement shall continue. It is further agreed that the improvements set out below, which aim to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, shall be applied on a trial basis from 1 May 1989 to the end of the Uruguay Round in respect of complaints brought during that period under Article XXII or XXIII; it is also agreed to keep the application of these improvements under review during the remainder of the Round and to decide on their adoption before the end of the Round; to continue negotiations with the aim of further improving and strengthening the GATT dispute settlement system taking into account the experience gained in the application of these improvements.
4. All the points set out in this Decision shall be applied without prejudice to any provision on special and differential treatment for developing contracting parties in the existing instruments on dispute settlement including the CONTRACTING PARTIES' Decision of 5 April 1966 (BISD 14S/18).

**B. Notification**

Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII, as well as arbitration awards within GATT, must be notified to the Council where any contracting party may raise any point relating thereto.

**C. Consultations**

1. If a request is made under Article XXII:1 or XXIII:1, the contracting party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 24

satisfactory solution. If the contracting party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the contracting party that requested the holding of consultations may proceed directly to request the establishment of a panel or a working party.

2. If the consultations under Article XXII:1 or XXIII:1 fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel or a working party under Article XXIII:2. The complaining party may request a panel or a working party during the sixty-day period if the parties jointly consider that consultations have failed to settle the dispute.

3. Requests for consultations under Article XXII:1 or XXIII:1 shall be notified to the Council by the party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

4. In cases of urgency, including those which concern perishable goods en route, parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have failed to settle the dispute within a period of thirty days after the request, the complaining party may request the establishment of a panel or a working party.

**D. Good offices, conciliation, mediation**

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can then proceed with a request for the establishment of a panel or a working party under Article XXIII:2. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel or working party. The complaining party may request a panel or a working party during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel or working party process proceeds.

3. The Director-General may, acting in an ex officio capacity, offer his good offices, conciliation or mediation with the view to assisting contracting parties to settle a dispute.

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 25

E. Arbitration

1. Expeditious arbitration within GATT as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.
2. Resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all contracting parties sufficiently in advance of the actual commencement of the arbitration process.
3. Other contracting parties may become party to an arbitration proceeding upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award.

F. Panel and working party procedures

(a) Establishment of a panel or a working party

The request for a panel or a working party shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel or a working party with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. If the complaining party so requests, a decision to establish a panel or working party shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise.\*

(b) Standard terms of reference

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty days from the establishment of the panel:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of contracting party) in document L/... and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2".

\*References to the Council, made in this paragraph as well as in the following paragraphs, are without prejudice to the competence of the CONTRACTING PARTIES, for which the Council is empowered to act in accordance with normal GATT practice (BISD 26S/215).

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 26

2. In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be circulated to all contracting parties. If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council.

(c) Composition of panels

1. Contracting parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

2. Panels shall be composed of well-qualified governmental and/or non-governmental individuals.

3. The roster of non-governmental panelists shall be expanded and improved. To this end, contracting parties may nominate individuals to serve on panels and shall provide relevant information on their nominee's knowledge of international trade and of the GATT.

4. Panels shall be composed of three members unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five members.

5. If there is no agreement on the members within twenty days from the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the Council, shall form the panel by appointing the panelists whom he considers most appropriate, after consulting both parties. The Director-General shall inform the contracting parties of the composition of the panel thus formed no later than ten days from the date he receives such a request.

(d) Procedures for multiple complainants

1. Where more than one contracting party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all parties concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel will organize its examination and present its findings to the Council so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.



**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 27

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

(e) Third contracting parties

1. The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.

2. Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. At the request of the third contracting party, the panel may grant the third contracting party access to the written submissions to the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third contracting party.

(f) Time devoted to various phases of a panel

1. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

2. Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.

3. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

4. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in the second paragraph of this section and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 28

5. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to provide its report to the parties within three months.

6. When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission of the report to the contracting parties exceed nine months.

7. In the context of consultations involving a measure taken by a developing contracting party, the parties may agree to extend the periods established in paragraphs 2 and 4 of Section C. If, after the relevant period has elapsed, the parties cannot agree that the consultations have concluded, the Chairman of the Council shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation. The provisions of paragraph 4 of Section G are not affected by any action pursuant to this paragraph.

**G. Adoption of panel reports**

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until thirty days after they have been issued to the contracting parties.

2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided.

4. The period from the request under Article XXII:1 or Article XXIII:1 until the Council takes a decision on the panel report shall not, unless agreed to by the parties, exceed fifteen months. The provisions of this paragraph shall not affect the provisions of paragraph 6 of Section F(f).

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 29

**H. Technical assistance**

1. While the Secretariat assists contracting parties in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing contracting parties. To this end, the Secretariat shall make available a qualified legal expert within the Technical Co-operation Division to any developing contracting party which so requests. This expert shall assist the developing contracting party in a manner ensuring the continued impartiality of the Secretariat.

2. The Secretariat shall conduct special training courses for interested contracting parties concerning GATT dispute settlement procedures and practices so as to enable contracting parties' experts to be better informed in this regard.

**I. Surveillance of implementation of recommendations and rulings**

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

2. The contracting party concerned shall inform the Council of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the contracting party concerned shall have a reasonable period of time in which to do so.

3. The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each such Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the panel recommendations or rulings.

4. In cases brought by developing contracting parties, the Council shall consider what further action it might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/214).

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 30

8. 1979 Agreement on Technical Barriers to Trade, Article 14 and Annexes 2 and 3 (BISD 26S/22, 31)

Article 14

Consultation and Dispute Settlement

Consultation

14.1 Each Party shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by other Parties with respect to any matter affecting the operation of this Agreement.

14.2 If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, by another Party or Parties, and that its trade interests are significantly affected, the Party may make written representations or proposals to the other Party or Parties which it considers to be concerned. Any Party shall give sympathetic consideration to the representations or proposals made to it, with a view to reaching a satisfactory resolution of the matter.

Dispute settlement

14.3 It is the firm intention of Parties that all disputes under this Agreement shall be promptly and expeditiously settled, particularly in the case of perishable products.

14.4 If no solution has been reached after consultations under Article 14, paragraphs 1 and 2, the Committee shall meet at the request of any Party to the dispute within thirty days of receipt of such a request, to investigate the matter with a view to facilitating a mutually satisfactory solution.

14.5 In investigating the matter and in selecting, subject, inter alia, to the provisions of Article 14, paragraphs 9 and 14, the appropriate procedures the Committee shall take into account whether the issues in dispute relate to commercial policy considerations and/or to questions of a technical nature requiring detailed consideration by experts.

14.6 In the case of perishable products the Committee shall, in keeping with Article 14, paragraph 3, consider the matter in the most expeditious manner possible with a view to facilitating a mutually satisfactory solution within three months of the request for the Committee investigation.

14.7 It is understood that where disputes arise affecting products with a definite crop cycle of twelve months, every effort would be made by the Committee to deal with these disputes within a period of twelve months.

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 31

14.8 During any phase of a dispute settlement procedure including the earliest phase, competent bodies and experts in matters under consideration may be consulted and invited to attend the meetings of the Committee; appropriate information and assistance may be requested from such bodies and experts.

#### Technical issues

14.9 If no mutually satisfactory solution has been reached under the procedures of Article 14, paragraph 4 within three months of the request for the Committee investigation, upon the request of any Party to the dispute who considers the issues to relate to questions of a technical nature the Committee shall establish a technical expert group and direct it to:

examine the matter;

consult with the Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

make a statement concerning the facts of the matter; and

make such findings as will assist the Committee in making recommendations or giving rulings on the matter, including inter alia, and if appropriate, findings concerning the detailed scientific judgments involved, whether the measure was necessary for the protection of human, animal or plant life or health, and whether a legitimate scientific judgment is involved.

14.10 Technical expert groups shall be governed by the procedures of Annex 2.

14.11 The time required by the technical expert group considering questions of a technical nature will vary with the particular case. The technical expert group should aim to deliver its findings to the Committee within six months from the date the technical issue was referred to it, unless extended by mutual agreement between the Parties to the dispute.

14.12 Reports should set out the rationale behind any findings that they make.

14.13 If no mutually satisfactory solution has been reached after completion of the Procedures in this Article, and any Party to the dispute requests a panel, the Committee shall establish a panel which shall operate under the provisions of Article 14, paragraphs 15 to 18.

#### Panel proceedings

14.14 If no mutually satisfactory solution has been reached under the procedures of Article 14, paragraph 4 within three months of the request for the Committee investigation and the procedures of Article 14, paragraphs 9 to 13 have not been invoked, the Committee shall, upon request of any Party to the dispute, establish a panel.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 32

- 14.15 When a panel is established, the Committee shall direct it to:
- examine the matter;
  - consult with Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
  - make a statement concerning the facts of the matter as they relate to the application of provisions of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.
- 14.16 Panels shall be governed by the procedures in Annex 3.
- 14.17 Panels shall use the report of any technical expert group established under Article 14, paragraph 9 as the basis for its consideration of issues that involve questions of a technical nature.
- 14.18 The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations to the Committee without undue delay, normally within a period of four months from the date that the panel was established.

Enforcement

- 14.19 After the investigation is complete or after the report of a technical expert group, working group, panel or other body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report, unless extended by the Committee, including:
- a statement concerning the facts of the matter; or
  - recommendations to one or more Parties; or
  - any other ruling which it deems appropriate.
- 14.20 If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event the Committee shall consider what further action may be appropriate.
- 14.21 If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend, in respect of any other Party, the application of such obligations under this Agreement as it determines to be appropriate in the circumstances. In this respect, the Committee may, *inter alia*, authorize the suspension of the application of obligations, including those in Articles 5 to 9, in order to restore mutual economic advantage and balance of rights and obligations.



### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 33

14.22 The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

#### Other provisions relating to dispute settlement

##### Procedures

14.23 If disputes arise between Parties relating to rights and obligations of this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT. Parties recognize that, in any case so referred to the CONTRACTING PARTIES, any finding, recommendation or ruling pursuant to Article 14, paragraphs 9 to 18 may be taken into account by the CONTRACTING PARTIES, to the extent they relate to matters involving equivalent rights and obligations under the General Agreement. When Parties resort to GATT Article XXIII, a determination under that Article shall be based on GATT provisions only.

##### Levels of obligation

14.24 The dispute settlement provisions set out above can be invoked in cases where a Party considers that another Party has not achieved satisfactory results under Articles 3, 4, 6, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in Articles 2, 5 and 7 as if the body in question were a Party.

##### Processes and production methods

14.25 The dispute settlement procedures set out above can be invoked in cases where a Party considers that obligations under this Agreement are being circumvented by the drafting of requirements in terms of processes and production methods rather than in terms of characteristics of products.

##### Retroactivity

14.26 To the extent that a Party considers that technical regulations, standards, methods for assuring conformity with technical regulations or standards, or certification systems which exist at the time of entry into force of this Agreement are not consistent with the provisions of this Agreement, such regulations, standards, methods and systems shall be subject to the provisions in Articles 13 and 14 of this Agreement, in so far as they are applicable.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 34

ANNEX 2

TECHNICAL EXPERT GROUPS

The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Participation in technical expert groups shall be restricted to persons, preferably to government officials, of professional standing and experience in the field in question.
2. Citizens of countries whose central governments are Parties to a dispute shall not be eligible for membership of the technical expert group concerned with that dispute. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.
3. The Parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.
4. To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each technical expert group should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the Parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 35

#### ANNEX 3

#### PANELS

The following procedures shall apply to panels established in accordance with the provisions of Article 14.

1. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of technical barriers to trade and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established under Article 14, paragraph 13 or Article 14, paragraph 14, the Chairman, within seven days shall propose the composition of the panel consisting of three or five members, preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons. Citizens of countries whose central governments are Parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

2. Each panel shall develop its own working procedures. All Parties having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. In case such consultation with competent bodies and experts is necessary it should be at the earliest possible stage of the dispute settlement procedure. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.

3. Where the Parties to a dispute have failed to come to a satisfactory solution, the panel shall submit its findings in a written form. Panel reports should normally set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 36

4. To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the Parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

9. 1979 Agreement on Government Procurement, Article VII:6-14  
(BISD 26S/49)

Dispute settlement

6. If no mutually satisfactory solution has been reached as a result of consultations under paragraph 4 between the Parties concerned, the Committee shall meet at the request of any party to the dispute within thirty days of receipt of such a request to investigate the matter, with a view to facilitating a mutually satisfactory solution.

7. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 6 within three months, the Committee shall, at the request of any party to the dispute establish a panel to:

- (a) examine the matter;
- (b) consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
- (c) make a statement concerning the facts of the matter as they relate to application of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

8. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of governmental officials experienced in the field of trade relations. This list may also include persons other than governmental officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two persons whom the Parties would be willing to make available for such work. When a panel is established under paragraph 7, the Chairman, within seven days, shall propose to the parties to the dispute the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as governmental representatives nor as representatives of any organization.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 37

Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

9. Each panel shall develop its own procedures. All Parties, having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Before a panel seeks such information from a source within the jurisdiction of a Party it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

Where a mutually satisfactory solution to a dispute cannot be found or where the dispute relates to an interpretation of this Agreement, the panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee. Where an interpretation of this Agreement is not involved and where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution had been reached.

10. The time required by panels will vary with the particular case. Panels should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency, normally within a period of four months from the date the panel was established.

Enforcement

11. After the examination is complete or after the report of a panel, working party or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to these reports, the Committee shall take appropriate action normally within thirty days of receipt of the report unless extended by the Committee, including:

- (a) a statement concerning the facts of the matter;
- (b) recommendations to one or more Parties; and/or
- (c) any other ruling which it deems appropriate.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 38

Any recommendations by the Committee shall aim at the positive resolution of the matter on the basis of the operative provisions of this Agreement and its objectives set out in the Preamble.

12. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

13. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Balance of rights and obligations

14. If the Committee's recommendations are not accepted by a party, or parties, to the dispute, and if the Committee considers that the circumstances are serious enough to justify such action, it may authorize a Party or Parties to suspend in whole or in part, and for such time as may be necessary, the application of this Agreement to any other Party or Parties, as is determined to be appropriate in the circumstances.

10. 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Articles 12, 13, 17 and 18 (BISD 26S/71, 72, 75, 76)

Article 12

Consultations

1. Whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory in a manner inconsistent with the provisions of this Agreement, such signatory may request consultations with such other signatory.

2. A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

3. Whenever a signatory has reason to believe that any subsidy is being granted or maintained by another signatory and that such subsidy either causes injury to its domestic industry, nullification or impairment of benefits accruing to it under the General Agreement, or serious prejudice to its interests, such signatory may request consultations with such other signatory.

4. A request for consultations under paragraph 3 above shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question and (b) the injury caused to the domestic industry or, in the case of nullification or impairment, or serious prejudice, the adverse effects caused to the interests of the signatory requesting consultations.



### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 39

5. Upon request for consultations under paragraph 1 or paragraph 3 above, the signatory believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

#### Article 13

##### Conciliation, dispute settlement and authorized countermeasures

1. If, in the case of consultations under paragraph 1 of Article 12, a mutually acceptable solution has not been reached within thirty days<sup>1</sup> of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.
2. If, in the case of consultations under paragraph 3 of Article 12, a mutually acceptable solution has not been reached within sixty days of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.
3. If, any dispute arising under this Agreement is not resolved as a result of consultations or conciliations, the Committee shall, upon request, review the matter in accordance with the dispute settlement procedures of Part VI.
4. If, as a result of its review, the Committee concludes that an export subsidy is being granted in a manner inconsistent with the provisions of this Agreement or that a subsidy is being granted or maintained in such a manner as to cause injury, nullification or impairment, or serious prejudice, it shall make such recommendations<sup>2</sup> to the parties as may be appropriate to resolve the issue and, in the event the recommendations are not followed, it may authorize such countermeasures as may be appropriate, taking into account the degree and nature of the adverse effects found to exist, in accordance with the relevant provisions of Part VI.

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<sup>1</sup>Any time periods mentioned in this Article and in Article 18 may be extended by mutual agreement.

<sup>2</sup>In making such recommendations, the Committees shall take into account the trade, development and financial needs of developing country signatories.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 40

Article 17

Conciliation

1. In cases where matters are referred to the Committee for conciliation failing a mutually agreed solution in consultations under any provision of this Agreement, the Committee shall immediately review the facts involved and, through its good offices, shall encourage the signatories involved to develop a mutually acceptable solution.<sup>1</sup>
2. Signatories shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.
3. Should the matter remain unresolved, notwithstanding efforts at conciliation made under paragraph 2 above, any signatory involved may, thirty days after the request for conciliation, request that a panel be established by the Committee in accordance with the provisions of Article 18 below.

Article 18

Dispute Settlement

1. The Committee shall establish a panel upon request pursuant to paragraph 3 of Article 17<sup>2</sup>. A panel so established shall review the facts of the matter and, in light of such facts, shall present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by this Agreement.
2. A panel should be established within thirty days of a request therefor<sup>3</sup> and a panel so established should deliver its findings to the Committee within sixty days after its establishment.
3. When a panel is to be established, the Chairman of the Committee, after securing the agreement of the signatories concerned, should propose

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<sup>1</sup>In this connection, the Committee may draw signatories' attention to those cases in which, in its view, there is no reasonable basis supporting the allegations made.

<sup>2</sup>This does not preclude, however, the more rapid establishment of a panel when the Committee so decides, taking into account the urgency of the situation.

<sup>3</sup>The parties to the dispute would respond within a short period of time, i.e. seven working days, to nominations of panel members by the Chairman of the Committee and would not oppose nominations except for compelling reasons.

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 41

the composition of the panel. Panels shall be composed of three or five members, preferably governmental, and the composition of panels should not give rise to delays in their establishment. It is understood that citizens of countries whose governments<sup>1</sup> are parties to the dispute would not be members of the panel concerned with that dispute.

4. In order to facilitate the constitution of panels, the Chairman of the Committee should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement and this Agreement, who could be available for serving on panels. For this purpose, each signatory would be invited to indicate at the beginning of every year to the Chairman of the Committee the name of one or two persons who would be available for such work.

5. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

6. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee.

7. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any signatory with an interest in the matter has a right to enquire about and be given appropriate information about that solution and a notice outlining the solution that has been reached shall be presented by the panel to the Committee.

8. In cases where the parties to a dispute have failed to come to a satisfactory solution, the panels shall submit a written report to the Committee which should set forth the findings of the panel as to the questions of fact and the application of the relevant provisions of the General Agreement as interpreted and applied by this Agreement and the reasons and bases therefor.

9. The Committee shall consider the panel report as soon as possible and, taking into account the findings contained therein, may make recommendations to the parties with a view to resolving the dispute. If

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<sup>1</sup>The term "governments" is understood to mean governments of all member countries in cases of customs unions.

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 42

the Committee's recommendations are not followed within a reasonable period, the Committee may authorize appropriate countermeasures (including withdrawal of GATT concessions or obligations) taking into account the nature and degree of the adverse effect found to exist. Committee recommendations should be presented to the parties within thirty days of the receipt of the panel report.

11. 1979 International Dairy Arrangement, Article IV:5 and 6 (BISD 26S/94)  
See also the similar Article IV:6 of the 1979 Arrangement Regarding Bovine Meat (BISD 26S/88)

Article IV

Functions of the International Dairy Products Council and Co-operation between the Participants to this Arrangement

5. Any participant may raise before the Council any matter<sup>1</sup> affecting this Arrangement, *inter alia*, for the same purposes provided for in paragraph 2 of this Article. Each participant shall promptly afford adequate opportunity for consultation regarding such matter<sup>1</sup> affecting this Arrangement.

6. If the matter affects the application of the specific provisions of the Protocols annexed to this Arrangement, any participant which considers that its trade interests are being seriously threatened and which is unable to reach a mutually satisfactory solution with the other participant or participants concerned, may request the Chairman of the Committee for the relevant Protocol established under Article VII:2(a) of this Arrangement, to convene a special meeting of the Committee on an urgent basis so as to determine as rapidly as possible, and within four working days if requested, any measures which may be required to meet the situation. If a satisfactory solution cannot be reached, the Council shall, at the request of the Chairman of the Committee for the relevant Protocol, meet within a period of not more than fifteen days to consider the matter with a view to facilitating a satisfactory solution.

<sup>1</sup>It is confirmed that the term "matter" in this paragraph includes any matter which is covered by multilateral agreements negotiated within the framework of the Multilateral Trade Negotiations, in particular those bearing on export and import measures. It is further confirmed that the provisions of Article IV:5 and this footnote are without prejudice to the rights and obligations of the parties to such agreements.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 43

12. 1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, Articles 19, 20 and Annex III (BISD 26S/128, 149)

Consultations

Article 19

1. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Party or of other Parties, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations.
2. The Parties concerned shall initiate requested consultations promptly.
3. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to Parties engaged in consultations.

Dispute Settlement

Article 20

1. If no mutually satisfactory solution has been reached between the Parties concerned in consultations under Article 19 above, the Committee shall meet at the request of any party to the dispute, within thirty days of receipt of such a request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.
2. In investigating the matter and in selecting its procedures, the Committee shall take into account whether the issues in dispute relate to commercial policy considerations or to questions requiring detailed technical consideration. The Committee may request on its own initiative that the Technical Committee carry out an examination, as provided in paragraph 4 below, of any question requiring technical consideration. Upon the request of any party to the dispute that considers the issues to relate to questions of a technical nature, the Committee shall request the Technical Committee to carry out such an examination.
3. During any phase of a dispute settlement procedure, competent bodies and experts in matters under consideration may be consulted; appropriate information and assistance may be requested from such bodies and experts. The Committee shall take into consideration the results of any work of the Technical Committee that pertain to the matter in dispute.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 44

Technical issues

4. When the Technical Committee is requested under the provisions of paragraph 2 above, it shall examine the matter and report to the Committee no later than three months from the date the technical issue was referred to it, unless the period is extended by mutual agreement between the parties to the dispute.

Panel proceedings

5. In cases where the matter is not referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within three months from the date of the request to the Committee to investigate the matter. Where the matter is referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within one month from the date when the Technical Committee presents its report to the Committee.

6. (a) When a panel is established, it shall be governed by the procedures as set forth in Annex III.
- (b) If the Technical Committee has made a report on the technical aspects of the matter in dispute, the panel shall use this report as the basis for its consideration of the technical aspects of the matter in dispute.

Enforcement

7. After the investigation is completed or after the report of the Technical Committee or panel is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report. Such action shall include:

- (i) a statement concerning the facts of the matter; and
- (ii) recommendations to one or more Parties or any other ruling which it deems appropriate.

8. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

9. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend the application to any other Party or Parties of such obligations under this Agreement as it determines to be appropriate in the circumstances.



**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 45

10. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

11. If a dispute arises between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT, including invoking Article XXIII thereof.

ANNEX III

Ad Hoc Panels

1. Ad hoc panels established by the Committee under this Agreement shall have the following responsibilities:

- (a) to examine the matter referred to it by the Committee;
- (b) to consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and
- (c) to make a statement concerning the facts of the matter as they relate to the application of the provisions of this Agreement and, make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

2. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established, the Chairman, after consultation with the Parties concerned, shall, within seven days of such establishment propose the composition of the panel consisting of three or five members and preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 46

3. Each panel shall develop its own working procedures. All Parties having a substantial interest in the matter and having notified this to the Committee shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be disclosed without the specific permission of the person or government providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person or government providing the information, will be provided.

4. Where the parties to the dispute have failed to reach a satisfactory solution the panel shall submit its findings in writing. The report of a panel should normally set out the rationale behind its findings. Where a settlement of the matter is reached between the parties, the report of the panel may be confined to a brief description of the dispute and to a statement that a solution has been reached.

5. Panels shall use such report of the Technical Committee as may have been issued under Article 20.4 of this Agreement as the basis for their consideration of issues that involve questions of a technical nature.

6. The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, normally within a period of three months from the date that the panel was established.

7. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

13. 1979 Agreement on Import Licensing Procedures, Article 4 (BISD 26S/159)

Article 4

Institutions, Consultation and Dispute Settlement

1. There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the Parties (referred to in this Agreement as "the Committee"). The Committee shall elect its own Chairman and shall meet as necessary for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 47

2. Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement, shall be subject to the procedures of Articles XXIII and XXIII of the GATT.

14. 1979 Agreement on Trade in Civil Aircraft, Article 8  
(BISD 26S/166)

Article 8

Surveillance, Review, Consultation and Dispute Settlement

8.1 There shall be established a Committee on Trade in Civil Aircraft (hereinafter referred to as "the Committee") composed of representatives of all Signatories. The Committee shall elect its own Chairman. It shall meet as necessary, but not less than once a year, for the purpose of affording Signatories the opportunity to consult on any matters relating to the operation of this Agreement, including developments in the civil aircraft industry, to determine whether amendments are required to ensure continuance of free and undistorted trade, to examine any matter for which it has not been possible to find a satisfactory solution through bilateral consultations, and to carry out such responsibilities as are assigned to it under this Agreement, or by the Signatories.

8.2 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such review.

8.3 Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, Signatories shall undertake further negotiations, with a view to broadening and improving this Agreement on the basis of mutual reciprocity.

8.4 The Committee may establish such subsidiary bodies as may be appropriate to keep under regular review the application of this Agreement to ensure a continuing balance of mutual advantages. In particular, it shall establish an appropriate subsidiary body in order to ensure a continuing balance of mutual advantages, reciprocity and equivalent results with regard to the implementation of the provisions of Article 2 above related to product coverage, the end-use systems, customs duties and other charges.

8.5 Each Signatory shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by another Signatory with respect to any matter affecting the operation of this Agreement.

8.6 Signatories recognize the desirability of consultations with other Signatories in the Committee in order to seek a mutually acceptable solution prior to the initiation of an investigation to determine the existence, degree and effect of any alleged subsidy. In those exceptional circumstances in which no consultations occur before such domestic

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 48

procedures are initiated, Signatories shall notify the Committee immediately of initiation of such procedures and enter into simultaneous consultations to seek a mutually agreed solution that would obviate the need for countervailing measures.

8.7 Should a Signatory consider that its trade interests in civil aircraft manufacture, repair, maintenance, rebuilding, modification or conversion have been or are likely to be adversely affected by any action by another Signatory, it may request review of the matter by the Committee. Upon such a request, the Committee shall convene within thirty days and shall review the matter as quickly as possible with a view to resolving the issues involved as promptly as possible and in particular prior to final resolution of these issues elsewhere. In this connection the Committee may issue such rulings or recommendations as may be appropriate. Such review shall be without prejudice to the rights of Signatories under the GATT or under instruments multilaterally negotiated under the auspices of the GATT, as they affect trade in civil aircraft. For the purposes of aiding consideration of the issues involved, under the GATT and such instruments, the Committee may provide such technical assistance as may be appropriate.

8.8 Signatories agree that, with respect to any dispute related to a matter covered by this Agreement, but not covered by other instruments multilaterally negotiated under the auspices of the GATT, the provisions of Articles XXII and XXIII of the General Agreement and the provisions of the Understanding related to Notification, Consultation, Dispute Settlement and Surveillance shall be applied, *mutatis mutandis*, by the Signatories and the Committee for the purposes of seeking settlement of such dispute. These procedures shall also be applied for the settlement of any dispute related to a matter covered by this Agreement and by another instrument multilaterally negotiated under the auspices of the GATT, should the parties to the dispute so agree.

15. 1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Article 15 (BISD 26S/185)

Article 15

Consultation, Conciliation and Dispute Settlement<sup>1</sup>

1. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Party with respect to any matter affecting the operation of this Agreement.

<sup>1</sup>If disputes arise between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 49

2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded, by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultation. The Parties concerned shall initiate consultation promptly.

3. If any Party considers that the consultation pursuant to paragraph 2 has failed to achieve a mutually agreed solution and final action has been taken by the administering authorities of the importing country to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Committee for conciliation. When a provisional measure has a significant impact and the Party considers the measure was taken contrary to the provisions of paragraph 1 of Article 10 of this Agreement, a Party may also refer such matter to the Committee for conciliation. In cases where matters are referred to the Committee for conciliation, the Committee shall meet within thirty days to review the matter, and, through its good offices, shall encourage the Parties involved to develop a mutually acceptable solution.<sup>1</sup>

4. Parties shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

5. If no mutually agreed solution has been reached after detailed examination by the Committee under paragraph 3 within three months, the Committee shall, at the request of any party to the dispute, establish a panel to examine the matter, based upon:

- (a) a written statement of the Party making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and
- (b) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing country.

6. Confidential information provided to the panel shall not be revealed without formal authorization from the person or authority providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the authority or person providing the information, will be provided.

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<sup>1</sup> In this connection the Committee may draw Parties' attention to those cases in which, in its view, there are no reasonable bases supporting the allegations made.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 50

7. Further to paragraphs 1-6 the settlement of disputes shall mutatis mutandis be governed by the provisions of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance. Panel members shall have relevant experience and be selected from Parties not parties to the dispute.

16. 1973 Arrangement Regarding International Trade in Textiles, Articles 1:6, 11:4 to 10 (BISD 21S/5, 14) and paragraphs 5 and 23 of the Conclusions of the Textiles Committee adopted on 22 December 1981 (BISD 28S/4 and 8)

Article 1

6. The provisions of this Arrangement shall not affect the rights and obligations of the participating countries under the GATT.

Article 11

4. In the absence of any mutually agreed solution in bilateral negotiations or consultations between participating countries provided for in this Arrangement, the Textiles Surveillance Body at the request of either party, and following a thorough and prompt consideration of the matter, shall make recommendations to the parties concerned.

5. The Textiles Surveillance Body shall, at the request of any participating country, review promptly any particular measures or arrangements which that country considers to be detrimental to its interests where consultations between it and the participating countries directly concerned have failed to produce a satisfactory solution. It shall make recommendations as appropriate to the participating country or countries concerned.

6. Before formulating its recommendations on any particular matter referred to it, the Textiles Surveillance Body shall invite participation of such participating countries as may be directly affected by the matter in question.

7. When the Textiles Surveillance Body is called upon to make recommendations or findings it shall do so, except when otherwise provided in this Arrangement, within a period of thirty days whenever practicable. All such recommendations or findings shall be communicated to the Textiles Committee for the information of its members.

8. Participating countries shall endeavour to accept in full the recommendations of the Textiles Surveillance Body. Whenever they consider themselves unable to follow any such recommendations, they shall forthwith inform the Textiles Surveillance Body of the reasons therefore and of the extent, if any, to which they are able to follow the recommendations.



### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 51

9. If, following recommendations by the Textiles Surveillance Body, problems continue to exist between the parties, these may be brought before the Textiles Committee or before the GATT Council through the normal GATT procedures.

10. Any recommendations and observations of the Textiles Surveillance Body would be taken into account should the matters related to such recommendations and observations subsequently be brought before the CONTRACTING PARTIES to the GATT, particularly under the procedures of Article XXIII of the GATT.

#### CONCLUSIONS OF THE TEXTILES COMMITTEE ADOPTED ON 22 DECEMBER 1981

5. It was agreed that any serious problems of textile trade falling within the purview of the Arrangement should be resolved through consultations and negotiations conducted under the relevant provisions thereof.

23. It was felt that in order to ensure the proper functioning of the MFA, all participants should refrain from taking measures on textiles covered by the MFA, outside the provisions therein, before exhausting all the relief measures provided in the MFA.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 52

**II. INTERNAL WORKING PROCEDURES ADOPTED BY PANELS ESTABLISHED UNDER ARTICLE XXIII:2 OF THE GENERAL AGREEMENT**

1. In July 1985, the Office of Legal Affairs of the GATT secretariat prepared a note for the attention of newly established panels, which describes the general procedures adopted by the CONTRACTING PARTIES for panels established under Article XXIII:2 of the General Agreement and suggests standard working procedures to be adopted by panels (text in: MTN.GNG/NG13/W/4). Since then, GATT panels established under Article XXIII:2 have regularly adopted these standard procedures as a basis for their work. By Decision of 12 April 1989, the CONTRACTING PARTIES adopted Improvements to the GATT Dispute Settlement Rules and Procedures (L/6489) and agreed that "Panels shall follow the suggested working procedures found in the July 1985 Note of the Office of Legal Affairs, unless the members of the panel agree otherwise after consulting the parties to the dispute" (L/6489, page 6). The following revised Note incorporates changes resulting from this Decision.

**2. Note by the secretariat for the attention of newly established panels**

**General procedures**

The procedures to be followed in the case of complaints under Article XXIII:2 of the General Agreement are set out in the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted by the CONTRACTING PARTIES (BISD 26S/210), in the Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement annexed to this Understanding (BISD 26S/215), in the 1982 Ministerial Declaration (BISD 29S/13), and in the decisions on dispute settlement procedures adopted by the CONTRACTING PARTIES in November 1984 (BISD 31S/9) and in April 1989 (L/6489). For the convenience of newly established panels the procedural rules that are relevant in the period between the establishment of a panel and the submission of its report to the CONTRACTING PARTIES are reproduced in Annex A.

In 1966 the CONTRACTING PARTIES adopted procedures for the settlement of disputes between developed and less-developed contracting parties (BISD 14S/18). These procedures apply only if a less-developed contracting party bringing a complaint under Article XXIII specifically invokes them. They are therefore not included in the Annex.

**Working procedures**

According to the Decision of April 1989, panels are to follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs unless the members of the panel agree otherwise after consulting the parties to the dispute. The Suggested Working Procedures, slightly revised to take into account the Decision of April 1989, are set out in Annex B.

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 53

ANNEX A

General Procedures Adopted by the CONTRACTING PARTIES for Panels  
Established under Article XXIII:2 of the General Agreement

The following is a list of the main procedural rules for complaints under Article XXIII:2 to be followed in the period between the formation of the panel and the submission of its report to the CONTRACTING PARTIES. For the convenience of the reader, these rules have been grouped by subject matter. The rules marked "\*" are taken from the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance; those marked "\*\*\*" from the Annex to this Understanding; those marked "\*\*\*\*" from the 1982 Ministerial Declaration; those marked "\*\*\*\*\*" from the 1984 Decision on Dispute Settlement Procedures; and those marked "\*\*\*\*\*" from the April 1989 Decision on Dispute Settlement Procedures. Wherever these decisions of the CONTRACTING PARTIES deal with the same subject matter, only the latest decision is quoted.

Function of panels

The function of panels is to assist the CONTRACTING PARTIES in discharging their responsibilities under Article XXIII:2. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the General Agreement and, if so requested by the CONTRACTING PARTIES, make such other findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2.\*

... after reviewing the facts of the case, the applicability of GATT provisions and the arguments advanced, the panel should come to ... a clear finding with respect to any contravention of GATT provisions and/or on the question of nullification and impairment of benefits. Where a finding establishing a contravention of GATT provisions or nullification and impairment is made, the panel should make such suggestions as appropriate for dealing with the matter as would assist the CONTRACTING PARTIES in making recommendations to contracting parties which they consider to be concerned or give a ruling on the matter as appropriate.\*\*\*

Contracting parties recognize that the dispute settlement system of GATT serves to preserve the rights and obligations of contracting parties under the General Agreement and to clarify the existing provisions of the General Agreement. It is a central element in providing security and predictability to the multilateral trading system.\*\*\*\*\*

... panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.\*

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 54

Impartiality of panels

Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.\*

Timetable for the panel's work

After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.\*\*\*\*\*

In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.\*\*\*\*\*

If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible ... the timetable for the panel process in such disputes shall be harmonized.\*\*\*\*\*

Panels should aim to deliver their findings without undue delay, taking into account the obligation of the CONTRACTING PARTIES to ensure prompt settlement.\*

... in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation.\*\*\*\*\*

In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to provide its report to the parties within three months.\*\*\*\*\*

In no case should the period from the establishment of the panel to the submission of the report to the contracting parties exceed nine months.\*\*\*\*\*

Working procedures

Panels set up their own working procedures. The practice for the panels has been to hold two or three formal meetings with the parties concerned. The panel invites the parties to present their views either in writing and/or orally in the presence of each other. The panel can question both parties on any matter which it considers relevant to the dispute.\*\*

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 55

Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.\*\*\*\*\*

Where written submissions are requested from the parties, panels should set precise deadlines, and the parties to a dispute should respect those deadlines.\*\*\*\*

Each party to the dispute shall deposit its written submissions with the secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to [above] and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.\*\*\*\*\*

#### Procedures for multiple complainants

Where more than one contracting party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all parties concerned.\*\*\*\*\*

The single panel will organize its examination and present its findings to the Council so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.\*\*\*\*\*

#### Interested third contracting parties

The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.\*\*\*\*\*

Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.\*\*\*\*\*

At the request of the third contracting party, the panel may grant the third contracting party access to the written submissions to the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third contracting party.\*\*\*\*\*

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 56

Right of the panel to seek information and advice

Each panel should have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a State it shall inform the government of that State. Any contracting party should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided should not be revealed without formal authorization from the contracting party providing the information.\*

Confidentiality

... the panel deliberations are secret.\*\*

Written memoranda submitted to the panel have been considered confidential, but are made available to the parties to the dispute.\*\*

Tasks of secretariat

The secretariat of GATT has the responsibility of assisting the panel, especially on the legal, historical and procedural aspects of the matters dealt with.\*\*\*

The secretariat provides the secretary and technical services for panels.\*

Drafting of the report

The reports of panels have been drafted in the absence of the parties in the light of the information and the statements made.\*\*

The report of a panel should normally set out the rationale behind any findings and recommendations that it makes.\*

The opinions expressed by the panel members on the matters are anonymous.\*\*

Submission of the report to the parties

To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the CONTRACTING PARTIES.\*



**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 57

Circulation of the report to the CONTRACTING PARTIES

Where the parties have failed to develop a mutually satisfactory solution, the panel should submit its findings in a written form. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.\*

When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.\*\*\*\*\*

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 58

ANNEX B

Suggested Working Procedures

1. In its proceedings the Panel will be guided by the relevant provisions of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210); of the 1982 Ministerial Declaration (BISD 29S/13); and of the decisions on dispute settlement procedures adopted by the CONTRACTING PARTIES in November 1984 (L/5718) and in April 1989 (L/6489). In addition, the following guidelines will apply.
2. The Panel will meet in closed session. The Parties to the dispute, or other interested Parties, will be present at the meetings only when invited by the Panel to appear before it.
3. The deliberations of the Panel and the documents submitted to it will be kept confidential. For the duration of the Panel proceeding, the Parties to the dispute are requested not to release any papers or make any statements in public regarding the dispute.
4. Before the first substantive meeting of the Panel with the Parties, both Parties to the dispute are expected to transmit to the Panel written submissions in which they present the facts of the case and their arguments.
5. At its first substantive meeting with the parties, the Panel will ask the Party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the Party against which the complaint has been brought will be asked to present its point of view.
6. As it may be necessary for the Parties to have time to prepare their formal rebuttals, the latter will be made at a second substantive meeting of the Panel. The Party complained against will have the right to take the floor first to be followed by the complaining Party. Both Parties are encouraged to submit, prior to that meeting, written briefs to the Panel.
7. The Panel may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.
8. The Parties to the dispute and any third contracting party invited to present its views in accordance with paragraph 15 of the 1979 Understanding (BISD 29S/213) and section F(e) of the April 1989 Decision (C/W/585) are encouraged to make available to the Panel a written version of their oral statements.

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 59

9. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 8 above will be made in the presence of both Parties. Moreover, each Party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the Panel, will be made available to the other Party.

10. [Any additional procedures specific to the Panel]

11. The Panel proposes the following timetable for its work:

- |   |       |                          |
|---|-------|--------------------------|
| (a) Receipt of first written submissions of the Parties:                                    |       | [3-6 weeks] <sup>1</sup> |
| [(1) complaining Party:   | _____ |                          |
| (2) Party complained against:]  | _____ | [2-3 weeks]              |
| (b) Date, time and place of first substantive meeting with the Parties:                     | _____ | [1-2 weeks]              |
| (c) Receipt of written rebuttals of the Parties:  | _____ | [2-3 weeks]              |
| (d) Date, time and place of second substantive meeting with the Parties:                    | _____ | [1-2 weeks]              |
| (e) Submission of descriptive part of the report to the Parties:                            | _____ | [3-6 weeks]              |
| (f) Receipt of comments by the Parties on the descriptive part of the report:               | _____ | [2 weeks]                |
| (g) Submission of the final report, including the findings and conclusions, to the Parties: | _____ | [2-6 weeks]              |
| (h) Circulation of the report to the CONTRACTING PARTIES:                                   | _____ | [2-4 weeks]              |

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the Parties will be scheduled if required.

<sup>1</sup>For the convenience of the Panel, the intervals between the various procedural steps found to be appropriate in many previous cases are indicated in this column.

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 60

**III. TABULAR LISTS OF GATT ARTICLE XXIII COMPLAINTS**<sup>1</sup>

**1. Chronological list of Article XXIII complaints**<sup>2</sup>

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<sup>1</sup>In some cases, the provisions of Article XXIII were not expressly invoked. Consultations under Article XXII or under other Articles (e.g. Article XVI:1), "Chairman rulings" (see e.g. 2S/12, 35) and some complaints which were disposed of before or subsequent to consultations, are not included in the list.

<sup>2</sup>The column "date of complaint" refers to the date of the L/ document notifying the invocation of Article XXIII:1 or, if Article XXIII:1 was not invoked or if the invocation of Article XXIII:1 was not notified to GATT, of Article XXIII:2. If the complaining country invoked Article XXIII during a GATT Council meeting prior to the circulation of an L/ document on the matter, the date of this oral invocation of Article XXIII has been indicated. For additional information on the respective disputes (e.g. GATT Articles examined in the Panel reports) see the country list of Article XXIII complaints below.

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
1.	Import restrictions	September 1948	USA/ Cuba	Working Party September 1948	Working Party report announced settlement reached among the parties and abstained from legal ruling. Import regulations were terminated in 1948.	CP.2/SR.22 CP.2/43 CP.2/SR.25
2.	Internal taxes	1949, 1950	France/ Brazil	Working Party November 1950	Brazil was asked to liberalize its discriminatory internal taxes and to report further. Rights of France under XXIII were confirmed. Measure was abolished August 1958.	CP.3/SR.9 II/181 2S/25 4S/21 5S/36 7S/68
3.	Export restrictions	May 1949	Czechoslovakia/ USA	CONTRACTING PARTIES May 1949	The CONTRACTING PARTIES rejected the complaint.	II/28 CP.3/SR.22
4.	Subsidy on ammonium sulphate	July 1949	Chile/ Australia	Working Party March 1950	The CONTRACTING PARTIES found that there was a <i>prima facie</i> case that the value of a concession granted to Chile had been impaired as a result of a subsidy which did not conflict with the provisions of the GATT; Australia dissented. Agreement reached on the matter was notified in November 1950.	II/188 CP.5/SR 7S/68 CP.5/SR.6

MTN.GNG/NG13/W/4/Rev.1  
Page 61

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 62

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
5.	United Kingdom Purchase Tax	October 1950	Netherlands/ United Kingdom	CONTRACTING PARTIES December 1950	United Kingdom abolished discrimination	CP.5/12 CP.5/SR.20 G 18
6.	"Serious injury" in case of Article XIX action	November 1950	Czechoslovakia/ USA	Working Party December 1950	The CONTRACTING PARTIES adopted the Working Party report on 24 October 1951. The report found the US withdrawal of a tariff concession was not in violation of Article XIX.	CP.5/22 CP/106
7.	Family allowances	March 1951	Norway and Denmark/ Belgium	Panel October 1952	The Belgian legislation was found inconsistent with Article I (and possibly III:2) and based on a concept inconsistent with the spirit of the Agreement. The CONTRACTING PARTIES recommended to expedite changes in the legislation. Measure was terminated by a new law on 6 March 1954.	1S/59 2S/18 L/187 7S/68



2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
8.	Import restrictions on dairy products	September 1951	Netherlands and Denmark/USA	CONTRACTING PARTIES September 1951	Violation of Article XI was not contested. The USA were asked to remove restrictions within a reasonable time-limit and report further to the CONTRACTING PARTIES. Failing progress, the CONTRACTING PARTIES adopted a Decision submitted by a Working Party authorizing the Netherlands to avail itself of Article XXIII:2 benefits. Concessions were suspended by the Netherlands on wheat flour, subject to annual "determination" by the CONTRACTING PARTIES.	CP.6/26,28 II/16 1S/31,32,62 2S/28 3S/46 4S/31,99 5S/28,142 6S/14,157 7S/23,128
9.	Belgian restrictions on imports from the dollar area	February 1952	US/ Belgium	Working Party February 1952	The Working Party never convened since it was agreed to defer to IMF's arrangement for general liberalization. The restrictions were eventually terminated.	GATT/IC/7 CP.6/50 SR.7/11 SR.9/2

MTN.GNG/NG13/W/4/Rev.1  
Page 63

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 64

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
10.	Treatment of sardine imports	September 1952	Norway/ Germany	Panel October 1952	The CONTRACTING PARTIES found that the different tariff rates on competing products were not in violation of Article I but recommended that Germany consider ways of removing the competitive inequality between different types of sardine imports as regards the imposition of duties and taxes. The case was disposed of in 1953.	L/16 1S/30,53 SR.8/18
11.	Increase of import duties (coefficient for currency conversion)	September 1952	UK/ Greece	Panel October 1952	Recommendation of 3 November 1952 notes inconsistency of measure with Article II, para.1. Measure was rescinded 20 July 1953.	L/15 1S/23,51 SR.8/7
12.	Special import taxes ("contribution" levied on certain imports)	October 1952	France/ Greece	Panel October 1952	Decision was deferred and matter referred to CONTRACTING PARTIES for decision on principles. Measure was terminated April 1953.	1S/48 SR.8/7
13.	Statistical tax on imports and exports	November 1952	USA/ France	CONTRACTING PARTIES September 1953	Claimed violation of Article II not contested. Measure suspended 1 October 1954 and abolished as of 1 January 1955.	SR.8/7 SR.9/28

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
14.	Special temporary compensation tax on imports	July 1954	Italy/ France	CONTRACTING PARTIES, Working Party January 1955	Decisions urging removal of tax. Measure was partially removed as first step, abolished August 1957, and replaced by other measures. The matter was considered as settled.	L/213,366, 406,412,585, 622,643,657, 671 3S/26, 4S/20 5S/27, SR.12/5
15.	Anti-dumping duties	July 1954	Italy/ Sweden	Panel November 1954	Recommendation made to Italy and Sweden to consult. Decision deferred pending bilateral inquiry. Measure abrogated in July 1955.	L/215 3S/81 L/386 7S/69
16.	Import duties on starch and potato flour	October 1954	Benelux countries/ Germany	Panel January 1955	Following the Panel report, Germany proposed tariff concessions which were found acceptable.	L/260 3S/77 SR.9/34
17.	Luxury import tax	October 1954	Italy/ Greece	CONTRACTING PARTIES September 1955	Matter settled in consultations.	L/234 SR.9/7,30
18.	Stamp tax, increase to 2 per cent	October 1954	USA/ France	CONTRACTING PARTIES January 1955	Complaint was withdrawn.	L/245 SR.9/28

MTN.GNG/NG13/W/4/Rev.1  
Page 65

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 66

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
19.	Stamp tax, further increase to 3 per cent	September 1955	USA/ France	CONTRACTING PARTIES November 1955	French undertaking to cancel tax increase in violation of tariff bindings as soon as possible. Stamp tax reduced to 2 per cent as from 1 January 1961.	L/410 L/569,720 L/1412 SR.10/5 C/M/4
20.	US (Hawaiian) Regulations affecting imported eggs	September 1955	Australia/ USA	CONTRACTING PARTIES November 1955	Discussion was deferred pending State court legal action. The court invalidated the regulation requiring "We sell Foreign eggs" sign as violating Article III.	L/411 SR.10/13
21.	Increase in bound duties (long-playing records)	November 1956	Germany/ Greece	Group of Experts November 1956	Following the report of customs experts, the parties agreed on a compromise duty rate in November 1957. Germany then withdrew the complaint.	L/575 L/580 L/765 SR.12/21
22.	Exports of subsidized eggs	April 1957	Denmark/ UK	Intersessional Committee and Panel April 1957	Panel appointed, but never met due to settlement of complaints over violation of Article XVI.	L/627 IC/SR.31 IC/SR.34

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 67

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
23.	Discrimination against imported agricultural machinery	July 1957	UK/ Italy	Panel May 1958	Recommendation to eliminate adverse effects of farmers' credit facilities which were found to be contrary to Article III. Agreement between parties reached in November 1958. Matters subsequently discussed in seventeenth session.	L/649 7S/23.60 SR.13/18 L/1294 SR.17/5
24.	Discrimination against imported agricultural machinery	October 1957	UK/ France	CONTRACTING PARTIES October 1957	Discrimination removed with retro-active effect.	SR.12/5 SR.13/7
25.	Assistance to exports of wheat	April/May 1958	Australia/ France	Panel April 1958	The export subsidies were found to violate Article XVI. Recommendation for a revision of the methods of financing or for consultations between parties before new contracts were concluded by France. Agreement between the parties reached in April 1960.	7S/22.46 L/1323 L/1548 SR.13/8
26.	Assistance to exports of flour	September 1958	Australia/ Italy	Panel November 1958	Settled on basis of revised subsidy programme.	L/853 IC/SR.41 SR.13/17

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 68

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
27.	UK preference on ornamental pottery	March 1959	Germany/ United Kingdom	Panel March 1959	The Panel could not establish that the proposed increase of margin of preference would divert trade contrary to the terms of earlier waiver.	IC/SR/44 SECRET 105
28.	Rescource to Article XXIII (Primary products)	November 1961	Uruguay/ 15 developed countries	Panel February 1962	Panel made recommendations addressed to seven countries. The countries reported back, in 1963, on their compliance with GATT. Panel then made recommendation to give immediate consideration to removal of certain impairing or nullifying measures.	L/1647 L/1662 11S/95,56 13S/35,45
29.	Increase in margin of preferences on bananas	December 1961	Brazil/ UK	Panel February 1962	Council took note of Panel report of 11 April 1962. Following the Panel ruling, the proposed tariff increase was abandoned in October 1962.	L/1749 C/M/10 SR.19/12 SR.20/2
30.	Imports of potatoes (Value for duties)	November 1962	USA/ Canada	Panel November 1962	CONTRACTING PARTIES recommended that Canada withdraw the additional charge or effect satisfactory adjustment of the impaired benefit. Measure abolished 2 January 1963.	SR.20/8 11S/55,88 L/1968



2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
31.	Import restrictions	November 1962	USA/ France	Panel November 1962	CONTRACTING PARTIES recommended that France withdraw the quotas which were found to violate Article XI. USA was however asked to refrain from suspending concessions for a reasonable length of time. The US returned to the case in September 1972 and subsequently a settlement was reached.	11S/55,94 L/3744 C/M/80.81,83
32.	US action under Article XXVIII (negotiations on poultry)	October 1963	US/ EEC	Panel (to render an advisory opinion to the two parties concerned) October 1963	Panel report of 21 November 1963. The US complied with the Panel conclusions.	L/2088 12S/65
33.	Administrative and statistical fees	December 1969	USA/ Italy	Council December 1969	During the Council discussion, the USA reserved its right to revert to the matter again.	L/3279 C/M/59

MTN.GNG/NG13/W/4/Rev.1  
Page 69

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 70

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
34.	Import restrictions on grains	September 1970	USA/ Denmark		Notification received by the Council. Parties reached an agreement in October 1970.	L/3436
35.	Margins of preference	September 1970	USA/ Jamaica	Panel September 1970	Following the Panel recommendation the CONTRACTING PARTIES granted a waiver to Jamaica on 2 March 1971 changing the base date for calculation of margins of preference to 1 August 1962. At the same time Jamaica undertook to restore all margins of preference to the 1962 level.	18S/33 18S/183 L/3485
36.	Compensatory taxes on imports	June 1972	USA/ EEC	Council July 1972	Compensatory taxes on large number of items abolished. US agreed to defer further action.	L/3715 and Add.1 C/M/80
37.	Restrictions on cotton textiles	September 1972	Israel/ UK	Panel October 1972	Parties reached an agreement in January 1973.	L/3741 L/3812 20S/237 C/M/84

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

					MTN.GNG/NG13/W/4/Rev.1 Page 71	
No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
38.	Dollar area quotas	October 1972	USA/ UK	Panel December 1972	Panel report adopted on 30 July 1973. Parties reached agreement on phasing-out of quotas.	20S/230,236  L/3753 L/3843 L/3890 L/3891
39.	Tax legislation (DISC)	May 1973	EEC/US	Panel July 1973	Report presented to the Council on 12 November 1976. Council adopted the report on 7-8 December 1981 and agreed to an "understanding" (C/M/154). The DISC legislation was amended in 1984.	L/3851 23S/98 28S/114 C/M/87,89, 110,112,117, 119,120,122, 123,124,149, 151-154,159, 161,165,166, 168,170,171, 180 L/5716 C/M/183
40.	Income tax practices	May 1973	USA/France	Panel July 1973	Reports presented to the Council on 12 November 1976. Council adopted the reports on 7-8 December 1981 and agreed to an "understanding" (C/M/154).	L/3860 23S/114 23S/127 23S/137 28S/114 C/M/87,89, 110,112,117, 119,120,122- 124,145,146, 148,149,151- 154
41.	Income tax practices	May 1973	USA/Belgium	Panel July 1973		
42.	Income tax practices	May 1973	USA/ Netherlands	Panel July 1973		

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 72

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
43.	Article XXIV:6 negotiations with the EEC	November 1974	Canada/EEC	Panel November 1974	Panel never met due to agreement reached between the parties in March 1975.	L/4107 C/M/101,102,105 C/W/250,251
44.	Import quotas on eggs	September 1975	USA/Canada	Working Party September 1975	Working Party report adopted on 17 February 1976. Canada increased certain quotas.	L/4222 23S/91 L/4319
45.	Minimum import prices, licences and surety deposits for certain processed fruits and vegetables	April 1976	US/EEC	Panel July 1976	The Panel report, which found that the minimum import price and associated security system for tomato concentrates violated Article XI, was adopted by the Council on 18 October 1978.	C/M/113, 114,115,117, 124,128 25S/68
46.	Import deposits for animal feed proteins	April 1976	US/EEC	Panel September 1976	The Panel report, which found various measures in violation of Article III, was adopted by the Council on 14 March 1978.	C/M/113,115, 116,119,124 25S/49

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
47.	Withdrawal of tariff concessions under Article XXVIII:3	October 1976	EEC/Canada	Panel November 1976	The Panel report, which concluded that Canada was entitled to proceed to a withdrawal of concessions, was adopted by the Council on 17 May 1978.	L/4432 C/M/117, 119, 125-128 25S/42
48.	Import restrictions on thrown silk yarn	July 1977	US/Japan	Panel July 1977	Panel report, adopted on 17 May 1978, notes that parties arrived at bilateral solution.	L/4530 C/M/122, 123 125 25S/107
49.	Export refunds on malted barley	November 1977	Chile/EEC	Council and good offices of the Director-General (matter not pursued by Chile) November 1977		C/M/116, 123, 125
50.	Restrictions on imports of textiles from Hong Kong	May 1978	UK on behalf of Hong Kong/Norway	Panel July 1979	The Panel report, which found Norway's Article XIX action not consistent with Article XIII, was adopted by the Council on 18 June 1980.	L/4959 27S/119 C/M/125-128, 134, 135, 139, 141, 143, 144

MTN.GNG/NG13/W/4/Rev.1  
Page 73

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 74

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
51.	Restraints on imports of leather	July 1978	USA/Japan	Panel January 1979	Panel report, adopted on 6 November 1979, notes bilateral settlement and withdrawal of complaint.	L/4691 C/M/127,128, 132-136,139, 144 26S/320
52.	Refunds on exports of sugar	September 1978	Australia/EEC	Panel November 1978	The Panel report which found, <u>inter alia</u> , that the EEC system of export refunds for sugar constitutes a threat of prejudice in terms of Article XVI:1, was adopted on 6 November 1979. The possibility of limiting EEC subsidization of sugar exports was subsequently discussed in two working parties.	L/4701 26S/290 28S/80 29S/82 L/5113,5121, 5175,5185, 5186,5294 C/M/128-130, 132,135,138, 139,143,144, 146,148-150
53.	Refunds on exports of sugar	November 1978	Brazil/EEC	Panel November 1978	The Panel report which found, <u>inter alia</u> , that the EEC system of export refunds for sugar constitutes a threat of prejudice in terms of Article XVI:1, was adopted on 10 November 1980. The possibility of limiting EEC subsidization of sugar exports was subsequently discussed in two working parties.	L/4722 27S/69 28S/80, 29S/82, C/M/130,132 135,138,139, 143,144,146, 148-150



2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
54.	Import restrictions on apples from Chile	June 1979	Chile/EEC	Panel November 1979	The Panel report, which found the EEC measures not in conformity with Article XIII, was adopted on 10 November 1980.	L/4805, 4807, 4816, 27S/98 C/M/134, 135, 138, 144
55.	Restrictions on imports of leather	October 1979	Canada/Japan	Panel November 1979	Panel report, adopted on 10 November 1980, notes that Canada and Japan agreed on a solution to the matter.	L/4856 27S/118
56.	Restrictions on domestic sale of soyabean oil	November 1979	US/Spain	Panel January 1980	Council took note of the report and of the statements made on 3 November 1981.	L/4859 L/5142 L/5161, 5188 C/M/136, 138, 139, 148, 149, 151, 152
57.	Restraints on imports of manufactured tobacco	November 1979	US/Japan	Panel November 1979	The Panel report, which notes that the US and Japan agreed on a solution to the matter, was adopted on 11 June 1981.	L/4871, 28S/100 C/M/136, 139, 148

MTN.GNG/NG13/W/4/Rev.1  
Page 75

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 76

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
58.	US - Prohibition of imports of tuna and tuna products	January 1980	Canada/US	Panel March 1980	The Panel report, which found the import restrictions not in conformity with Article XI, was adopted on 22 February 1982.	L/4931, 288/91 C/M/138, 139, 141, 144, 154-157, 159
59.	Spain - Tariff treatment of unroasted coffee	6 May 1980	Brazil/Spain	Panel June 1980	The Panel report, which found the tariff régime not in conformity with Article I, was adopted on 11 June 1981.	L/4974, 288/102 C/M/135, 136, 138, 139, 141, 143, 148, 151
60.	EEC - Imports of beef from Canada	6 June 1980	Canada/EEC	Panel June 1980	The Panel report, which found the EEC measures inconsistent with Articles I and II, was adopted on 10 March 1981.	L/4987, 288/92 C/M/139, 141, 143, 146

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
61.	EEC - Imports of poultry from the United States	September 1980	US/EEC	Panel October 1980	Panel report, adopted on 11 June 1981, indicates that complaint was withdrawn in May 1981 (L/5149).	L/5033, L/5040, L/5149, 28S/90, C/M/143,145, 148
62.	US - Imposition of countervailing duties without injury criterion	November 1980	India/US	Panel November 1980	Panel report, adopted on 3 November 1981, indicates that complaint was withdrawn in September 1981 (L/5062/Add.1).	L/5028 L/5062 28S/113 C/M/143,144, 148,149,152
63.	US - Import duty on vitamin B12, feed-grade quality	1 June 1981	EEC/US	Panel June 1981	The Panel report, which concluded that the US had not infringed any GATT provision, was adopted on 1 October 1982.	L/5129,5157 29S/110 C/M/148-150, 159-161,166

MTN.GNG/NG13/W/4/Rev.1  
Page 77

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 78

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
64.	EC - Production subsidies on canned fruit	11 June 1981	Australia/EEC	(Australia intervened in the subsequent panel proceeding <i>infra</i> note 67)		L/5167,5224 C/M/148,149
65.	US - Imports of automotive spring assemblies	September 1981	Canada/US	Panel December 1981	Panel report found no violation of GATT provisions. The Panel report was adopted on 26 May 1983 subject to an understanding (C/M/168)	L/5195+Add.1 L/5333 C/M/151,152,154,155, 159-162,165, 167,168
66.	EEC - Quantitative restrictions against imports from Hong Kong	December 1981 (recourse to Art. XXIII:1) September 1982 (recourse to Art. XXIII:2)	United Kingdom on behalf of Hong Kong/EEC	Panel October 1982	The Panel report, which found the French import restriction to violate Article XI, was adopted on 12 July 1983. Quantitative restrictions on three product categories were removed in November 1983. In 1984, the EEC invoked Article XIX in respect of quartz watches. Additional liberalizing measures were announced in November 1984.	L/5362 C/M/154,161 165,170,171 173 305/129 C/M/173,174, 178 SR.40/2, p.7

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (continued)**

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
67.	EEC - Production aids on canned peaches, canned pears, canned fruit cocktail and dried grapes	March 1982	US/EEC	Panel March 1982	The 1985 Panel report, which was not adopted by the GATT Council, concluded that the EEC production aids on peaches and pears nullified or impaired benefits accruing to the US from tariff concessions granted by the EEC under Article II. The Parties agreed on a settlement of the dispute.	L/5306 C/M/156,159, 186-188, 190-192,194, 195 L/5778
68.	Canada - Administration of the Foreign Investment Review Act (FIRA)	March 1982	US/Canada	Panel March 1982	The Panel report which found, inter alia, that certain purchase undertakings were inconsistent with Article III, was adopted on 7 February 1984.	L/5303 C/M/156,160, 162,171,173, 174 305/140

MTN.GNG/NG13/W/4/Rev.1  
Page 79

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 80

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
69.	EEC - sugar régime	April 1982	Argentina, Australia, Brazil, Colombia, Cuba, Dominican Republic, India, Nicaragua, Peru Philippines/ EEC States	Consultations pursuant to Art. XXIII:1	Council took note of the statement that complainants reserve their rights under GATT.	L/5309+Add. C/M/161



2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
70.	EEC - Tariff treatment on imports of citrus products from certain Mediterranean countries	June 1982	US/EEC	Panel November 1982	The 1985 Panel report, which has not been adopted by the GATT Council, did not pass judgement on the conformity of the EC agreements with Article XXIV. The Panel found that the EC tariff preferences on fresh oranges and fresh lemons accorded to certain Mediterranean countries had impaired benefits accruing to the US under Article I:1 in the sense of Article XXIII:1(b). The Parties agreed on a settlement of the dispute.	L/5337 L/5339 C/M/159-162, 167,168,170, 186,190 L/5776
71.	Finland - Internal regulations having an effect on imports of certain parts of footwear	September 1982	EEC/Finland	Panel established in November 1982 (Matter not pursued by the EEC)		L/5369 L/5394 C/M/161,162

MTN.GNG/NG13/W/4/Rev.1  
Page 81

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 82

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
72.	Switzerland - Imports of table grapes	October 1982	EEC/Switzerland	Article XXIII:1 consultations (Matter not pursued)		L/5371
73.	EEC - Import restrictive measures on video tape recorders	December 1982	Japan/EEC	Article XXIII:1 consultations (Matter not pursued following a bilateral agreement)		L/5427 C/M/162
74.	Japan - Measures on imports of leather	January 1983	US/Japan	Panel April 1983	The Panel report, which found the Japanese import restrictions inconsistent with Article XI, was adopted on 15/16 May 1984.	L/5440, 5462 C/M/166, 167 170, 176, 178, 183, 186, 187, 190, 191 31S/94
75.	US - "Manufacturing clause" in US copyright legislation	September 1982	EEC/US	Panel April 1983	The Panel report, which found the US import restriction inconsistent with Article XI, was adopted on 15/16 May 1984.	L/5467 C/M/160, 167, 170 31S/74
76.	Japan - nullification or impairment of benefits and impediment to the attainment of GATT objectives	April 1983	EEC/Japan	Article XXIII:1 consultations. Request for a GATT Working Party not pursued.		L/5479 C/M/167

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
77.	US - Imports of sugar	May 1983	Nicaragua/USA	Panel July 1983	The Panel report, which found the sugar quota allocated to Nicaragua inconsistent with Article XIII was adopted on 13 March 1984.	L/5492 C/M/168,170, 171,176,178, 183 31S/67
78.	US - Reclassification of machine-threshed tobacco	September 1983	EEC/USA	Article XXIII:1 consultations (Matter not pursued)		L/5541
79.	EEC - Imports of newsprint from Canada	January 1984	Canada/EEC	Panel March 1984	The Panel report, which found the EEC import quota inconsistent with Article II, was adopted on 20 November 1984.	L/5589,5628 C/M/176,183 31S/114
80.	Chile - Import measures on certain dairy products	May 1984	EEC/Chile	Article XXIII:1 consultations (Matter not pursued)		L/5653

MTN.GNG/NG13/W/4/Rev.1  
Page 83

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 84

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
81.	Canada - Discriminatory application of Retail Sales Tax on Gold Coins	July 1984	South Africa/ Canada	Panel November 1984	The Panel report of September 1985, which has not yet been adopted by the Council, recommends that the CONTRACTING PARTIES request Canada to (a) continue to take such measures as are available to it to secure the observance of Article III:2 by the Province of Ontario in accordance with Article XXIV:12 and (b) compensate South Africa for the competitive opportunities lost as a result of the Ontario measure until its efforts in accordance with Article XXIV:12 have secured the withdrawal of the measure. The differential fiscal treatment in Ontario was removed in January 1986 and the Parties agreed on a settlement.	L/5662,5711 C/M/183,192, 194,195, 198 L/5863
82.	New Zealand - Imports of electrical transformers from Finland	July 1984	Finland/ New Zealand	Panel October 1984	The Panel report, adopted on 17-19 July 1985, found the imposition of anti-dumping duties not to be consistent with Article VI:6(a). New Zealand removed the anti-dumping duty in 1985.	L/5682 C/M/180, 181,183,191 328/55

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
83.	EEC - Operation of its beef and veal régime	October 1984	Australia/ EEC	Article XXIII:1 consultations (Matter not pursued)		L/5715 C/M/183
84.	US - Ban on imports of steel pipes and tubes from the EC.	December 1984	EEC/USA	Council	Council took note of the conclusion of a bilateral arrangement in January 1985.	L/5747/Add.2 C/M/184,185 L/5773
85.	Canada - Import distribution and sale of alcoholic drinks by provincial marketing agencies	February 1985	EEC/ Canada	Panel March 1985 (Composition of Panel announced in December 1986)	Panel Report, adopted March 1988, found that Canada was in contravention of its GATT obligations under Articles II, XI and XXIV:12	L/5777,6304 C/M/186,195, 217,218, 227
86.	US - Restrictions on imports of certain sugar-containing products	March 1985	Canada/ USA	Panel March 1985 (Matter not pursued)		L/5783 C/M/186

MTN.GNG/NG13/W/4/Rev.1  
Page 85

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 86

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
87.	Japan - Quantitative restrictions on imports of leather footwear	July 1985	USA/ Japan	Panel July 1985 (Matter not pursued)		L/5826 + Add.1 C/M/191
88.	US - Trade measures affecting Nicaragua	July 1985	Nicaragua/ USA	Panel October 1985	Given the limited terms of reference of the Panel, the Panel report of October 1986 did not make a finding on whether the trade embargo was justified under Article XXI and had nullified or impaired benefits in terms of Article XXIII.	C/M/188,190, 191,192,195, 196,204,205, 206,207,208, 209,212,213, 215 L/6053
89.	US - Restrictions on imports of cotton pillowcases and bedsheets	September 1985	Portugal/ USA	Article XXIII:1 consultations (Matter not pursued)		L/5859
90.	EC - Ban on importation of skins of certain seal pups and related products	December 1985	Canada/ EEC	Article XXIII:1 consultations (Matter not pursued)		L/5940

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
91.	United States - imports of non-beverage ethyl alcohol from Brazil	May 1986	Brazil/US	Article XXIII:1 consultations (Matter not pursued)		L/5993
92.	Japan - Restrictions on imports of certain agricultural products	August 1986	US/Japan	Panel October 1986	Panel report, adopted March 1988, found Japanese measures in contravention of its GATT obligations under Article XI:1	L/6037, 6253 C/M/201, 202 205, 206, 217, 218, 219, 220, 222, 235 C/145
93.	Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages	October 1986	EEC/Japan	Panel February 1987	Panel report, adopted in November 1987, found Japanese taxes on certain imported alcoholic beverages not in conformity with its GATT obligations under Article III:2	L/6078, 6216, 6465 C/M/204, 205, 206, 215, 217, 218, 228 34S/83
94.	Japan - Restrictions on imports of herring, pollock and surimi	October 1986	US/Japan	Council November 1986		L/6070 C/M/204, 205, 206, 207

MTN.GNG/NG13/W/4/Rev.1  
Page 87



2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 88

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
95.	Canada - Restrictions on exports of unprocessed uranium	December 1986	US/Canada	Article XXIII:1 consultations		L/6104
96, 97, 98	US - Tax on petroleum and certain imported substances	January 1987	Canada, EEC and Mexico/US	Panel February 1987	Panel report, adopted June 1987, found US tax on imported petroleum inconsistent with Article III:2. Canada and EEC seek withdrawal of concessions under XXIII:2 in 1989	L/6114, 6121, 6123, 6175 C/M/202, 206, 211, 213, 217, 218, 220, 222, 223, 224, 226, 227, 228, 231, 232, 234, 235, C/W/540 and Add.1 34S/136
99.	US - Customs user fee	February 1987	Canada and EEC/US	Panel March 1987	Panel report, adopted in March 1988, found the US merchandise processing fee inconsistent with GATT obligations under Articles II:2(c) and VIII:1(a)	L/6130, 6264 6131 C/M/207, 208, 217
100.	Japan - Agreement Regarding Trade in Semi-Conductors	February 1987	EEC/Japan	Panel April 1987	Panel report, adopted in June 1988, found Japanese measures inconsistent with Article XI:1. However, measures to improve access to its market for US products were not found to be discriminatory	L/6129, 6309 C/M/202, 207, 208, 209, 211, 219, 220, 226, 227, 228, 230, 234

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
101.	Canada - Restrictions on exports of unprocessed salmon and herring	February 1987	US/Canada	Panel March 1987	Panel report, adopted April 1988, found Canadian export prohibitions contrary to Article XI:1	L/6132, 6268 C/M/208, 217 218, 220, 227, 228, 231, 232
102.	US - Tax reform legislation for small passenger aircraft	April 1987	EEC/US	Article XXIII:1 consultations April 1987	Request for a GATT panel not pursued; relevant United States legislation had lapsed and would not be renewed.	L/6153 C/M/208, 209
103.	US - Section 337 of the United States Tariff Act of 1930	April 1987	EEC/US	Panel October 1987	Panel report, tabled November 1988, found S.337 inconsistent with Article III:4	L/6160, 6439, 6487, 6500, 6529 C/M/213, 215, 228, 230, 231, 232, 235
104.	US - Restrictions on certain Japanese products	April 1987	Japan/US	Article XXIII:1 consultations		L/6159 C/M/208, 211, 213, 215, 227

MTN.GNG/NG13/W/4/Rev.1  
Page 89

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 90

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
105.	India - Import restrictions on almonds	June 1987	US/India	Panel November 1987	US withdrew complaint after bilateral settlement	C/M/211,212, 213,215,218 L/5197 C/154 + Add.1
106.	EEC - Enlargement of EEC	June 1987	Argentina/EEC	Council July 1987	Request for Panel not pursued following bilateral consultations	L/6201 C/M/212,213
107.	EEC - Third country meat directive	October 1987	US/EEC	Council October 1987		C/M/213,215
108.	Japan - Imports of SPF dimension lumber	November 1987	Canada/Japan	Panel March 1988	Panel report, adopted July 1989, found Japanese tariffs on dimension lumber not inconsistent with Article I:1	L/6262,6315, 6470,6528 C/M/218,222, 232,234,235
109.	US - Tariff increases and import prohibitions on products from Brazil	November 1987	Brazil/US	Article XXIII:1 consultations and request for good offices by Director-General		L/6274+Add.1

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
110.	EEC - Implementation of harmonized system	November 1987	Argentina/EEC	Article XXIII:1 consultations		C/M/215
111.	Norway - Restrictions on imports of apples and pears	November 1987	US/Norway	Panel March 1988	Panel report, adopted June 1989, found Norwegian import restrictions inconsistent with GATT obligations under Article XI:1 and were not exempted under para. 1(b) of the Protocol of Provisional Application	L/6311, 6474, 6491 C/M/218, 222, 232, 234
112.	Japan - Copper trading practices in Japan	Joint request for conciliation in December 1987 following bilateral consultations under Article XXII	EEC/Japan	Conciliation by Director-General under 1979 Understanding, para. 8 (BISD 26S/210)	Good Offices Report by Personal Representative of Director-General 8 January 1989	SR.43/4 L/5286, 5627, 6456 C/M/223, 229
113.	US - Removal of GSP concessions for Chile	January 1988	Chile/US	Article XXIII:1		L/6298 C/M/217-220

MTN.GNG/NG13/W/4/Rev.1  
Page 91

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 92

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
114.	Korea - Restrictions on imports of beef	February 1988	US/Korea	Panel May 1988	Panel report of May 1989 found Korean import restrictions introduced in 1984/85 to be in contravention of Article XI and that restrictions existing at the time of Korea's accession to the GATT should be phased out in accordance with Article XVIII	L/6316, 6503 C/M/218, 220, 223, 224, 234, 235
115.	Korea - Restrictions on imports of beef	March 1988	Australia/Korea	Panel May 1988	Panel report of May 1989 found Korean restrictions introduced in 1984/85 to be in contravention of Article XI and that restrictions existing at the time of Korea's accession to the GATT should be phased out in accordance with Article XVIII	L/6332, 6504 C/M/220, 224, 234, 235
116.	EEC - Prohibition on imports of almonds by Greece	April 1988	US/EEC	Request for GATT Panel under Article XXIII:2	Greece lifted import restrictions on 29 April 1988	L/6327 C/M/218, 220

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
117.	Japan - Restrictions on imports of beef and citrus products	April 1988	US/Japan	Panel May 1988	Complaint withdrawn in July 1988 following market opening measures by Japan	L/6322/Add.1, 6370 C/M/219, 220, 223
118.	Sweden - Restrictions on imports of apples and pears	April 1988	US/Sweden	Request for GATT Panel under Article XXIII:2	Matter not pursued following changes to Swedish legislation	L/6330, C/M/217, 220, 226, SR.44/2
119.	US - Quality standards for grapes	April 1988	Chile/US	Article XXIII:1 consultations		L/6324+Add.1
120.	Japan - Restrictions on imports of beef	April 1988	Australia/Japan	Panel May 1988	Complaint withdrawn in July 1988 following market opening measures by Japan	L/6333+Add.1, 6370 C/M/220, 223
121.	EEC - Payments and subsidies paid to processors and producers of oilseeds and related animal feed proteins	April 1988	US/EEC	Panel June 1988		L/6328, C/M/220, 222, 224

MTN.GNG/NG13/W/4/Rev.1  
Page 93

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 94

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
122.	Korea - Restrictions on imports of beef	April 1988	New Zealand/ Korea	Panel September 1988	Panel report of May 1989 found Korean restrictions introduced in 1984/85 to be in contravention of Article XI and that restrictions existing at the time of Korea's accession to the GATT should be phased out in accordance with Article XVIII	L/6354, 6505 C/M/222, 223, 224, 226, 234 235
123.	EEC - Restrictions on imports of apples	April 1988	New Zealand/ EEC	Request for Panel		L/6336, 6357
124.	EEC - Import licences for dessert apples	May 1988	Chile/EEC	Panel May 1988	Panel report, adopted June 1989, found EEC restrictions inconsistent with Articles XI:1, X and XIII	L/6329, 6336 6337, 6339, 6491 C/M/134, 135, 138, 144, 207, 218, 220, 232, 234
125.	Japan - Restrictions on imports of beef	May 1988	New Zealand/ Japan	Article XXIII:1 consultations	Complaint withdrawn in July 1988 following market opening measures by Japan	L/6340, 6355/Add.1, 6370 C/M/222



2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 95

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
126.	US - Restrictions on imports of sugar	July 1988	Australia/US	Panel September 1988	Panel report, adopted June 1989, found US restrictions on importation of certain sugars in contravention of Article XI:1	L/6373,6514 C/M/222,224,234
127.	US - Import restrictions on agricultural products based on 1955 Waiver	July 1988	EEC/US	Panel June 1989		L/6393 C/M/224,226,227,228,230,232,234
128.	EEC - Import restrictions on apples from the United States	July 1988	US/EEC	Panel September 1988	Panel report, adopted in June 1989, found EEC restrictions in contravention of Articles XI:1, X and XIII	L/6371,6513 C/M/223,224,226,234
129.	EEC - Regulation on imports of parts and components	July 1988	Japan/EEC	Panel October 1988		L/6381,6387,6410 C/M/207,220,224,226,232
130.	US - Restrictions on products from Brazil	November 1988	Brazil/US	Panel February 1989		L/6386+Add.1 C/M/224,226,228,229,234

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 96

No.	Description of case	Date of complaint	Complaint by/versus	Referred to	Action taken	Reference
131.	US - Increase in duty on certain products from the EC	November 1988		Request for Council ruling and establishment of Panel under Article XXIII		L/6438, 6469 C/M/228, 229, 230, 231, 232, 234, 235
132.	Canada - Import restrictions on ice cream and yoghurt	December 1988	US/Canada	Panel December 1988	Panel report, not yet adopted, of September 1989 found Canada's import restrictions inconsistent with Article XI	L/6445, 6568 C/M/227, 230 C/164
133.	US - Import prohibitions on ice cream from Canada	December 1988	Canada/US	Article XXIII:1 consultations		L/6444, C/M/227, 228, 229
134.	EEC - Restrictions on exports of copper scrap	May 1989	US/EEC	Panel July 1989		L/6518 C/M/234, 235 DS 5/1
135.	US - Determination under Sections 304 and 305 of the Trade Act of 1974 in respect of the EEC's subsidies for oilseeds	July 1989	EEC/US	Request for Article XXIII:1 consultations		DS 2/1

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

No.	Description of case	Date of complaint	Complaint by/ versus	Referred to	Action taken	Reference
136.	EEC - Subsidies for producers and processors of oilseeds	September 1989	Canada/EEC	Request for Article XXIII:1 consultations		DS 3/1
137.	Finland - Restrictions on imports of apples and pears	September 1989	US/Finland	Request for Article XXIII:1 consultations was later withdrawn		DS 1/2,3
138.	US - Countervailing duty on pork from Canada	September 1989	Canada/US	Request for Panel under Article XXIII:2		DS 7/1 L/6583

MTN.GNG/NG13/W/4/Rev.1  
Page 97

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1

Page 98

2. List of Article XXIII complaints by countries complained against

Australia

- Subsidization on ammonium sulphate

Complaint by Chile in 1949 (See list 1, No. 4) Working Party report adopted on 3 April 1950 GATT Articles examined: I, III, XI, XVI, XXIII Agreement reached between Australia and Chile	II/188 CP.5/SR.6 7S/68
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Belgium

- Family allowances

Complaint by Norway and Denmark in 1951 (See list 1, No. 7) Working Party report adopted on 7 November 1952 GATT Articles examined: I, II, III, XVII Recommendation of 7 November 1952 Measure examined in March 1954	1S/59 2S/18 7S/68
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- Restrictions on imports from the dollar area

Complaint by the United States in 1952 (See list 1, No. 9) Restrictions eventually terminated	GATT/IC/7 CP.6/50 SR.9/2
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- Income tax practices

Complaint by United States in 1973 (See list 1, No. 41) Panel report adopted on 7-8 December 1981 GATT Articles examined: XVI, XXIII Reservation by Belgium Understanding and statements on the adoption of the panel report	L/3860 23S/127 28S/114 C/98; SR.32/1 28S/114
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Brazil

- Internal taxes

Complaint by France in 1945 (See list 1, No. 2) First Working Party report adopted on 30 June 1949 Second Working Party report adopted on 13 December 1950 GATT Article examined: III Resolution of 24 October 1953 and Resolution of 30 November 1955 urging Brazil to bring laws into conformity with the General Agreement Tax discrimination abolished in August 1958	CP.3 II/181 II/186 2S/25 4S/21 7S/68; L/729
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**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 99

Canada

- Imports of potatoes

Complaint by United States in 1962 (See list 1, No. 30)	SR.20/8
Panel report adopted on 16 November 1962	11S/88
GATT Articles examined: II, VI, VII	
Recommendation of 16 November 1962 that Canada withdraw the additional charge	11S/55
Value for duty cancelled in January 1963 and again established in 1966	L/1968 L/2682

- Import quotas on eggs

Complaint by United States in 1975 (See list 1, No. 44)	L/4222
Working Party report adopted on 17 January 1976	23S/91
GATT Article examined: XI	
In March 1976, Canada notified certain increases in the quotas in accordance with suggestions made by the Working Party	L/4319

- Withdrawal of tariff concessions under  
Article XXVIII:3

Complaint by EEC in 1976 (See list 1, No. 47)	C/M/117; L/4432
Panel report adopted on 17 May 1978	25S/42
GATT Article examined: XXVIII	

- Administration of the Foreign Investment Review  
Act

Complaint by United States in 1982 (See list 1, No. 68)	L/5308
Panel report adopted on 7 February 1984	30S/140
GATT Articles examined: III, XI, XVIII, XX(d)	

- Discriminatory application by Ontario of retail  
sales tax on gold coins

Complaint by South Africa in 1984 (See list 1, No. 81)	L/5662, 5711
Panel report (not yet adopted)	L/5863
GATT Articles examined: III, XXIII, XXIV	

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 100

- Import distribution and sale of alcoholic drinks  
by provincial marketing agencies  
  
Complaint by EEC in 1985 L/5777  
(See list 1, No. 85)
- Restrictions on exports of unprocessed uranium  
  
Complaint by United States in 1986 L/6104  
(See list 1, No. 95)
- Restrictions on exports of unprocessed salmon  
and herring  
  
Complaint by the United States in 1987 L/6132  
(See list 1, No. 101)  
Panel report adopted April 1988 L/6268  
GATT Articles examined: XI:1, XI:2(b), XX(g)
- Restrictions on import of ice cream and yoghurt  
  
Complaint by the United States in 1988 L/6444  
(See list 1, No. 132)  
Panel report of September 1989 C/M/227, 230  
L/6568
- Chile
  - Import measures on certain dairy products  
  
Complaint by EEC in 1984 L/5653  
(See list 1, No. 80)
- Cuba
  - Import restrictions  
  
Complaint by United States in 1948 CP.2/SR.22  
(See list 1, No. 1)  
Working Party report adopted on  
14 September 1948, noted bilateral settlement CP.2/43  
Import regulations were terminated in 1948 CP.2/SR.25
- Denmark
  - Import restrictions on grains  
  
Complaint by United States in 1970 L/3436  
(See list 1, No. 34)  
Complaint was withdrawn subsequent to settlement  
reached in consultations C/M/64

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 101

European Economic Community

- Negotiations on poultry

Common request from United States and EEC to establish  
a Panel to render an advisory opinion

(See list 1, No. 32)

Panel report of 21 November 1963

L/2088

The Parties complied with the Panel's conclusions

12S/65

- Compensatory taxes on imports

Complaint by United States in 1972

L/3715 + Add.1

(See list 1, No. 36)

Compensatory taxes on large number of items  
abolished

C/M/79

US agreed to defer further action

C/M/80

- Article XXIV:6 negotiations with the EEC

Complaint by Canada in 1974

L/4107

(See list 1, No. 43)

Reservation by EEC against procedure

C/M/101

Panel established

C/M/102

Agreement reached between the parties in 1975

C/M/105

- Import deposits for animal feed proteins

Complaint by United States in 1976

C/M/113

(See list 1, No. 46)

Panel report adopted on 14 March 1978

25S/49

GATT Articles examined: I, II, III

- Minimum import prices, licenses and surety  
deposits for certain processed fruits and  
vegetables

Complaint by United States in 1976

C/M/113

(See list 1, No. 45)

Panel report adopted on 18 October 1978

25S/68

GATT Articles examined: I, II, VIII, XI, XXIII

- Export refunds on malted barley

Complaint by Chile in 1977

L/4588

(See list 1, No. 49)

C/M/116

Conciliation and good offices of Director-General

C/M/125



**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 102

- Refunds on exports of sugar

Complaint by Australia in 1978 (See list 1, No. 52)	L/4701
Panel report adopted on 6 November 1979	26S/290
GATT Article examined: XVI	
Working Party report on Article XVI:1 discussions adopted on 10 March 1981	28S/80
Working Party report adopted on 31 March 1982	29S/82
Complaint by Brazil in 1978 (See list 1, No. 53)	L/4722
Panel report adopted on 10 November 1980	27S/69
GATT Articles examined: XVI, XXIII, XXXVI, XXXVIII	
Working Party report on Article XVI:1 discussions adopted on 10 March 1981	28S/80
Working Party report adopted on 31 March 1982	29S/82

- Import restrictions on apples

Complaint by Chile in 1979 (See list 1, No. 54)	L/4805
Panel report adopted on 10 November 1980	27S/98
GATT Articles examined: I, II, XI, XIII, XXIII, Part IV	

- Imports of beef

Complaint by Canada in 1980 (See list 1, No. 60)	L/4987
Panel report adopted on 10 March 1981	28S/92
GATT Articles examined: I, II, XXIII	

- Imports of poultry

Complaint by United States in 1980 (See list 1, No. 61)	L/5033
Panel report adopted on 11 June 1981	28S/90
Complaint withdrawn	L/5149

- Quantitative restrictions against imports  
from Hong Kong

Complaint by United Kingdom on behalf of Hong Kong in 1981/82 (See list 1, No. 66)	L/5362
Panel report adopted on 12 July 1983	30S/129
GATT Articles examined: XI, XIII, XXIII	

- Production subsidies on canned fruit

Complaint by Australia in 1981 (See list 1, No. 64)	L/5167 C/M/148, 149
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**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 103

- Production aids on canned peaches, canned pears, canned fruit cocktail and dried grapes  
  
 Complaint by United States in 1982 L/5306  
 (See list 1, No. 67)  
 Panel report (not adopted) L/5778  
 GATT Articles examined: II, XXIII
- EEC - Sugar régime  
  
 Complaint by Argentina, Australia, Brazil, Colombia, Cuba, the Dominican Republic, India, Nicaragua, Peru and the Philippines in 1982 L/5309 + Addenda  
 (See list 1, No. 69)  
 Council took note of the statement that C/M/161  
 complainants reserve their rights under GATT
- Imports of citrus fruits and products  
  
 Complaint by United States in 1982 L/5337, 5339  
 (See list 1, No. 70)  
 Panel report (not adopted) L/5776  
 GATT Articles examined: I, XXIII, XXIV
- Import restrictive measures on video tape recorders  
  
 Complaint by Japan in 1982 L/5427  
 (See list 1, No. 73)
- Imports of Newsprint  
  
 Complaint by Canada in 1984 L/5589, 5628  
 (See list 1, No. 79)  
 Panel report adopted on 6-8 and 20 November 1984 31S/114  
 GATT Articles examined: II, XIII, XXIII, XXVIII
- Operation of its beef and veal régime  
  
 Complaint by Australia in 1984 L/5715  
 (See list 1, No. 83)
- Ban on importation of skins of certain seal pups and related products  
  
 Complaint by Canada in 1985 L/5940  
 (See list 1, No. 90)

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 104

- Enlargement of EEC  
Complaint by Argentina in 1987 L/6201  
(See list 1, No. 106)  
Request for panel not pursued following  
bilateral consultations C/M/212, 215
- Third Country Meat Directive  
Complaint by the United States in 1987 L/6218  
(See list 1, No. 107)  
Request for Panel C/M/213, 215
- Implementation of Harmonized System  
Complaint by Argentina in 1987  
(See list 1, No. 110)  
Consultations under Article XXIII:1 C/M/215
- Restrictions on imports of almonds into Greece  
Complaint by the United States in 1988 C/M/218, 220  
(See list 1, No. 116)  
Request for Panel under Article XXIII:2 L/6327  
Greece lifted import restrictions in April 1988
- Subsidies on oilseeds and related animal feed proteins  
Complaint by the United States in 1988 L/6328  
(See list 1, No. 121)  
Panel set up June 1988 C/M/222, 224
- Restrictions on imports of apples  
Complaint by New Zealand in 1988  
(See list 1, No. 123)  
Request for Panel L/6336, 6357

## 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 105

- Restrictions on imports of apples  
Complaint by Chile in 1988 L/6329, 6336  
(See list 1, No. 124)  
Panel report adopted June 1989 L/6491, C/M/232  
GATT Articles referred to: XI:2(c)(i), XI:2(c)(ii),  
XIII:2, XIII:3(b) and (c), X:1, XXVIII:1(b)
  - Restrictions on imports of apples  
Complaint by the United States in 1988 L/6371  
(See list 1, No. 128)  
Panel Report June 1989 L/6513  
GATT Articles referred to: XI:1, XI:2(c)(i),  
XI:2(c)(ii), X:1, XIII:3(c), XXIII
  - Restrictions on imports of parts and components  
Complaint by Japan in 1988 L/6387, 6410  
(See list 1, No. 129)  
Panel set up November 1988 C/M/224
  - Restrictions on exports of copper scrap  
Complaint by the United States in 1989 L/6518  
(See list 1, No. 134)  
Panel established July 1989 C/M/234, 235
  - Subsidies for producers and processors of oilseeds  
Complaint by Canada in 1989  
(See list 1, No. 136)  
Request for Article XXIII:1 consultations DS 3/1
- Finland
- Internal regulations having an effect on imports of certain parts of footwear  
Complaint by the EEC in 1982 L/5369, 5394  
(See list 1, No. 71)
  - Restrictions on imports of apples and pears  
Complaint by United States in 1989  
(See list 1, No. 137)  
Request for Article XXIII:1 consultations DS 1/2  
Request withdrawn DS 1/3

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 106

France

- Statistical tax on imports and exports

Complaint by United States in 1952 (See list 1, No. 13)	SR.8/7
Tax abolished as of 1 January 1955	SR.9/28

- Special temporary compensation tax on imports

Complaint by Italy in 1954 (See list 1, No. 14)	L/213
Decisions of CONTRACTING PARTIES of 17 January 1955, of 30 November 1955 and of 16 November 1956 urging removal of tax	3S/26; 4S/20; 5S/27
Interim report of the Working Party of 8 August 1957	L/657
The tax was partially removed as a first step, abolished in August 1957, and replaced by a uniform levy. The Contracting Parties considered the matter as settled.	L/671 IC/SR.34/7 SR.12/5

- Stamp tax, increase to 2 per cent

Complaint by United States in 1954 (See list 1, No. 18)	L/245
Complaint withdrawn	SR.9/28

- Stamp tax, further increase to 3 per cent

Complaint by United States in 1955 (See list 1, No. 19)	L/410
French undertaking to cancel increase as soon as possible	L/569, 720
Stamp tax reduced to 2 per cent as from 1 January 1961	L/1412

- Discrimination against imported agricultural  
machinery

Complaint by United Kingdom in 1957 (See list 1, No. 24)	SR.12/5
Discrimination removed with retroactive effect	SR.13/7

- Assistance to exports of wheat flour

Complaint by Australia in 1958 (See list 1, No. 25)	IC/SR.38/12
Panel report adopted on 21 November 1958	7S/46
GATT Articles examined: XVI:3	
Recommendation of 21 November 1958	7S/22
Agreement reached between the parties in April 1960	L/1323, 1548

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 107

**- Import restrictions**

Complaint by United States in 1962 (See list 1, No. 31)	SR.20/8
Panel report adopted on 14 November 1962	11S/94
GATT Articles examined: XI, XII	
Recommendation of 14 November 1962	11S/55
Certain restrictions were removed by France.	C/M/80
Matter was eventually not pursued	C/M/81, 83

**- Income tax practices**

Complaint by United States in 1973 (See list 1, No. 40)	L/3860
Panel report adopted on 7-8 December 1981	23S/114; 28S/114
GATT Articles examined: XVI, XXIII	
Reservation by France	C/S
Understanding and statements on the adoption of the Panel report	C/M/154 28S/114

**Germany**

**- Treatment of sardines imports**

Complaint by Norway in 1952 (See list 1, No. 10)	L/16
Panel report adopted on 31 October 1952	1S/53
GATT Articles examined: I, XIII, XXIII	
Recommendation of 31 October 1952	1S/30
Agreement reached between governments in 1953	SR.8/18

**- Import duties on starch and potato flour**

Complaint by Benelux countries in 1954 (See list 1, No. 16)	L/260
Panel report noted on 16 February 1955	3S/77
GATT Article examined: II	
Settlement agreed between the parties	SR.9/34

**Greece**

**- Increase of import duties**

Complaint by United Kingdom in 1952 (See list 1, No. 11)	L/15
Panel report adopted on 3 November 1952	1S/51
GATT Article examined: II	
Recommendation of 3 November 1952	1S/23
Previously existing coefficient for currency conversion was restored	SR.8/7 7S/69

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 108

- Special import taxes

Complaint by France in 1952 SR.7/8  
(See list 1, No. 12)

Panel report adopted on 3 November 1952 1S/48

GATT Articles examined: II, III

Measure terminated in April 1953 SR.8/7  
7S/69

- Luxury tax

Complaint by Italy in 1954 L/234  
(See list 1, No. 17)

Matter settled in consultations SR.9/7, 30

- Increase in bound duties

Complaint by Germany in 1956 L/575  
(See list 1, No. 21)

Report of Group of Experts L/580

Settlement reached and complaint withdrawn  
in November 1957 L/765, SR.12/21

India

- Import restrictions on almonds

Complaint by the United States in 1987 L/6197  
(See list 1, No. 105)

Panel established in November 1987  
US withdrew complaint after bilateral settlement C/M/211, 215

Italy

- Discrimination against imported agricultural machinery

Complaint by United Kingdom in 1957 L/649  
(See list 1, No. 23)

Panel report adopted on 23 October 1958 7S/60

GATT Articles examined: III, XXIII

Recommendation of 23 October 1958 7S/23

Agreement reached SR.13/18

Matter raised again by the United Kingdom in 1960 L/1294

Retained on agenda SR.17/5



**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 107

- Assistance to exports of flour

Complaint by Australia in 1958	L/853
(See list 1, No. 26)	
Matter referred to panel but agreement	SR.13/17
reached in bilateral discussions	IC/SR.41

- Administrative and statistical fees

Complaint by the United States in 1969	L/3279
(See list 1, No. 33)	
During the Council discussion, the United States	C/M/59
reserved the right to revert to the matter	

Jamaica

- Increase in margins of preference

Complaint by United States in 1970	L/3440
(See list 1, No. 35)	
Panel report adopted on 2 February 1971	18S/183
GATT Article examined: XXVI	
(Panel recommended the granting of a waiver	
to change with respect to Jamaica the base date	
referred to in para. 4 of Article I from	
10 April 1947 to 1 August 1962)	
Decision of 2 March 1971 changing	18S/33
the base date for calculation of margins of	
preference to 1 August 1962. Jamaica undertook	
to reduce increased margins of preference to	
the 1962 level	

Japan

- Import restrictions on thrown silk yarn

Complaint by United States in 1977	L/4530
(See list 1, No. 48)	
Panel report adopted on 17 May 1978	25S/107
indicating that parties have arrived	
at a bilateral solution	

- Restraints on imports of leather

Complaint by United States in 1978	L/4691
(See list 1, No. 51)	
Panel report adopted on 6 November 1979	26S/320
notes that United States was withdrawing the	
complaint subsequent to bilateral settlement	
reached	

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 110

- Restrictions on imports of leather  
 Complaint by Canada in 1979 L/4856  
 (See list 1, No. 55)  
 Panel report adopted on 10 November 1980 notes  
 that parties agreed on a solution to the matter 27S/118
- Restraints on imports of manufactured tobacco  
 Complaint by United States in 1980 L/4871  
 (See list 1, No. 57)  
 Panel report, adopted 11 June 1981, notes 28S/100  
 bilateral settlement and withdrawal of complaint
- Measures on imports of leather  
 Complaint by United States in 1983 L/5440, 5462  
 (See list 1, No. 74)  
 Panel report adopted on 15/16 May 1984 31S/94  
 GATT Articles examined: II, X, XI, XIII
- Nullification or impairment of benefits  
 Complaint by EEC in 1983 L/5479  
 (See list 1, No. 76)
- Restrictions on imports of leather footwear  
 Complaint by United States in 1985 L/5826  
 (See list 1, No. 87)
- Restrictions on imports of certain agricultural products  
 Complaint by United States in 1986 L/6037  
 (See list 1, No. 92)  
 Panel report adopted March 1988 L/6253  
 GATT Articles examined: XI:1, XI:2(c)(i), XX(d)
- Customs duties, taxes and labelling practices on imported wines and alcoholic beverages  
 Complaint by EEC in October 1986 L/6078  
 (See list 1, No. 93)  
 Panel report adopted November 1987 L/6465, 34S/83  
 GATT Articles examined: III:1, III:2, IX:6
- Restrictions on imports of herring, pollock and surimi  
 Complaint by United States in October 1986 L/6070  
 (See list 1, No. 94)

## 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 111

### - Bilateral agreement regarding trade in semi-conductors

Complaint by EEC in February 1987 L/6129  
(See list 1, No. 100) L/6309  
Panel report adopted June 1988  
GATT Articles examined: I, VI, X, X:1, XVII:1(c)

### - Restrictions on imports of SPF dimension lumber

Complaint by Canada in 1987 L/6315  
(See list 1, No. 108)  
Panel report adopted July 1989 L/6470  
GATT Articles examined: I:1

### - Copper trading practices in Japan

Joint request for conciliation in 1987 L/5286, 5627  
(See list 1, No. 112)  
Conciliation Report January 1989 SR.43/4  
L/6456

### - Restrictions on imports of beef and citrus products

Complaint by the United States in 1988 L/6262, 6322+Add.1  
(See list 1, No. 117)  
Complaint withdrawn in July 1988 C/M/220, 223  
following market-opening measures by Japan

### - Restrictions on imports of beef

Complaint by Australia in 1988 L/6333, 6370  
(See list 1, No. 120)  
Panel set up in May 1988  
Complaint withdrawn in July 1988 following  
market-opening measures by Japan C/M/220, 223

### - Restrictions on imports of beef

Complaint by New Zealand in 1988 L/6340  
(See list 1, No. 125)  
Article XXIII:1 consultations  
Complaint withdrawn following market opening  
measures by Japan L/6355

### Korea

### - Restrictions on imports of beef

Complaint by the United States in 1988 L/6316  
(See list 1, No. 114)  
Panel report May 1989 L/6503  
GATT Articles examined: II, X, XI, XIII,  
XV:2, XVIII

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 112

- Restrictions on imports of beef

Complaint by Australia in 1988	L/6332
(See list 1, No. 115)	
Panel report May 1989	L/6504
GATT Articles examined: II, X, XI, XIII, XV:2, XVIII	

- Restrictions on imports of beef

Complaint by New Zealand in 1988	L/6354
(See list 1, No. 122)	
Panel report June 1989	L/6505
GATT Articles examined: II, X, XI, XIII, XVIII	

Netherlands

- Income tax practices

Complaint by United States in 1973	L/3860
(See list 1, No. 42)	
Panel report adopted on 7-8 December 1981	23S/137; 28S/114
GATT Articles examined: XVI, XXIII	
Reservation by the Netherlands	C/99
Understanding and Statements on the adoption of the Panel report	C/M/154 28S/114

New Zealand

- Imports of electrical transformers

Complaint by Finland in 1984	L/5682
(See list 1, No. 82)	
Panel report adopted on 18 July 1985	32S/55
GATT Article examined: VI	

Norway

- Restrictions on imports of certain textile products

Complaint by United Kingdom on behalf of Hong Kong in 1978	L/4959
(See list 1, No. 50)	
Panel report adopted "in principle" on 18 June 1980	27S/119
GATT Articles examined: XI, XIII, XIX	

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 113

- Restrictions on imports of apples and pears

Complaint by the United States in 1987 (See list 1, No. 111)	L/6311
Panel report adopted in June 1989 GATT Articles referred to: I, X, XI:2(c)(i), XI:2(c)(ii), XIII; also Protocol of Provisional Application, para. 1(b)	L/6491, C/M/222

Spain

- Restrictions on domestic sale of soyabean oil

Complaint by United States in 1979 (See list 1, No. 56)	L/4859
Panel report of 17 June 1981 GATT Articles examined: III, XVII, XXIII	L/5142
Council took note of the report and of the statements made on 3 November 1981	C/M/152

- Tariff treatment of unroasted coffee

Complaint by Brazil in 1980 (See list 1, No. 59)	L/4974
Panel report adopted on 11 June 1981 GATT Articles examined: I, II	28S/102

Sweden

- Anti-dumping duties

Complaint by Italy in 1954 (See list 1, No. 15)	L/215
Panel report adopted on 26 February 1955 GATT Article examined: VI	3S/81
Anti-dumping regulations in question were abrogated on 10 July 1955	7S/69 L/386

- Restrictions on imports of apples and pears

Complaint by the United States in 1988 (See list 1, No. 118)	L/6330
Request for GATT Panel under Article XXIII:2	C/M/220

Switzerland

- Imports of table grapes

Complaint by the EEC in 1982 (See list 1, No. 72)	L/5371
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**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1

Page 114

United Kingdom

- United Kingdom Purchase Tax

Complaint by Netherlands in 1950	CP.5/12
(See list 1, No. 5)	CP.5/SR.20
United Kingdom abolished discrimination	G 18

- Preference on ornamental pottery

Complaint by Germany in 1959	IC/SR/44
(See list 1, No. 27)	
Panel report	SECRET 105

- Increase in margins of preferences on bananas

Complaint by Brazil in 1961	SR.19/12
(See list 1, No. 29)	
Panel report of 11 April 1962	L/1749
Council took note of Panel report	C/M/10
In accordance with the Panel ruling that the purpose of the proposed increase in margin of preferences did not qualify under the conditions of the authorizing waiver, the proposed tariff increase was abandoned	SR.20/2

- Exports of subsidized eggs

Complaint by Denmark in 1957	L/627
(See list 1, No. 22)	
Discussion by Intersessional Committee and establishment of Panel which never met due to settlement reached in September 1957	IC/SR.31
	IC/SR.34

- Import restrictions of cotton textiles

Complaint by Israel in 1972	L/3741
(See list 1, No. 37)	C/M/79, 81
Panel report adopted on 5 February 1973 notes that bilateral settlement had been reached	20S/237

- Dollar area import quotas

Complaint by United States in 1972	L/3753
(See list 1, No. 38)	C/M/83
Interim panel report adopted on 30 July 1973	20S/230
Panel report, adopted on 30 July 1973, notes withdrawal of complaint following bilateral settlement reached	20S/236

**2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 115

United States

- Export restrictions

Complaint by Czechoslovakia in 1949 (See list 1, No. 3)	CP.3/SR.18
The CONTRACTING PARTIES rejected the complaint	II/28
Suspension of obligations between Czechoslovakia and the United States	II/36

- "Serious injury" in case of Article XIX action

Complaint by Czechoslovakia (See list 1, No. 6)	CP.5/22
Working Party report adopted on 24 October 1951.	CP/106
The report found the withdrawal by the United States of a tariff concession not in violation of Article XIX.	CP.6/SR.19

- Import restrictions on dairy products

Complaints by the Netherlands and Denmark in 1951 (See list 1, No. 8)	CP.6/26; CP.6/28
Resolution of 26 October 1951	II/16
Resolution of 8 November 1952	1S/31
Netherlands suspension of obligations to United States	1S/32, 62
Resolution of 13 October 1953	2S/28
Resolution of 5 November 1954	3S/46
Determination (suspension of certain obligations) of 1 December 1955	4S/31, 96
Determination (suspension of certain obligations) of 16 November 1956	5S/28, 136
Determination (suspension of certain obligations) of 28 November 1957	6S/14, 152
Determination (suspension of certain obligations) of 20 November 1958	7S/23, 124
Decision of 5 March 1955, granting a waiver to the United States in connection with import restrictions	3S/32

- Hawaiian regulations affecting imported eggs

Complaint by Australia in 1955 (See list 1, No. 20)	L/411
Regulation invalidated	SR.10/13

- Tax legislation (DISC)

Complaint by EEC in 1973 (See list 1, No. 39)	L/3851
Panel report presented to Council on 12 November 1976 and adopted on 7-8 December 1981	23S/98 28S/114



**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 116

- Tax legislation (DISC) (cont'd)

GATT Articles examined: XVI, XXIII	
Understanding and statements on the adoption	28S/114
of the Panel report	C/M/154
Follow-up of DISC	L/5716

- Prohibition of imports of tuna and tuna products

Complaint by Canada in 1980	L/4931
(See list 1, No. 58)	
Panel report adopted on 22 February 1982	29S/91
GATT Articles examined: I, II, XI, XIII, XX(g), XXIII	

- Imposition of countervailing duties without injury criterion

Complaint by India in 1980	L/5028, 5062
(See list 1, No. 62)	
Panel report adopted on 3 November 1980 notes	28S/113
bilateral settlement	

- Import duty on vitamin B-12

Complaint by EEC in 1981	L/5129
(See list 1, No. 63)	
Panel report adopted on 1 October 1982	29S/110
GATT Articles examined: II, XXVIII	

- Imports of automotive spring assemblies

Complaint by Canada in 1981	L/5195 + Addenda
(See list 1, No. 65)	
Panel report adopted on 26 May 1983	30S/107
subject to an understanding	C/M/168
GATT Articles examined: III, XI, XX, XXIII	

- "Manufacturing clause" in US copyright legislation

Complaint by EEC in 1982	C/M/160
(See list 1, No. 75)	
Panel report adopted on 15/16 May 1984	31S/74
GATT Articles examined: XI, XIII and Protocol of Provisional Application	

## 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 117

- Imports of sugar  
Complaint by Nicaragua in 1983 C/M/168  
(See list 1, No. 77) L/5492  
Panel report adopted on 13 March 1984 31S/67  
GATT Articles examined: XI, XIII
- Reclassification of machine-threshed tobacco  
Complaint by EEC in 1983 L/5541  
(See list 1, No. 78)
- Ban on imports of steel pipes and tubes from the EC  
Complaint by EEC in 1984 L/5747/Add.2  
(See list 1, No. 84)
- Restrictions on imports of certain sugar-containing products  
Complaint by Canada in 1985 L/5783  
(See list 1, No. 86)
- Trade measures affecting Nicaragua  
Complaint by Nicaragua in 1985 C/M/191, 192  
(See list 1, No. 88)  
Panel report L/6053  
GATT Articles examined: XXI, XXIII, XXV:5
- Restrictions on imports of cotton pillowcases and bedsheets  
Complaint by Portugal in 1985 L/5859  
(See list 1, No. 89)
- Imports of non-beverage ethyl alcohol  
Complaint by Brazil in 1986 L/5993  
(See list 1, No. 91)
- Tax on petroleum and certain imported substances  
Complaints by Canada, by the EEC and by Mexico L/6121, L/6123,  
in 1987 L/6114  
(See list 1, No. 96, 97, 98)  
Panel report adopted June 1987  
GATT Article examined: III:2 L/6175, 34S/136

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 118

- Customs user fee

Complaints by Canada and the EEC in 1987 L/6130, L/6131  
(See list 1, No. 99)  
Panel report adopted March 1987  
GATT Articles examined: II:2(c), VIII:1(a)

- Tax reform legislation for small passenger aircraft

Complaint by the EEC in 1987 L/6153  
(See list 1, No. 102)  
Request for Panel not pursued; US legislation  
had lapsed C/M/208, 209

- Section 337 of the United States Tariff Act of 1930

Complaint by the EEC in 1987 L/6160, 5439, 6500,  
(See list 1, No. 103) 6529  
Panel report tabled November 1988 L/6487  
GATT Articles examined: III:2, III:4, XX(d)

- Import restrictions on certain Japanese products

Complaint by Japan in 1987 L/6159  
(See list 1, No. 104)

- Tariff increases and import prohibitions on products from Brazil

Complaint by Brazil in 1987 L/6274+Add.1  
(See list 1, No. 109)  
Consultations under Article XXIII:1  
and request for good offices of Director-General

- Removal of GSP benefits for Chile

Complaint by Chile in 1987 L/6298  
(See list 1, No. 113)  
Consultations under Article XXIII:1 C/M/217-220

- Quality standards for grapes

Complaint by Chile in 1988  
(See list 1, No. 119)  
Consultations under Article XXIII:1 L/6324+Add.1

## 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 119

- Restrictions on imports of sugar  
Complaint by Australia in 1988 L/6373  
(See list 1, No. 126)  
Panel report adopted June 1989 L/6514  
GATT Articles referred to: II:1(b), IV(d), XI:1, C/M/224  
XVII:3, XVIII bis
- Restrictions on imports of agricultural products based on 1955 Waiver  
Complaint by the EEC in 1988 L/6393  
(See list 1, No. 127)  
Panel established in June 1989 C/M/234
- Restrictions on products from Brazil  
Complaint by Brazil in 1988 L/6386  
(See list 1, No. 130)  
Panel established in February 1989 C/M/229
- Increases in duty for certain products from the EEC  
Complaint by the EEC in 1988 L/6438, 6469  
(See list 1, No. 131)  
Request for Council ruling and establishment of a Panel under Article XXIII C/M/228
- Prohibition on imports of ice cream from Canada  
Complaint by Canada in 1988 L/6444  
(See list 1, No. 133)  
Article XXIII:1 consultations C/M/227-229
- Determination under sections 304 and 305 of the Trade Act of 1974 in respect of the EEC's subsidies for oilseeds  
Complaint by the EEC in 1989 DS 2/1  
(See list 1, No. 135)  
Request for Article XXIII:1 consultations
- Countervailing duty on pork from Canada  
Complaint by Canada in 1989 DS 7/1  
(See list 1, No. 138)  
Request for Article XXIII:1 consultations

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 120

Uruguay

- Uruguayan recourse in 1961 affecting fifteen contracting parties maintaining different types of measures L/1647  
(See list 1, No. 28)
- Report of Panel adopted on 16 November 1962 11S/95
- GATT Articles examined: I, II, III, XI, XII, XVII, XX, XXII, XXIII
- Recommendation of 16 November 1962, addressed to seven contracting parties 11S/56
- Reports of Panel adopted on 3 March 1965 13S/35, 45

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 121

IV. DISPUTE SETTLEMENT UNDER THE TOKYO ROUND AGREEMENTS

1. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement

- EEC subsidies on export of wheat flour

Request for conciliation under Article 17 by the United States in 1981	SCM/Spec/6
Discussion in Subsidies Committee on 14 December 1981	SCM/M/Spec/1
Panel report of March 1983 (not yet adopted)	SCM/42
Subsequent discussions in Subsidies Committee	SCM/M/14, 18, 31, 32, 34
	SCM/M/Spec/9, 20

- EEC subsidies on export of pasta

Request for conciliation under Article 13:1 by the United States in 1982	SCM/Spec/11
Discussions in Subsidies Committee on 3, 10, 24 March and 7 April 1982	SCM/Spec/2-5
Panel report of May 1983 (not yet adopted)	SCM/43
Subsequent discussions in Subsidies Committee	SCM/M/18, 31, 32, 34

- EEC subsidies on export of sugar

Request for conciliation under Article 13:2 by the United States in 1982	SCM/Spec/14
Discussion in Subsidies Committee on 30 April 1982	SCM/M/Spec/6

- Certain domestic procedures of the United States

Request for conciliation under Article 17 by India in 1982	SCM/20
Discussion in Subsidies Committee on 29 April 1982, 15 July 1982 and 17 November 1983	SCM/M/11
	SCM/Spec/17
	SCM/M/Spec/7

United States countervailing duties investigations against imports from Canada

Request for conciliation under Article 17 by Canada in 1983	SCM/40
Request withdrawn in March 1983	SCM/40/Add.1

- United States subsidies on the export of wheat flour

Request for conciliation under Article 17 by the EEC in April 1983	SCM/Spec/18
Discussion in Subsidies Committee on 18 May 1983 and establishment of Panel (Matter not pursued)	SCM/M/Spec/8

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 122

- EEC's and Brazilian subsidies on the export and production of poultry  
  
Request for conciliation under Article 17:1 by the United States in September 1983  
Discussion in Subsidies Committee on 18 November 1983  
SCM/Spec/19  
SCM/M/Spec/9
- Definition of industry concerning wine and grape products contained in the United States Trade and Tariff Act of 1984  
  
Request for conciliation under Article 17:1 by the EEC in December 1984  
Panel report of March 1986 (not yet adopted)  
Subsequent discussions in Subsidies Committee  
SCM/M/22, page 6  
SCM/60  
SCM/71  
SCM/M/31, 32, 34
- United States countervailing duty investigation into softwood lumber  
  
Request for conciliation under Article 17 by Canada in July 1986  
Discussion in Subsidies Committee and establishment of Panel in August 1986  
US and Canada reach mutually satisfactory settlement in January 1987  
Panel report of May 1987  
SCM/73  
SCM/76  
SCM/M/Spec/12  
SCM/M/32, 34  
SCM/83
- Canadian countervailing duty investigation on imports of boneless manufacturing beef  
  
Request for conciliation under Article 17 by the EEC in July 1986  
Discussion in Subsidies Committee and establishment of Panel in October 1986  
Panel report of October 1987  
SCM/75  
SCM/77  
SCM/M/32, 35  
SCM/85  
SCM/M/39
- Canadian countervailing duty action concerning pasta products exported from the EEC  
  
Request by the EEC for conciliation under Article 17:1 in October 1986  
SCM/78  
SCM/M/32
- Canadian imposition of countervailing duties on imports of grain corn exported from the United States  
  
Request by the United States for a special meeting under Article 16:1 in May 1987  
Request for conciliation under Article 17 in October 1989  
SCM/M/33  
SCM/95



## 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 123

- United States countervailing duties on non-rubber footwear from Brazil

Request from Brazil for conciliation under Article 17:1 in May 1988	SCM/M/38, 39
Panel established in October 1988	SCM/87
Panel report of October 1989	SCM/M/40+Add.1
	SCM/94

- United States subsidies on exports of soyabean oil

Request by Brazil for consultations under Article 12:1 in August 1988	SCM/90
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- EC approval of a German export subsidy

Request by the United States for consultations under Article 12:1 in April 1989	SCM/92
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2. Agreement on the Implementation of Article VI of the General Agreement

- Canadian anti-dumping action on electric generators imported from the EEC

EEC request of November 1983 for conciliation under Article 15:3	ADP/16
Discussions in Anti-Dumping Committee in November 1983 and March 1984	ADP/M/11
	paras. 53-59
	ADP/M/Spec/1

- Australian restrictions on imports of canned ham from Romania

Request by Romania for consultation under Article 15 in May 1988	ADP/M/20
	ADP/M/22

- United States dumping determinations made on imports of stainless steel pipe and tube from Sweden

Request by Sweden for conciliation under Article 15:3 in September 1988	ADP/38
Request by Sweden for establishment of a panel under Article 15:5 in October 1988	ADP/M/23
Panel established in January 1989	ADP/M/24
	ADP/M/25

- EEC modification to anti-dumping regulations (Regulation 1761/87)

Request by Japan for consultations under Article 15:2 in July 1988 and for conciliation under Article 15:3 in October 1988	L/6381
	ADP/M/24
	ADP/39

2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 124

- Australian anti-dumping duties on imports of transformers from Finland

Request by Finland for conciliation under Article 15:3 in April 1989

ADP/42

- EEC anti-dumping duties on imports of video cassettes from Hong Kong

Request by Hong Kong for consultations under Article 15:2 in June 1989

ADP/44

3. Agreement on Technical Barriers to Trade

- Japan's treatment of United States manufactured metal softball bats

Request for initiation of dispute settlement procedures under Article 14:4 by the United States in 1982  
Request withdrawn in March 1983

TBT/Spec/7

TBT/Spec/8

- Spanish homologation requirements for heating radiators and electrical medical equipment

EEC request of February 1984 for a Committee investigation under Article 14:4 concerning procedures in Spain for type approval of heating radiators and electrical medical equipment  
Discussions in the Committee on Technical Barriers to Trade in February, April, July and September 1984  
Recommendation of 10 July 1984  
Closure of investigation in September 1984  
Amendment of Spanish regulations

TBT/Spec/9

TBT/M/Spec/1,2,3,4

TBT/M/Spec/3,p.6

TBT/M/Spec/4,p.2

TBT/Spec/12

- Spanish type approval of heating radiators and electrical medical equipment

Consultations under Article 14:1 between Spain and the United States in 1985

TBT/M/19

- EEC Animal Hormone Directive (85/649/EEC)

Request for initiation of dispute settlement procedures under Article 14:4 by the United States in March 1987  
Committee investigates United States case in sessions in June, July and September 1987  
United States announces retaliatory measures against certain EEC products in December 1987

TBT/Spec/18, 19

TBT/M/24

TBT/M/Spec/6,

7, 8

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (continued)**

MTN.GNG/NG13/W/4/Rev.1  
Page 125

4. Agreement on Import Licensing Procedures

- India - import licensing procedures for almonds

Request by United States for panel under Article 4:2 in 1987	LIC/M/19
Panel established in September 1987	LIC/14
Withdrawal of United States complaint following bilateral settlement of issue	LIC/15
	LIC/M/22

5. Agreement on Government Procurement

- EC's treatment of value-added taxes

Request for initiation of dispute settlement procedures under Article VII:6 by the United States in 1982	GPR/Spec/18
Discussion in Committee on Government Procurement in July 1982	GPR/M/Spec/1
Panel report adopted on 16 May 1984 and statements made at the meeting of 16 May 1984	GPR/21
Solution of the dispute accepted in February 1987	L/6128

- Japan's single tendering practices

Request for consultations under Article VII:4 by the United States in 1984	GPR/Spec/42
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- French "Computer Literacy Program"

Request for establishment of a Panel pursuant to Article VII:2 by the United States in 1985	GPR/W/69
As a result of bilateral consultations, the establishment of a Panel was not deemed necessary	GPR/M/16
	GPR/M/18

- Procurement of machine tools by the United States Department of Defense

Request by EEC for consultations under Article VII:3 in 1987	GPR/37
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- United States procurement of antarctic research vessel

Request by Finland for consultations under Article VII:4 in October 1988	GPR/M/31
Request by Finland for special meeting of Committee under Article VII:6 in March 1989	GPR/W/89, 91-93
	GPR/M/32, 33

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 126

6. Agreement on Trade in Civil Aircraft

- Development, production and marketing of aircraft produced by the Airbus Industry Consortium

Request by the United States for review AIR/W/62  
under Article 8.7 in 1987

Review meeting held in March 1987 AIR/M/20

7. International Dairy Arrangement

- United States sales to Egypt

Request by EEC for a special meeting pursuant L/5562  
to Article VII:1(b) DPC/10, 11

- EEC sales of butter below minimum prices

Special meetings pursuant to Article IV:6 DPC/16, 17

8. Arrangement Regarding Bovine Meat

- EEC subsidies on exports of bovine meat

Request by Argentina for a special meeting IMC/W/31  
pursuant to Article IV:6

2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 127

V. FACTUAL ANALYSIS OF THE WORK OF PANELS ESTABLISHED UNDER  
GATT ARTICLE XXIII:2 SINCE 1979

1. Additional Factual Data on Article XXIII Panels  
established since 1979

Since GATT contracting parties are not obliged to notify the GATT secretariat of Article XXIII:1 consultations and of their results, the GATT secretariat disposes only of very incomplete information in this respect. Moreover, due to the lack of a central GATT legal office prior to 1983, there exists no systematic collection of certain factual data pertaining to GATT dispute settlement proceedings prior to 1983 (e.g. dates of the first meeting of panels, working procedures adopted by each panel). The parties involved in disputes under Article XXIII, the areas of dispute, the GATT Articles examined in the panel reports, the panel findings and the document references have been indicated already in the tabular lists reproduced above in part III. The following data are confined to additional factual information on the work of GATT panels established under Article XXIII:2 since the GATT Tokyo Round and cover the period 1979-1986 (cases Nos. 50, 51, 54-63, 65-68, 70, 71, 74, 75, 77, 79, 81, 82, 85-88, 92 in the chronological list above).

(a) Terms of reference

Out of the twenty-nine panels established between 1979 and 1986, twenty-four were established with "standard terms of reference", such as:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United Kingdom on behalf of Hong Kong in document L/5362 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2". (BISD 30S/129)

or:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Brazil, relating to the tariff treatment of imports of unroasted coffee into Spain (L/4974), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings as provided in Article XXIII." (BISD 28S/102)

or:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by South Africa, that is, whether the action taken with effect from 11 May 1983 in respect of the levying of the retail sales tax on gold coins by the Province of Ontario accords with the provisions of Articles III and II of the General Agreement; whether Canada has carried out its obligations in

## 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 128

terms of Article XXIV:12 of the General Agreement; whether any benefits accruing to South Africa under the General Agreement have been nullified or impaired; and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or giving the rulings provided for in paragraph 2 of Article XXIII". (L/5863)

Three panels were given special terms of reference designed to limit the jurisdiction of the panel (see case No. 88, L/6053) or to direct its attention to certain bilateral understandings (case No. 85, C/M/195) or Council discussions (case No. 92, C/145). Two panel proceedings were discontinued before the terms of reference had been decided upon.

### (b) Average time passed for the various phases of the panel proceedings

Out of the twenty-nine panels established between 1979-1986 under Article XXIII:2, twenty-four panels submitted reports to the GATT Council before the end of 1986 (three complaints were not pursued, two recent panel proceedings continue to be pending). Five of these twenty-four panel reports have not been adopted (cases Nos. 56, 67, 70, 81 and 88). But in three of these disputes the parties agreed on a solution of the dispute (see cases Nos. 67, 70 and 81), and in another dispute (case No. 56) the GATT Council took note of the report. As regards the remaining nineteen panel proceedings which led to the adoption of a panel report by the Council, the average time passed for the various phases of the panel proceedings was:

- (i) Average time from the date of the complaint under Article XXIII:2 to the date of the establishment of a panel by the GATT Council: 1 1/4 months;
- (ii) Average time from the date of the establishment of a panel to the date of the publication of the panel report as an L-document: 10 1/2 months;
- (iii) Average time from the date of publication of panel report to the date of its adoption by the Council: 2 1/2 months;
- (iv) Average time from the date of the complaint under Article XXIII:2 to the date of adoption of the panel report: 14 1/2 months.

If the five panel reports, which were not adopted by the Council (Nos. 56, 67, 70, 81 and 88), are included into the statistical calculation, the average time from the date of the complaint under Article XXIII:2 to the date of the establishment of a panel increases to 1 1/2 months, and the average time from the date of the establishment of a panel to the date of the circulation of the panel report as an L-document increases to 12 1/2 months.

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 129

#### (c) GATT Articles examined and areas of disputes

Out of the twenty-nine panels established under GATT Article XXIII:2 between 1979-1986, twenty-four panels submitted reports to the GATT Council before the end of 1986. Five of these reports notify that the parties agreed on a settlement of the dispute and/or that the complaint had been withdrawn. Out of the remaining nineteen panel reports, eleven related to quantitative restrictions or national treatment in terms of Articles XI or XIII, eight to tariff bindings in terms of Article II, eleven raised questions of trade discrimination in terms of Articles I or XIII, and nine affected agricultural products.

#### 2. Assessment of the Causes of the Non-Adoption of Panel Reports since 1979

Between 1979-1986, five panel reports submitted to the Council have not been adopted (Nos. 56, 67, 70, 81 and 88). One panel report (No. 56) was only taken note of because the complaining country, as well as other contracting parties, disagreed with some panel interpretations of GATT Article III and requested the Council not to adopt the report. Two of these panel reports (Nos. 67 and 81) prompted an agreed solution of the dispute, but were not adopted by the Council because of opposition from the respective "losing" parties. Another panel report (No. 70) also contributed to an agreed settlement of the dispute, but some of the panel reasonings were criticized by a number of contracting parties for being inconsistent with past GATT interpretations and GATT legal practice. The fifth panel report (No. 88) continues to be pending before the Council and relates to the sensitive area of politically-motivated trade embargoes.



**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 130

**VI. CONCLUDING REMARKS**

**1. Overall Assessment of GATT Article XXIII Dispute Settlement Proceedings**

In evaluating the GATT dispute settlement system under Article XXIII, the following facts should be taken into account.

(a) The more than 100 formal complaints under Article XXIII represent only a very small portion of the disputes that were settled under the General Agreement. Most disputes about the interpretation or implementation of the General Agreement are settled through bilateral consultations or through domestic procedures (e.g. national court decisions on customs matters, antidumping and countervailing duty proceedings) without any involvement of the CONTRACTING PARTIES. One of the major practical functions of Article XXIII has been to provide an incentive to settle disputes by mutual agreement.

(b) About sixty out of 103 formal complaints under Article XXIII led to the submission of one or several report(s) by a panel, working party or group of experts. The other complaints were withdrawn or settled otherwise. Of the fifty-two panel reports submitted to the CONTRACTING PARTIES, to the Council or directly to the parties to the dispute (see No. 32) until the end of 1986, forty-five were adopted; of these, four with understandings and one "in principle", the others without qualifications. In five cases, the parties settled the dispute in a mutually satisfactory way and the complainants no longer insisted on the adoption of the panel report (Nos. 16, 29, 67, 70 and 81). In another case, the panel report was not adopted because the complaining country disagreed with the panel findings and requested the Council not to adopt the report (No. 56). One recent panel report continues to be under consideration by the Council (No. 88). Thus, apart from one panel report which continues to be under consideration in the GATT Council, all other panel reports were either adopted or led to the withdrawal of the complaint or contributed to a settlement of the dispute.

(c) The United States, the EEC and Japan have been the most frequent targets of Article XXIII complaints. Out of nineteen Article XXIII complaints directed against the EEC, sixteen concerned import restrictions or export subsidies on agricultural products. The complaints against the United States and Japan were less frequently directed against agricultural trade restrictions. The 103 complaints so far under Article XXIII included fifteen complaints by altogether fourteen developing contracting parties.

(d) The average time from the date of the complaint under Article XXIII:2 to the date of adoption of the panel report (14 1/2 months during the period 1979-1986), and between the Council decision to establish a panel and the adoption of the panel report by the Council (thirteen months during the period 1979-1986), does not appear to be unreasonable if compared with the often longer time-periods in other international and national dispute

### 2.1 Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)

MTN.GNG/NG13/W/4/Rev.1  
Page 131

settlement proceedings. Since 1983, the time that elapsed between the first meeting of the panel with the parties and the submission of its report was on average less than six months. During these six months, the panel gave the parties time to submit their arguments and their rebuttals, time to comment on the factual part of the panel report, time to reflect on the panel findings and adequate opportunity to develop a mutually satisfactory solution prior to the submission of the panel report to the GATT Council. In the case of the three panels established at the request of a developing contracting party since 1983 (see Nos. 77, 88 and 96), the average time between the first panel meeting and the submission of the panel report to the parties was only about four months. The delays and problems that have occurred in some panel proceedings over the past years appear to have been due, *inter alia*, to the difficulties of the parties in agreeing on the composition of the panels, to the shortage of qualified persons available to serve as panel members, to the negotiation of special terms of reference, to differences of opinion on the interpretations of GATT law by a few panels (see cases Nos. 56 and 70), and to the opposition to the adoption of a few panel reports by the defendant parties (see cases Nos. 67 and 81).

(e) Only once has a contracting party (Netherlands in 1951) had recourse to the "retaliation" provision of Article XXIII:2 and has been authorized by the CONTRACTING PARTIES to suspend GATT obligations to another contracting party (the United States).

(f) Most of the GATT panel procedures have gradually evolved in GATT practice under Article XXIII in reaction to concrete needs and constraints. The 1979 Understanding on Dispute Settlement is essentially an agreed codification of the customary practice of the GATT in the field of dispute settlement under Article XXIII:2 and has proven very useful. This case-oriented use of Article XXIII for the elaboration of agreed interpretations of the GATT provisions and for the progressive improvement of GATT dispute settlement procedures has become an important function of Article XXIII in addition to its function as a framework for the settlement of concrete bilateral disputes.

#### 2. Overall Assessment of Dispute Settlement Proceedings under the 1979 Tokyo Round Agreements

The practical experience with dispute settlement has differed so much under the various Tokyo Round Agreements that it seems difficult to draw any general conclusions. For instance, views tend to differ on whether the large number of disputes under the Subsidy Code, and the disagreement in the Subsidy Committee over the adoption of panel reports, are to be attributed to the Subsidy Code provisions, or to the parties concerned, or to the panel reports concerned. The declared reasons for the opposition by some contracting parties to the adoption of the panel reports pending before the Subsidy Committee - the "non-liquet"-finding of one panel report as to whether certain export subsidies were in contravention of the

**2.I Internal Working Procedures adopted by panels established under Article XXIII:2 of the General Agreement. Group of Negotiations on Goods (GATT), GATT Dispute Settlement System, Negotiating Group on Dispute Settlement, Note by the Secretariat, Revision (*continued*)**

MTN.GNG/NG13/W/4/Rev.1  
Page 132

provisions or not (SCM/42, para. 5.3); the dissenting opinion expressed by one panel member in another panel report (SCM/43, para. 5); and the link established by one contracting party between the adoption of different panel reports submitted by different panels (see SCM/M/32, para. 168, SCM/71) - have so far hardly ever presented themselves as obstacles to the adoption of panel reports in the GATT Council or in other MTN Committees (one exception being the link established between the four tax cases Nos. 39-42, the reports on which were elaborated by one and the same panel and adopted at the same time). The dispute settlement procedures of the Subsidy Code are particularly detailed and extensive; this suggests that the particular problems that have arisen in the settlement of disputes under this Code, may not be due to procedural deficiencies but rather to divergent interpretations of, or non-compliance with, the substantive subsidy rules of this Code.

The dispute settlement provisions of the other MTN Agreements have been used only in one instance for the establishment of a panel and the adoption of a panel report under the Government Procurement Agreement (GPR/21).

**2.m April 1989 Decision on Improvements to the GATT Dispute Settlement Rules and Procedures. Decision of 22 February 1994**

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

L/7416  
28 February 1994  
Limited Distribution

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(94-0376)

**APRIL 1989 DECISION ON IMPROVEMENTS TO THE GATT  
DISPUTE SETTLEMENT RULES AND PROCEDURES**

Extension of application

Decision of 22 February 1994

The CONTRACTING PARTIES,

*Recalling* their Decision of 12 April 1989 (BISD 36S/61),

*Noting* that the improvements to the GATT dispute settlement rules and procedures are being applied on a trial basis until the end of the Uruguay Round and that a decision on their adoption should be taken before the end of the Round,

*Considering* that the continuation of the improved rules and procedures is necessary for the effectiveness of the dispute settlement mechanism,

*Decide,*

To keep the above-mentioned improvements in effect until the entry into force of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the Agreement Establishing the World Trade Organization (MTN/FA, II).

**2.n Third Party Participation in Panels. Statement by the Chairman of the Council on 21 June 1994**

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

RESTRICTED  
C/COM/3  
27 June 1994  
Limited Distribution

(94-1344)

COUNCIL  
21 June 1994  
Item No. 9

THIRD-PARTY PARTICIPATION IN PANELS

Statement by the Chairman of the Council

At the June 1994 Council meeting, the Chairman of the Council made the following statement:

"At the February 1994 Council meeting, the United States raised the question of third-party participation in panels. The late notification by a contracting party of its intention to participate in a panel may create difficulties, for example in relation to the determination of the panel's composition. Another problem that has occurred relates to the reception by third parties, in good time, of the submissions of the parties to the dispute to the first meeting of a panel.

After consultations, and in order to avoid such difficulties, I propose that the Council agree to the following practices in future, without prejudice to the rights of contracting parties under established dispute settlement procedures:

1. Delegations in a position to do so, should indicate their intention to participate as a third party in a panel proceeding at the Council session which establishes the panel. Others who wish to indicate a third party interest should do so within the next ten days.
2. Further to paragraph F(e) (3) of the Decision of 12 April 1989 (BISD 36S/61) and to the Decision of 22 February 1994 (L/7416), it is the understanding of the Council that third parties shall receive the submissions of the parties to the dispute to the first meeting of a panel established by the Council."

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At its meeting, the Council agreed to the above-mentioned practices.

# 3

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## **Tokyo Round plurilateral agreements – provisions and procedures**





3.a 1973 Arrangement regarding International Trade in Textiles, relevant provisions

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

TEX.NG/1  
20 December 1973  
General Distribution

ARRANGEMENT REGARDING INTERNATIONAL  
TRADE IN TEXTILES

PREAMBLE

Recognizing the great importance of production and trade in textile products of wool, man-made fibres and cotton for the economies of many countries, and their particular importance for the economic and social development of developing countries and for the expansion and diversification of their export earnings, and conscious also of the special importance of trade in textile products of cotton for many developing countries;

Recognizing further the tendency for an unsatisfactory situation to exist in world trade in textile products and that this situation, if not satisfactorily dealt with, could work to the detriment of countries participating in trade in textile products, whether as importers or exporters, or both, adversely affect prospects for international co-operation in the trade field, and have unfortunate repercussions on trade relations generally;

Noting that this unsatisfactory situation is characterized by the proliferation of restrictive measures, including discriminatory measures, that are inconsistent with the principles of the General Agreement on Tariffs and Trade and also that, in some importing countries, situations have arisen which in the view of these countries, cause or threaten to cause disruption of their domestic markets;

Desiring to take co-operative and constructive action, within a multilateral framework, so as to deal with the situation in such a way as to promote on a sound basis the development of production and expansion of trade in textile products and progressively to achieve the reduction of trade barriers and the liberalization of world trade in these products;

Recognizing that, in pursuit of such action, the volatile and continually evolving nature of production and trade in textile products should be constantly borne in mind and the fullest account taken of such serious economic and social problems as exist in this field in both importing and exporting countries, and particularly in the developing countries;

(...)

3.a 1973 Arrangement regarding International Trade in Textiles, relevant provisions (*continued*)

TEX.NG/1  
Page 9

(...)

2. In recognition of the need for special treatment for exports of textile products from developing countries, the criterion of past performance shall not be applied in the establishment of quotas for their exports of products from those textile sectors in respect of which they are new entrants in the markets concerned and a higher growth rate shall be accorded to such exports, having in mind that this special treatment should not cause undue prejudice to the interests of established suppliers or create serious distortions in existing patterns of trade.

3. Restraints on exports from participating countries whose total volume of textile exports is small in comparison with the total volume of exports of other countries should normally be avoided if the exports from such countries represent a small percentage of the total imports of textiles covered by this Arrangement of the importing country concerned.

4. Where restrictions are applied to trade in cotton textiles in terms of this Arrangement, special consideration will be given to the importance of this trade to the developing countries concerned in determining the size of quotas and the growth element.

5. Participating countries shall not, as far as possible, maintain restraints on trade in textile products originating in other participating countries which are imported under a system of temporary importation for re-export after processing, subject to a satisfactory system of control and certification.

6. Consideration shall be given to special and differential treatment to re-imports into a participating country of textile products which that country has exported to another participating country for processing and subsequent re-importation, in the light of the special nature of such trade without prejudice to the provisions of Article 3.

#### Article 7

The participating countries shall take steps to ensure, by the exchange of information, including statistics on imports and exports when requested, and by other practical means, the effective operation of this Arrangement.

#### Article 8

1. The participating countries agree to avoid circumvention of this Arrangement by trans-shipment, re-routing, or action by non-participants. In particular, they agree on the measures provided for in this Article.

2. The participating countries agree to collaborate with a view to taking appropriate administrative action to avoid such circumvention. Should any participating country believe that the Arrangement is being circumvented and that no appropriate administrative measures are being applied to avoid such

#### 3.a 1973 Arrangement regarding International Trade in Textiles, relevant provisions (*continued*)

TEX.NG/1  
Page 10

circumvention, that country should consult with the exporting country of origin and with other countries involved in the circumvention with a view to seeking promptly a mutually satisfactory solution. If such a solution is not reached the matter shall be referred to the Textiles Surveillance Body.

3. The participating countries agree that if resort is had to the measures envisaged in Articles 3 and 4, the participating importing country or countries concerned shall take steps to ensure that the participating country's exports against which such measures are taken shall not be restrained more severely than the exports of similar goods of any country not party to this Arrangement which are causing, or actually threatening, market disruption. The participating importing country or countries concerned will give sympathetic consideration to any representations from participating exporting countries to the effect that this principle is not being adhered to or that the operation of this Arrangement is frustrated by trade with countries not party to this Arrangement. If such trade is frustrating the operation of this Arrangement, the participating countries shall consider taking such actions as may be consistent with their law to prevent such frustration.

4. The participating countries concerned shall communicate to the Textiles Surveillance Body full details of any measures or arrangements taken under this Article or any disagreement and, when so requested, the Textiles Surveillance Body shall make reports or recommendations as appropriate.

#### Article 9

1. In view of the safeguards provided for in this Arrangement the participating countries shall, as far as possible, refrain from taking additional trade measures which may have the effect of nullifying the objectives of this Arrangement.

2. If a participating country finds that its interests are being seriously affected by any such measure taken by another participating country, that country may request the country applying such measure to consult with a view to remedying the situation.

3. If the consultation fails to achieve a mutually satisfactory solution within a period of sixty days the requesting participating country may refer the matter to the Textiles Surveillance Body which shall promptly discuss such matter, the participating country concerned being free to refer the matter to that body before the expiry of the period of sixty days if it considers that there are justifiable grounds for so doing. The Textiles Surveillance Body shall make such recommendations to the participating countries as it considers appropriate.

#### Article 10

1. There is established within the framework of GATT a Textiles Committee consisting of representatives of the parties to this Arrangement. The Committee shall carry out the responsibilities ascribed to it under this Arrangement.

**3.a 1973 Arrangement regarding International Trade in Textiles, relevant provisions** *(continued)*

TEX.NG/1  
Page 11

2. The Committee shall meet from time to time and at least once a year to discharge its functions and to deal with those matters specifically referred to it by the Textiles Surveillance Body. It shall prepare such studies as the participating countries may decide. It shall undertake an analysis of the current state of world production and trade in textile products, including any measures to facilitate adjustment and it shall present its views regarding means of furthering the expansion and liberalization of trade in textile products. It will collect the statistical and other information necessary for the discharge of its functions and will be empowered to request the participating countries to furnish such information.

3. Any case of divergence of view between the participating countries as to the interpretation or application of this Arrangement may be referred to the Committee for its opinion.

4. The Committee shall once a year review the operation of this Arrangement and report thereon to the GATT Council. To assist in this review, the Committee shall have before it a report from the Textiles Surveillance Body, a copy of which will also be transmitted to the Council. The review during the third year shall be a major review of this Arrangement in the light of its operation in the preceding years.

5. The Committee shall meet not later than one year before the expiry of this Arrangement in order to consider whether the Arrangement should be extended, modified or discontinued.

Article 11

1. The Textiles Committee shall establish a Textiles Surveillance Body to supervise the implementation of this Arrangement. It shall consist of a Chairman and eight members to be appointed by the parties to this Arrangement on a basis to be determined by the Textiles Committee so as to ensure its efficient operation. In order to keep its membership balanced and broadly representative of the parties to this Arrangement provision shall be made for rotation of the members as appropriate.

2. The Textiles Surveillance Body shall be considered as a standing body and shall meet as necessary to carry out the functions required of it under this Arrangement. It shall rely on information to be supplied by the participating countries, supplemented by any necessary details and clarification it may decide to seek from them or from other sources. Further, it may rely for technical assistance on the services of the GATT secretariat and may also hear technical experts proposed by one or more of its members.

3. The Textiles Surveillance Body shall take the action specifically required of it in articles of this Arrangement.

3.a 1973 Arrangement regarding International Trade in Textiles, relevant provisions (*continued*)

TEX.NG/1  
Page 12

4. In the absence of any mutually agreed solution in bilateral negotiations or consultations between participating countries provided for in this Arrangement, the Textiles Surveillance Body at the request of either party, and following a thorough and prompt consideration of the matter, shall make recommendations to the parties concerned.
5. The Textiles Surveillance Body shall, at the request of any participating country, review promptly any particular measures or arrangements which that country considers to be detrimental to its interests where consultations between it and the participating countries directly concerned have failed to produce a satisfactory solution. It shall make recommendations as appropriate to the participating country or countries concerned.
6. Before formulating its recommendations on any particular matter referred to it, the Textiles Surveillance Body shall invite participation of such participating countries as may be directly affected by the matter in question.
7. When the Textiles Surveillance Body is called upon to make recommendations or findings it shall do so, except when otherwise provided in this Arrangement, within a period of thirty days whenever practicable. All such recommendations or findings shall be communicated to the Textiles Committee for the information of its members.
8. Participating countries shall endeavour to accept in full the recommendations of the Textiles Surveillance Body. Whenever they consider themselves unable to follow any such recommendations, they shall forthwith inform the Textiles Surveillance Body of the reasons therefor and of the extent, if any, to which they are able to follow the recommendations.
9. If, following recommendations by the Textiles Surveillance Body, problems continue to exist between the parties, these may be brought before the Textiles Committee or before the GATT Council through the normal GATT procedures.
10. Any recommendations and observations of the Textiles Surveillance Body would be taken into account should the matters related to such recommendations and observations subsequently be brought before the CONTRACTING PARTIES to the GATT, particularly under the procedures of Article XXIII of the GATT.
11. The Textiles Surveillance Body shall, within fifteen months of the coming into force of this Arrangement, and at least annually thereafter, review all restrictions on textile products maintained by participating countries at the commencement of this Arrangement, and submit its findings to the Textiles Committee.

3.a 1973 Arrangement regarding International Trade in Textiles, relevant provisions (*continued*)

TEX.NG/1  
Page 13

12. The Textiles Surveillance Body shall annually review all restrictions introduced or bilateral agreements entered into by participating countries concerning trade in textile products since the coming into force of this Arrangement, and required to be reported to it under the provisions of this Arrangement, and report annually its findings to the Textiles Committee.

Article 12

1. For the purposes of this Arrangement, the expression "textiles" is limited to tops, yarns, piece-goods, made-up articles, garments and other textile manufactured products (being products which derive their chief characteristics from their textile components) of cotton, wool, man-made fibres, or blends thereof, in which any or all of those fibres in combination represent either the chief value of the fibres or 50 per cent or more by weight (or 17 per cent or more by weight of wool) of the product.

2. Artificial and synthetic staple fibre, tow, waste, simple mono- and multi-filaments, are not covered by paragraph 1 above. However, should conditions of market disruption (as defined in Annex A) be found to exist for such products, the provisions of Article 3 of this Arrangement (and other provisions of this Arrangement directly relevant thereto) and paragraph 1 of Article 2 shall apply.

3. This Arrangement shall not apply to developing country exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or to traditional folklore handicraft textiles products, provided that such products are properly certified under arrangements established between the importing and exporting participating countries concerned.

4. Problems of interpretation of the provisions of this Article should be resolved by bilateral consultation between the parties concerned and any difficulties may be referred to the Textiles Surveillance Body.

Article 13

1. This Arrangement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT. It shall be open for acceptance, by signature or otherwise, by governments contracting parties to the GATT or having provisionally acceded to the GATT and by the European Economic Community.

2. Any government which is not a contracting party to the GATT, or has not acceded provisionally to the GATT, may accede to this Arrangement on terms to be agreed between that government and the participating countries. These terms would include a provision that any government which is not a contracting party to the GATT must undertake, on acceding to this Arrangement, not to introduce new import restrictions or intensify existing import restrictions, on textile products, in so far as such action would, if that government had been a contracting party to the GATT, be inconsistent with its obligations thereunder.

(...)

3.b 1979 Agreement on Technical Barriers to Trade, relevant provisions

152

**AGREEMENT ON TECHNICAL BARRIERS TO TRADE**

**ACCORD RELATIF AUX OBSTACLES TECHNIQUES AU COMMERCE**

**ACUERDO SOBRE OBSTÁCULOS TÉCNICOS AL COMERCIO**

GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES  
ADUANEROS Y COMERCIO

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12 April 1979  
Geneva



3.b 1979 Agreement on Technical Barriers to Trade, relevant provisions (*continued*)

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to the Agreement on Technical Barriers to Trade (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Recognizing the important contribution that international standards and certification systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

Desiring therefore to encourage the development of such international standards and certification systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and methods for certifying conformity with technical regulations and standards do not create unnecessary obstacles to international trade;

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade;

Recognizing that no country should be prevented from taking measures necessary for the protection of its essential security interest;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and methods for certifying conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

Hereby agree as follows:

Article 1 General provisions

1.1 General terms for standardization and certification shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

(...)

3.b 1979 Agreement on Technical Barriers to Trade, relevant provisions (*continued*)

- 13 -

(...)

their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Parties, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing countries are able to comply with this Agreement, the Committee is enabled to grant upon request specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards, test methods and certification systems and the special development and trade needs of the developing country, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall in particular, take into account the special problems of the least-developed countries.

- 12.9 During consultations, developed countries shall bear in mind the special difficulties experienced by developing countries in formulating and implementing standards and technical regulations and methods of ensuring conformity with those standards and technical regulations, and in their desire to assist developing countries with their efforts in this direction, developed countries shall take account of the special needs of the former in regard to financing, trade and development.
- 12.10 The Committee shall examine periodically the special and differential treatment as laid down in this Agreement, granted to developing countries, on national and international levels.

Institutions, consultation and dispute settlement

Article 13 The Committee on Technical Barriers to Trade

There shall be established under this Agreement:

- 13.1 A Committee on Technical Barriers to Trade composed of representatives from each of the Parties (hereinafter referred to as "the Committee"). The Committee shall elect its own Chairman and shall meet as necessary but no less than once a year for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives and shall carry out such responsibilities as assigned to it under this Agreement or by the Parties;
- 13.2 Working parties, technical expert groups, panels or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.
- 13.3 It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies, e.g. the Joint FAO/WHO Codex Alimentarius Commission. The Committee shall examine this problem with a view to minimizing such duplication.

### 3.b 1979 Agreement on Technical Barriers to Trade, relevant provisions (*continued*)

- 14 -

#### Article 14 Consultation and dispute settlement

##### Consultation

- 14.1 Each Party shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by other Parties with respect to any matter affecting the operation of this Agreement.
- 14.2 If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, by another Party or Parties, and that its trade interests are significantly affected, the Party may make written representations or proposals to the other Party or Parties which it considers to be concerned. Any Party shall give sympathetic consideration to the representations or proposals made to it, with a view to reaching a satisfactory resolution of the matter.

##### Dispute settlement

- 14.3 It is the firm intention of Parties that all disputes under this Agreement shall be promptly and expeditiously settled, particularly in the case of perishable products.
- 14.4 If no solution has been reached after consultations under Article 14, paragraphs 1 and 2, the Committee shall meet at the request of any Party to the dispute within thirty days of receipt of such a request, to investigate the matter with a view to facilitating a mutually satisfactory solution.
- 14.5 In investigating the matter and in selecting, subject, *inter alia*, to the provisions of Article 14, paragraphs 9 and 14, the appropriate procedures the Committee shall take into account whether the issues in dispute relate to commercial policy considerations and/or to questions of a technical nature requiring detailed consideration by experts.
- 14.6 In the case of perishable products the Committee shall, in keeping with Article 14, paragraph 3, consider the matter in the most expeditious manner possible with a view to facilitating a mutually satisfactory solution within three months of the request for the Committee investigation.
- 14.7 It is understood that where disputes arise affecting products with a definite crop cycle of twelve months, every effort would be made by the Committee to deal with these disputes within a period of twelve months.
- 14.8 During any phase of a dispute settlement procedure including the earliest phase, competent bodies and experts in matters under consideration may be consulted and invited to attend the meetings of the Committee; appropriate information and assistance may be requested from such bodies and experts.

3.b 1979 Agreement on Technical Barriers to Trade, relevant provisions (*continued*)

- 15 -

Technical issues

- 14.9 If no mutually satisfactory solution has been reached under the procedures of Article 14, paragraph 4 within three months of the request for the Committee investigation, upon the request of any Party to the dispute who considers the issues to relate to questions of a technical nature the Committee shall establish a technical expert group and direct it to:
- examine the matter;
  - consult with the Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
  - make a statement concerning the facts of the matter; and
  - make such findings as will assist the Committee in making recommendations or giving rulings on the matter, including *inter alia*, and if appropriate, findings concerning the detailed scientific judgments involved, whether the measure was necessary for the protection of human, animal or plant life or health, and whether a legitimate scientific judgment is involved.
- 14.10 Technical expert groups shall be governed by the procedures of Annex 2.
- 14.11 The time required by the technical expert group considering questions of a technical nature will vary with the particular case. The technical expert group should aim to deliver its findings to the Committee within six months from the date the technical issue was referred to it, unless extended by mutual agreement between the Parties to the dispute.
- 14.12 Reports should set out the rationale behind any findings that they make.
- 14.13 If no mutually satisfactory solution has been reached after completion of the procedures in this Article, and any Party to the dispute requests a panel, the Committee shall establish a panel which shall operate under the provisions of Article 14, paragraphs 15 to 18.

Panel proceedings

- 14.14 If no mutually satisfactory solution has been reached under the procedures of Article 14, paragraph 4 within three months of the request for the Committee investigation and the procedures of Article 14, paragraphs 9 to 13 have not been invoked, the Committee shall, upon request of any Party to the dispute, establish a panel.
- 14.15 When a panel is established, the Committee shall direct it to:
- examine the matter;
  - consult with Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

3.b 1979 Agreement on Technical Barriers to Trade, relevant provisions (*continued*)

- 16 -

make a statement concerning the facts of the matter as they relate to the application of provisions of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

- 14.16 Panels shall be governed by the procedures in Annex 3.
- 14.17 Panels shall use the report of any technical expert group established under Article 14 paragraph 9 as the basis for its consideration of issues that involve questions of a technical nature.
- 14.18 The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations to the Committee without undue delay, normally within a period of four months from the date that the panel was established.

Enforcement

- 14.19 After the investigation is complete or after the report of a technical expert group, working group, panel or other body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report, unless extended by the Committee, including:
  - a statement concerning the facts of the matter; or
  - recommendations to one or more Parties; or
  - any other ruling which it deems appropriate.
- 14.20 If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event the Committee shall consider what further action may be appropriate.
- 14.21 If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend, in respect of any other Party, the application of such obligations under this Agreement as it determines to be appropriate in the circumstances. In this respect, the Committee may, *inter alia*, authorize the suspension of the application of obligations, including those in Articles 5 to 9, in order to restore mutual economic advantage and balance of rights and obligations.
- 14.22 The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

3.b 1979 Agreement on Technical Barriers to Trade, relevant provisions (*continued*)

- 17 -

Other provisions relating to dispute settlement

Procedures

- 14.23 If disputes arise between Parties relating to rights and obligations of this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT. Parties recognize that, in any case so referred to the CONTRACTING PARTIES, any finding, recommendation or ruling pursuant to Article 14, paragraphs 9 to 18 may be taken into account by the CONTRACTING PARTIES, to the extent they relate to matters involving equivalent rights and obligations under the General Agreement. When Parties resort to GATT Article XXIII, a determination under that Article shall be based on GATT provisions only.

Levels of obligation

- 14.24 The dispute settlement provisions set out above can be invoked in cases where a Party considers that another Party has not achieved satisfactory results under Articles 3, 4, 6, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in Articles 2, 5 and 7 as if the body in question were a Party.

Processes and production methods

- 14.25 The dispute settlement procedures set out above can be invoked in cases where a Party considers that obligations under this Agreement are being circumvented by the drafting of requirements in terms of processes and production methods rather than in terms of characteristics of products.

Retroactivity

- 14.26 To the extent that a Party considers that technical regulations, standards, methods for assuring conformity with technical regulations or standards, or certification systems which exist at the time of entry into force of this Agreement are not consistent with the provisions of this Agreement, such regulations, standards, methods and systems shall be subject to the provisions in Articles 13 and 14 of this Agreement, in so far as they are applicable.

Final provisions

Article 15 Final provisions

Acceptance and accession

- 15.1 This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT, and by the European Economic Community.

225

3.c 1979 Agreement on Government Procurement, relevant provisions

154

**AGREEMENT ON GOVERNMENT PROCUREMENT**

**ACCORD RELATIF AUX MARCHÉS PUBLICS**

**ACUERDO SOBRE COMPRAS DEL SECTOR PÚBLICO**

**GENERAL AGREEMENT ON TARIFFS AND TRADE**

**ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE**

**ACUERDO GENERAL SOBRE ARANCELES ADUANEROS  
Y COMERCIO**

---

12 April 1979  
Geneva



3.c 1979 Agreement on Government Procurement, relevant provisions (*continued*)

AGREEMENT ON GOVERNMENT PROCUREMENT

PREAMBLE

Parties to this Agreement (hereinafter referred to as "Parties"),

Considering that Ministers agreed in the Tokyo Declaration of 14 September 1973 that comprehensive Multilateral Trade Negotiations in the framework of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT") should aim, inter alia, to reduce or eliminate non-tariff measures or, where this is not appropriate, their trade restricting or distorting effects, and to bring such measures under more effective international discipline;

Considering that Ministers also agreed that negotiations should aim to secure additional benefits for the international trade of developing countries, and recognized the importance of the application of differential measures in ways which will provide special and more favourable treatment for them where this is feasible and appropriate;

Recognizing that in order to achieve their economic and social objectives to implement programmes and policies of economic development aimed at raising the standard of living of their people, taking into account their balance-of-payments position, developing countries may need to adopt agreed differential measures;

Considering that Ministers in the Tokyo Declaration recognized that the particular situation and problems of the least developed among the developing countries shall be given special attention and stressed the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations;

Recognizing the need to establish an agreed international framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

Recognizing that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and to foreign or domestic suppliers so as to afford protection to domestic products or suppliers and should not discriminate among foreign products or suppliers;

Recognizing that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;

Recognizing the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on

(...)

3.c 1979 Agreement on Government Procurement, relevant provisions (*continued*)

- 16 -

(...)

9. The Parties shall collect and provide to the Committee on an annual basis statistics on their purchases. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:

- (a) global statistics on estimated value of contracts awarded, both above and below the threshold value;
- (b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products and either nationality of the winning tenderer or country of origin of the product, according to a recognized trade or other appropriate classification system;
- (c) statistics on the total number and value of contracts awarded under each of the cases of Article V, paragraph 15.

Article VII

Enforcement of Obligations

228

Institutions

1. There shall be established under this Agreement a Committee on Government Procurement (referred to in this Agreement as "the Committee") composed of representatives from each of the Parties. This Committee shall elect its own Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee may establish ad hoc panels in the manner and for the purposes set out in paragraph 8 of this Article and working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

Consultations

3. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultations regarding, representations made by another Party with respect to any matter affecting the operation of this Agreement.

4. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations. The Parties concerned shall initiate requested consultations promptly.

#### 3.c 1979 Agreement on Government Procurement, relevant provisions (*continued*)

- 17 -

5. The Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall provide information concerning the matter subject to the provisions of Article VI, paragraph 8, and attempt to conclude such consultations within a reasonably short period of time.

##### Dispute settlement

6. If no mutually satisfactory solution has been reached as a result of consultations under paragraph 4 between the Parties concerned, the Committee shall meet at the request of any party to the dispute within thirty days of receipt of such a request to investigate the matter, with a view to facilitating a mutually satisfactory solution.

7. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 6 within three months, the Committee shall, at the request of any party to the dispute establish a panel to:

- (a) examine the matter;
- (b) consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
- (c) make a statement concerning the facts of the matter as they relate to application of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

8. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of governmental officials experienced in the field of trade relations. This list may also include persons other than governmental officials. In this connexion, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two persons whom the Parties would be willing to make available for such work. When a panel is established under paragraph 7, the Chairman, within seven days, shall propose to the parties to the dispute the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as governmental representatives nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

3.c 1979 Agreement on Government Procurement, relevant provisions (*continued*)

- 18 -

9. Each panel shall develop its own procedures. All Parties, having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Before a panel seeks such information from a source within the jurisdiction of a Party it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

Where a mutually satisfactory solution to a dispute cannot be found or where the dispute relates to an interpretation of this Agreement, the panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee. Where an interpretation of this Agreement is not involved and where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution had been reached.

10. The time required by panels will vary with the particular case. Panels should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency, normally within a period of four months from the date the panel was established.

Enforcement

11. After the examination is complete or after the report of a panel, working party or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to these reports, the Committee shall take appropriate action normally within thirty days of receipt of the report unless extended by the Committee, including:

- (a) a statement concerning the facts of the matter;
- (b) recommendations to one or more Parties; and/or
- (c) any other ruling which it deems appropriate.

Any recommendations by the Committee shall aim at the positive resolution of the matter on the basis of the operative provisions of this Agreement and its objectives set out in the Preamble.

3.c 1979 Agreement on Government Procurement, relevant provisions (*continued*)

- 19 -

12. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

13. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Balance of rights and obligations

14. If the Committee's recommendations are not accepted by a party, or parties, to the dispute, and if the Committee considers that the circumstances are serious enough to justify such action, it may authorize a Party or Parties to suspend in whole or in part, and for such time as may be necessary, the application of this Agreement to any other Party or Parties, as is determined to be appropriate in the circumstances.

Article VIII

Exceptions to the Agreement

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures necessary to protect public morals, order or safety, human, animal or plant life or health, intellectual property, or relating to the products of handicapped persons, of philanthropic institutions or of prison labour.

Article IX

Final Provisions

1. Acceptance and accession

- (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community whose agreed lists of entities are contained in Annex I.

(...)

231

3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions

153

**AGREEMENT ON INTERPRETATION AND APPLICATION OF  
ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

**ACCORD RELATIF A L'INTERPRÉTATION ET A L'APPLICATION DES  
ARTICLES VI, XVI ET XXIII DE L'ACCORD GÉNÉRAL  
SUR LES TARIFS DOUANIERS ET LE COMMERCE**

**ACUERDO RELATIVO A LA INTERPRETACIÓN Y APLICACIÓN DE LOS  
ARTÍCULOS VI, XVI Y XXIII DEL ACUERDO GENERAL SOBRE  
ARANCELES ADUANEROS Y COMERCIO**

GENERAL AGREEMENT ON TARIFFS AND TRADE  
ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES  
ADUANEROS Y COMERCIO

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12 April 1979  
Geneva

3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

AGREEMENT ON INTERPRETATION AND APPLICATION OF  
ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT  
ON TARIFFS AND TRADE

The signatories<sup>1</sup> to this Agreement,

Noting that Ministers on 12-14 September 1973 agreed that the Multilateral Trade Negotiations should, inter alia, reduce or eliminate the trade restricting or distorting effects of non-tariff measures, and bring such measures under more effective international discipline,

Recognizing that subsidies are used by governments to promote important objectives of national policy,

Recognizing also that subsidies may have harmful effects on trade and production,

Recognizing that the emphasis of this Agreement should be on the effects of subsidies and that these effects are to be assessed in giving due account to the internal economic situation of the signatories concerned as well as to the state of international economic and monetary relations,

Desiring to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to this Agreement, and that countervailing measures do not unjustifiably impede international trade, and that relief is made available to producers adversely affected by the use of subsidies within an agreed international framework of rights and obligations,

Taking into account the particular trade, development and financial needs of developing countries,

Desiring to apply fully and to interpret the provisions of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade<sup>2</sup> (hereinafter referred to as "General Agreement" or "GATT") only with respect to subsidies and countervailing measures and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation,

Desiring to provide for the speedy, effective and equitable resolution of disputes arising under this Agreement,

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<sup>1</sup>The term "signatories" is hereinafter used to mean Parties to this Agreement.

<sup>2</sup>Wherever in this Agreement there is reference to "the terms of this Agreement" or the "articles" or "provisions of this Agreement" it shall be taken to mean, as the context requires, the provisions of the General Agreement as interpreted and applied by this Agreement.

(...)



3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

- 5 -

(...)

11. In cases where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the country of importation.

12. An investigation shall be terminated when the investigating authorities are satisfied either that no subsidy exists or that the effect of the alleged subsidy on the industry is not such as to cause injury.

13. An investigation shall not hinder the procedures of customs clearance.

14. Investigations shall, except in special circumstances, be concluded within one year after their initiation.

15. Public notice shall be given of any preliminary or final finding whether affirmative or negative and of the revocation of a finding. In the case of an affirmative finding each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor. In the case of a negative finding each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of finding shall be forwarded to the signatory or signatories the products of which are subject to such finding and to the exporters known to have an interest therein.

16. Signatories shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports will be available in the GATT secretariat for inspection by government representatives. The signatories shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months.

Article 3 - Consultations

1. As soon as possible after a request for initiation of an investigation is accepted, and in any event before the initiation of any investigation, signatories the products of which may be subject to such investigation shall be afforded a reasonable opportunity for consultations with the aim of clarifying the situation as to the matters referred to in Article 2, paragraph 1 above and arriving at a mutually agreed solution.

2. Furthermore, throughout the period of investigation, signatories the products of which are the subject of the investigation shall be afforded a

**3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)**

- 6 -

reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.<sup>13</sup>

3. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

4. The signatory which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the signatory or signatories the products of which are subject to such investigation access to non-confidential evidence including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Article 4 - Imposition of countervailing duties

1. The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less are decisions to be made by the authorities of the importing signatory. It is desirable that the imposition be permissive in the territory of all signatories and that the duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.

2. No countervailing duty shall be levied<sup>14</sup> on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.<sup>15</sup>

(...)

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<sup>13</sup>It is particularly important, in accordance with the provisions of this paragraph, that no affirmative finding whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Part VI of this Agreement.

<sup>14</sup>As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty on tax.

<sup>15</sup>An understanding among signatories should be developed setting out the criteria for the calculation of the amount of the subsidy.

**3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions** (*continued*)

- 17 -

(...)

Signatories recognize, nevertheless, that the enumeration of forms of subsidies set out above should be reviewed periodically and that this should be done, through consultations, in conformity with the spirit of Article XVI:5 of the General Agreement.

4. Signatories recognize further that, without prejudice to their rights under this Agreement, nothing in paragraphs 1-3 above and in particular the enumeration of forms of subsidies creates, in itself, any basis for action under the General Agreement, as interpreted by this Agreement.

Article 12 - Consultations

1. Whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory in a manner inconsistent with the provisions of this Agreement, such signatory may request consultations with such other signatory.

2. A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

3. Whenever a signatory has reason to believe that any subsidy is being granted or maintained by another signatory and that such subsidy either causes injury to its domestic industry, nullification or impairment of benefits accruing to it under the General Agreement, or serious prejudice to its interests, such signatory may request consultations with such other signatory.

4. A request for consultations under paragraph 3 above shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question and (b) the injury caused to the domestic industry or, in the case of nullification or impairment, or serious prejudice, the adverse effects caused to the interests of the signatory requesting consultations.

5. Upon request for consultations under paragraph 1 or paragraph 3 above, the signatory believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

Article 13 - Conciliation, dispute settlement and authorized countermeasures

1. If, in the case of consultations under paragraph 1 of Article 12, a mutually acceptable solution has not been reached within thirty days<sup>30</sup> of the

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<sup>30</sup> Any time periods mentioned in this Article and in Article 18 may be extended by mutual agreement.

**3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)**

- 18 -

request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.

2. If, in the case of consultations under paragraph 3 of Article 12, a mutually acceptable solution has not been reached within sixty days of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.

3. If any dispute arising under this Agreement is not resolved as a result of consultations or conciliations, the Committee shall, upon request, review the matter in accordance with the dispute settlement procedures of Part IV.

4. If, as a result of its review, the Committee concludes that an export subsidy is being granted in a manner inconsistent with the provisions of this Agreement or that a subsidy is being granted or maintained in such a manner as to cause injury, nullification or impairment, or serious prejudice, it shall make such recommendations<sup>31</sup> to the parties as may be appropriate to resolve the issue and, in the event the recommendations are not followed, it may authorize such countermeasures as may be appropriate, taking into account the degree and nature of the adverse effects found to exist, in accordance with the relevant provisions of Part VI.

(...)

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<sup>31</sup>In making such recommendations, the Committee shall take into account the trade, development and financial needs of developing country signatories.

**3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions** (*continued*)

- 22 -

(...)

PART V

Article 16 - Committee on Subsidies and Countervailing Measures

1. There shall be established under this Agreement a Committee on Subsidies and Countervailing Measures composed of representatives from each of the signatories to this Agreement. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any signatory. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the signatories and it shall afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

2. The Committee may set up subsidiary bodies as appropriate.

3. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a signatory, it shall inform the signatory involved.

3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

- 23 -

PART VI

Article 17 - Conciliation

1. In cases where matters are referred to the Committee for conciliation failing a mutually agreed solution in consultations under any provision of this Agreement, the Committee shall immediately review the facts involved and, through its good offices, shall encourage the signatories involved to develop a mutually acceptable solution.<sup>34</sup>

2. Signatories shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

3. Should the matter remain unresolved, notwithstanding efforts at conciliation made under paragraph 2 above, any signatory involved may, thirty days after the request for conciliation, request that a panel be established by the Committee in accordance with the provisions of Article 18 below.

Article 18 - Dispute settlement

1. The Committee shall establish a panel upon request pursuant to paragraph 3 of Article 17.<sup>35</sup> A panel so established shall review the facts of the matter and, in light of such facts, shall present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by this Agreement.

2. A panel should be established within thirty days of a request therefor<sup>36</sup> and a panel so established should deliver its findings to the Committee within sixty days after its establishment.

3. When a panel is to be established, the Chairman of the Committee, after securing the agreement of the signatories concerned, should propose the composition of the panel. Panels shall be composed of three or five members,

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<sup>34</sup>In this connexion, the Committee may draw signatories' attention to those cases in which, in its view, there is no reasonable basis supporting the allegations made.

<sup>35</sup>This does not preclude, however, the more rapid establishment of a panel when the Committee so decides, taking into account the urgency of the situation.

<sup>36</sup>The parties to the dispute would respond within a short period of time, i.e. seven working days, to nominations of panel members by the Chairman of the Committee and would not oppose nominations except for compelling reasons.

### 3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

- 24 -

preferably governmental, and the composition of panels should not give rise to delays in their establishment. It is understood that citizens of countries whose governments<sup>37</sup> are parties to the dispute would not be members of the panel concerned with that dispute.

4. In order to facilitate the constitution of panels, the Chairman of the Committee should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement and this Agreement, who could be available for serving on panels. For this purpose, each signatory would be invited to indicate at the beginning of every year to the Chairman of the Committee the name of one or two persons who would be available for such work.

5. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

6. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee.

7. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any signatory with an interest in the matter has a right to enquire about and be given appropriate information about that solution and a notice outlining the solution that has been reached shall be presented by the panel to the Committee.

8. In cases where the parties to a dispute have failed to come to a satisfactory solution, the panels shall submit a written report to the Committee which should set forth the findings of the panel as to the questions of fact and the application of the relevant provisions of the General Agreement as interpreted and applied by this Agreement and the reasons and bases therefor.

<sup>37</sup>The term "governments" is understood to mean governments of all member countries in cases of customs unions.



**3.d 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, relevant provisions** *(continued)*

- 25 -

9. The Committee shall consider the panel report as soon as possible and, taking into account the findings contained therein, may make recommendations to the parties with a view to resolving the dispute. If the Committee's recommendations are not followed within a reasonable period, the Committee may authorize appropriate countermeasures (including withdrawal of GATT concessions or obligations) taking into account the nature and degree of the adverse effect found to exist. Committee recommendations should be presented to the parties within thirty days of the receipt of the panel report.

(...)

**3.e 1979 Arrangement regarding Bovine Meat, relevant provisions**

150

**ARRANGEMENT REGARDING BOVINE MEAT**

**ARRANGEMENT RELATIF A LA VIANDE BOVINE**

**ACUERDO DE LA CARNE DE BOVINO**

GENERAL AGREEMENT ON TARIFFS AND TRADE  
ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES  
ADUANEROS Y COMERCIO

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12 April 1979  
Geneva

3.e 1979 Arrangement regarding Bovine Meat, relevant provisions (*continued*)

ARRANGEMENT REGARDING BOVINE MEAT

PREAMBLE

Convinced that increased international co-operation should be carried out in such a way as to contribute to the achievement of greater liberalization, stability and expansion in international trade in meat and live animals;

Taking into account the need to avoid serious disturbances in international trade in bovine meat and live animals;

Recognizing the importance of production and trade in bovine meat and live animals for the economies of many countries, especially for certain developed and developing countries;

Mindful of their obligations to the principles and objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT")<sup>1</sup>;

Determined, in carrying out the aims of this Arrangement to implement the principles and objectives agreed upon in the Tokyo Declaration of Ministers, dated 14 September 1973 concerning the Multilateral Trade Negotiations, in particular as concerns special and more favourable treatment for developing countries;

The participants in the present Arrangement have, through their representatives, agreed as follows:

PART ONE

GENERAL PROVISIONS

Article I - Objectives

The objectives of this Arrangement shall be:

- (1) to promote the expansion, ever greater liberalization and stability of the international meat and livestock market by facilitating the progressive dismantling of obstacles and restrictions to world trade in bovine meat and live animals, including those which compartmentalize this trade, and by improving the international framework of world trade to the benefit of both consumer and producer, importer and exporter;

(...)

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<sup>1</sup>This provision applies only among GATT contracting parties.

3.e 1979 Arrangement regarding Bovine Meat, relevant provisions (*continued*)

- 3 -

(…)

2. Participating developing countries shall furnish the information available to them. In order that these countries may improve their data collection mechanisms, developed participants, and any developing participants able to do so, shall consider sympathetically any request to them for technical assistance.

3. The information that the participants undertake to provide pursuant to paragraph 1 of this Article, according to the modalities that the Council shall establish, shall include data on past performance and current situation and an assessment of the outlook regarding production (including the evolution of the composition of herds), consumption, prices, stocks of and trade in the products referred to in Article II, and any other information deemed necessary by the Council, in particular on competing products. Participants shall also provide information on their domestic policies and trade measures including bilateral and plurilateral commitments in the bovine sector, and shall notify as early as possible any changes in such policies and measures that are likely to affect international trade in live bovine animals and meat. The provisions of this paragraph shall not require any participant to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

4. The secretariat of the Arrangement shall monitor variations in market data, in particular herd sizes, stocks, slaughterings and domestic and international prices, so as to permit early detection of the symptoms of any serious imbalance in the supply and demand situation. The secretariat shall keep the Council apprized of significant developments on world markets, as well as prospects for production, consumption, exports and imports.

Note: It is understood that under the provisions of this Article, the Council instructs the secretariat to draw up, and keep up to date, an inventory of all measures affecting trade in bovine meat and live animals, including commitments resulting from bilateral, plurilateral and multilateral negotiations.

Article IV - Functions of the International  
Meat Council and Co-operation between the  
Participants to this Arrangement

1. The Council shall meet in order to:
  - (a) evaluate the world supply and demand situation and outlook on the basis of an interpretative analysis of the present situation and of probable developments drawn up by the secretariat of the Arrangement, on the basis of documentation provided in conformity with Article III of the present Arrangement, including that relating to the operation of domestic and trade policies and of any other information available to the secretariat;

3.e 1979 Arrangement regarding Bovine Meat, relevant provisions (*continued*)

- 4 -

- (b) proceed to a comprehensive examination of the functioning of the present Arrangement;
- (c) provide an opportunity for regular consultation on all matters affecting international trade in bovine meat.

2. If after evaluation of the world supply and demand situation referred to in paragraph 1(a) of this Article, or after examination of all relevant information pursuant to paragraph 3 of Article III, the Council finds evidence of a serious imbalance or a threat thereof in the international meat market, the Council will proceed by consensus, taking into particular account the situation in developing countries, to identify, for consideration by governments, possible solutions to remedy the situation consistent with the principles and rules of GATT.

3. Depending on whether the Council considers that the situation defined in paragraph 2 of this Article is temporary or more durable, the measures referred to in paragraph 2 of this Article could include short-, medium-, or long-term measures taken by importers as well as exporters to contribute to improve the overall situation of the world market consistent with the objectives and aims of the Arrangement, in particular the expansion, ever greater liberalization, and stability of the international meat and livestock markets.

4. When considering the suggested measures pursuant to paragraphs 2 and 3 of this Article, due consideration shall be given to special and more favourable treatment to developing countries, where this is feasible and appropriate.

5. The participants undertake to contribute to the fullest possible extent to the implementation of the objectives of this Arrangement set forth in Article I. To this end, and consistent with the principles and rules of the General Agreement, participants shall, on a regular basis, enter into the discussions provided in Article IV:1(c) with a view to exploring the possibilities of achieving the objectives of the present Arrangement, in particular the further dismantling of obstacles to world trade in bovine meat and live animals. Such discussions should prepare the way for subsequent consideration of possible solutions of trade problems consistent with the rules and principles of the GATT, which could be jointly accepted by all the parties concerned, in a balanced context of mutual advantages.

6. Any participant may raise before the Council any matter<sup>2</sup> affecting this Arrangement, *inter alia*, for the same purposes provided for in paragraph 2 of this Article. The Council shall, at the request of a participant, meet within a period of not more than fifteen days to consider any matter<sup>2</sup> affecting the present Arrangement.

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<sup>2</sup>Note: It is confirmed that the term "matter" in this paragraph includes any matter which is covered by multilateral agreements negotiated within the framework of the Multilateral Trade Negotiations, in particular those bearing on export and import measures. It is further confirmed that the provisions of Article IV, paragraph 6, and this footnote are without prejudice to the rights and obligations of the parties to such agreements.

3.e 1979 Arrangement regarding Bovine Meat, relevant provisions (*continued*)

- 5 -

PART TWO

Article V - Administration of the Arrangement

1. International Meat Council

An International Meat Council shall be established within the framework of the GATT. The Council shall comprise representatives of all participants to the Arrangement and shall carry out all the functions which are necessary to implement the provisions of the Arrangement. The Council shall be serviced by the GATT secretariat. The Council shall establish its own rules of procedure, in particular the modalities for consultations provided for in Article IV.

2. Regular and special meetings

The Council shall normally meet at least twice each year. However, the Chairman may call a special meeting of the Council either on his own initiative, or at the request of a participant to this Arrangement.

3. Decisions

The Council shall reach its decisions by consensus. The Council shall be deemed to have decided on a matter submitted for its consideration if no member of the Council formally objects to the acceptance of a proposal.

4. Co-operation with other organizations

The Council shall make whatever arrangements are appropriate for consultation or co-operation with intergovernmental and non-governmental organizations.

5. Admission of observers

- (a) The Council may invite any non-participating country to be represented at any of its meetings as an observer.
- (b) The Council may also invite any of the organizations referred to in paragraph 4 of this Article to attend any of its meetings as an observer.

(...)

3.f 1979 International Dairy Arrangement, relevant provisions

157

**INTERNATIONAL DAIRY ARRANGEMENT**

**ARRANGEMENT INTERNATIONAL RELATIF AU SECTEUR LAITIER**

**ACUERDO INTERNACIONAL DE LOS PRODUCTOS LÁCTEOS**

GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES ADUANEROS  
Y COMERCIO

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12 April 1979  
Geneva



3.f 1979 International Dairy Arrangement, relevant provisions (*continued*)INTERNATIONAL DAIRY ARRANGEMENTPREAMBLE

Recognizing the importance<sup>1</sup> of milk and dairy products to the economy of many countries in terms of production, trade and consumption;

Recognizing the need, in the mutual interests of producers and consumers, and of exporters and importers, to avoid surpluses and shortages, and to maintain prices at an equitable level;

Noting the diversity and interdependence of dairy products;

Noting the situation in the dairy products market, which is characterized by very wide fluctuations and the proliferation of export and import measures;

Considering that improved co-operation in the dairy products sector contributes to the attainment of the objectives of expansion and liberalization of world trade, and the implementation of the principles and objectives concerning developing countries agreed upon in the Tokyo Declaration of Ministers dated 14 September 1973 concerning the Multilateral Trade Negotiations;

Determined to respect the principles and objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT")<sup>2</sup> and, in carrying out the aims of this Arrangement, effectively to implement the principles and objectives agreed upon in the said Tokyo Declaration;

The participants to the present Arrangement have, through their representatives, agreed as follows:

(...)

<sup>1</sup>In this Arrangement and in the Protocols annexed thereto, the term "country" is deemed to include the European Economic Community.

<sup>2</sup>This preambular provision applies only among participants that are contracting parties to the GATT.

3.f 1979 International Dairy Arrangement, relevant provisions (*continued*)

- 3 -

(...)

2. Participating developing countries shall furnish the information available to them. In order that these participants may improve their data collection mechanisms, developed participants, and any developing participants able to do so, shall consider sympathetically any request to them for technical assistance.

3. The information that the participants undertake to provide pursuant to paragraph 1 of this Article, according to the modalities that the Council shall establish, shall include data on past performance, current situation and outlook regarding production, consumption, prices, stocks and trade, including transactions other than normal commercial transactions, in respect of the products referred to in Article II of this Arrangement, and any other information deemed necessary by the Council. Participants shall also provide information on their domestic policies and trade measures, and on their bilateral, plurilateral or multilateral commitments, in the dairy sector and shall make known, as early as possible, any changes in such policies and measures that are likely to affect international trade in dairy products. The provisions of this paragraph shall not require any participant to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Note: It is understood that under the provisions of this Article, the Council instructs the secretariat to draw up, and keep up to date, an inventory of all measures affecting trade in dairy products, including commitments resulting from bilateral, plurilateral and multilateral negotiations.

Article IV - Functions of the International Dairy  
Products Council and Co-operation between the  
Participants to this Arrangement

1. The Council shall meet in order to:

- (a) make an evaluation of the situation in and outlook for the world market for dairy products, on the basis of a status report prepared by the secretariat with the documentation furnished by participants in accordance with Article III of this Arrangement, information arising from the operation of the Protocols covered by Article VI of this Arrangement, and any other information available to it;
- (b) review the functioning of this Arrangement.

2. If after an evaluation of the world market situation and outlook, referred to in paragraph 1(a) of this Article, the Council finds that a serious market disequilibrium, or threat of such a disequilibrium, which affects or may affect international trade, is developing for dairy products in general or for one or more products, the Council will proceed to identify, taking particular account of the situation of developing countries, possible solutions for consideration by governments.

3.f 1979 International Dairy Arrangement, relevant provisions (*continued*)

- 4 -

3. Depending on whether the Council considers that the situation defined in paragraph 2 of this Article is temporary or more durable, the measures referred to in paragraph 2 of this Article could include short-, medium- or long-term measures to contribute to improve the overall situation of the world market.

4. When considering measures that could be taken pursuant to paragraphs 2 and 3 of this Article, due account shall be taken of the special and more favourable treatment, to be provided for developing countries, where this is feasible and appropriate.

5. Any participant may raise before the Council any matter<sup>3</sup> affecting this Arrangement, *inter alia*, for the same purposes provided for in paragraph 2 of this Article. Each participant shall promptly afford adequate opportunity for consultation regarding such matter<sup>3</sup> affecting this Arrangement.

6. If the matter affects the application of the specific provisions of the Protocols annexed to this Arrangement, any participant which considers that its trade interests are being seriously threatened and which is unable to reach a mutually satisfactory solution with the other participant or participants concerned, may request the Chairman of the Committee for the relevant Protocol established under Article VII:2(a) of this Arrangement, to convene a special meeting of the Committee on an urgent basis so as to determine as rapidly as possible, and within four working days if requested, any measures which may be required to meet the situation. If a satisfactory solution cannot be reached, the Council shall, at the request of the Chairman of the Committee for the relevant Protocol, meet within a period of not more than fifteen days to consider the matter with a view to facilitating a satisfactory solution.

Article V - Food Aid and Transactions other than  
Normal Commercial Transactions

1. The participants agree:

(a) In co-operation with FAO and other interested organizations, to foster recognition of the value of dairy products in improving nutritional levels and of ways and means through which they may be made available for the benefit of developing countries.

(...)

<sup>3</sup>It is confirmed that the term "matter" in this paragraph includes any matter which is covered by multilateral agreements negotiated within the framework of the Multilateral Trade Negotiations, in particular those bearing on export and import measures. It is further confirmed that the provisions of Article IV:5 and this footnote are without prejudice to the rights and obligations of the parties to such agreements.

3.f 1979 International Dairy Arrangement, relevant provisions (*continued*)

- 7 -

(...)

PART THREE

Article VII - Administration of the Arrangement

1. International Dairy Products Council

- (a) An International Dairy Products Council shall be established within the framework of the GATT. The Council shall comprise representatives of all participants to the Arrangement and shall carry out all the functions which are necessary to implement the provisions of the Arrangement. The Council shall be serviced by the GATT secretariat. The Council shall establish its own rules of procedure.
- (b) Regular and special meetings

The Council shall normally meet at least twice each year. However, the Chairman may call a special meeting of the Council either on his own initiative, at the request of the Committees established under paragraph 2(a) of this Article, or at the request of a participant to this Arrangement.
- (c) Decisions

The Council shall reach its decisions by consensus. The Council shall be deemed to have decided on a matter submitted for its consideration if no member of the Council formally objects to the acceptance of a proposal.
- (d) Co-operation with other organizations

The Council shall make whatever arrangements are appropriate for consultation or co-operation with intergovernmental and non-governmental organizations.
- (e) Admission of observers
  - (i) The Council may invite any non-participating country to be represented at any meeting as an observer.
  - (ii) The Council may also invite any of the organizations referred to in paragraph 1(d) of this Article to attend any meeting as an observer.

2. Committees

- (a) The Council shall establish a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol Regarding Certain Milk Powders, a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol Regarding Milk Fat and a Committee to carry out all the

3.f 1979 International Dairy Arrangement, relevant provisions (*continued*)

- 8 -

functions which are necessary to implement the provisions of the Protocol Regarding Certain Cheeses. Each of these Committees shall comprise representatives of all participants to the relevant Protocol. The Committees shall be serviced by the GATT secretariat. They shall report to the Council on the exercise of their functions.

(b) Examination of the market situation

The Council shall make the necessary arrangements, determining the modalities for the information to be furnished under Article III of this Arrangement, so that

- the Committee of the Protocol Regarding Certain Milk Powders may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol;

- the Committee of the Protocol Regarding Milk Fat may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol;

- the Committee of the Protocol Regarding Certain Cheeses may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol.

(c) Regular and special meetings

Each Committee shall normally meet at least once each quarter. However, the Chairman of each Committee may call a special meeting of the Committee on his own initiative or at the request of any participant.

(d) Decisions

Each Committee shall reach its decisions by consensus. A committee shall be deemed to have decided on a matter submitted for its consideration if no member of the Committee formally objects to the acceptance of a proposal.

(...)

3.g 1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, relevant provisions

159

**AGREEMENT ON IMPLEMENTATION OF ARTICLE VII  
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE  
AND PROTOCOL**

**ACCORD RELATIF À LA MISE EN OEUVRE DE L'ARTICLE VII  
DE L'ACCORD GÉNÉRAL  
SUR LES TARIFS DOUANIERS ET LE COMMERCE  
ET PROTOCOLE**

**ACUERDO RELATIVO A LA APLICACIÓN DEL ARTÍCULO VII DEL  
ACUERDO GENERAL SOBRE ARANCELES ADUANEROS Y COMERCIO  
Y PROTOCOLO**

GENERAL AGREEMENT ON TARIFFS AND TRADE  
ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES  
ADUANEROS Y COMERCIO

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12 April/1 November 1979  
Geneva

253

**3.g 1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, relevant provisions** (*continued*)

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII  
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD RELATIF A LA MISE EN OEUVRE DE L'ARTICLE VII  
DE L'ACCORD GENERAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO RELATIVO A LA APLICACIÓN DEL ARTÍCULO VII DEL  
ACUERDO GENERAL SOBRE ARANCELES ADUANEROS Y COMERCIO

GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES ADUANEROS  
Y COMERCIO

12 April 1979  
Geneva

(...)



3.g 1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

- 12 -

(...)

PART II - ADMINISTRATION, CONSULTATION AND DISPUTE SETTLEMENT

Institutions

Article 18

There shall be established under this Agreement:

1. A Committee on Customs Valuation (hereinafter referred to as the Committee) composed of representatives from each of the Parties. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Parties the opportunity to consult on matters relating to the administration of the customs valuation system by any Party as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Parties. The GATT secretariat shall act as the secretariat to the Committee.

2. A Technical Committee on Customs Valuation (hereinafter referred to as the Technical Committee) under the auspices of the Customs Cooperation Council, which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Consultation

Article 19

1. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Party or of other Parties, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations.

2. The Parties concerned shall initiate requested consultations promptly.

3. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to Parties engaged in consultations.

Dispute settlement

Article 20

1. If no mutually satisfactory solution has been reached between the Parties concerned in consultations under Article 19 above, the Committee shall meet at the request of any party to the dispute, within thirty days of receipt of

### 3.g 1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

- 13 -

such a request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

2. In investigating the matter and in selecting its procedures, the Committee shall take into account whether the issues in dispute relate to commercial policy considerations or to questions requiring detailed technical consideration. The Committee may request on its own initiative that the Technical Committee carry out an examination, as provided in paragraph 4 below, of any question requiring technical consideration. Upon the request of any party to the dispute that considers the issues to relate to questions of a technical nature, the Committee shall request the Technical Committee to carry out such an examination.

3. During any phase of a dispute settlement procedure, competent bodies and experts in matters under consideration may be consulted; appropriate information and assistance may be requested from such bodies and experts. The Committee shall take into consideration the results of any work of the Technical Committee that pertain to the matter in dispute.

#### Technical issues

4. When the Technical Committee is requested under the provisions of paragraph 2 above, it shall examine the matter and report to the Committee no later than three months from the date the technical issue was referred to it, unless the period is extended by mutual agreement between the parties to the dispute.

#### Panel proceedings

5. In cases where the matter is not referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within three months from the date of the request to the Committee to investigate the matter. Where the matter is referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within one month from the date when the Technical Committee presents its report to the Committee.

6. (a) When a panel is established, it shall be governed by the procedures as set forth in Annex III.

(b) If the Technical Committee has made a report on the technical aspects of the matter in dispute, the panel shall use this report as the basis for its consideration of the technical aspects of the matter in dispute.

#### Enforcement

7. After the investigation is completed or after the report of the Technical Committee or panel is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the

**3.g 1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)**

- 14 -

Committee shall take appropriate action normally within thirty days of receipt of the report. Such action shall include:

- (i) a statement concerning the facts of the matter; and
- (ii) recommendations to one or more Parties or any other ruling which it deems appropriate.

8. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

9. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend the application to any other Party or Parties of such obligations under this Agreement as it determines to be appropriate in the circumstances.

10. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

11. If a dispute arises between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT, including invoking Article XXIII thereof.

(...)

3.g 1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

- 36 -

(...)

ANNEX III

Ad hoc panels

1. Ad hoc panels established by the Committee under this Agreement shall have the following responsibilities:

- (a) to examine the matter referred to it by the Committee;
- (b) to consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and
- (c) to make a statement concerning the facts of the matter as they relate to the application of the provisions of this Agreement and, make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

2. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established, the Chairman, after consultation with the Parties concerned, shall, within seven days of such establishment propose the composition of the panel consisting of three or five members and preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

3. Each panel shall develop its own working procedures. All Parties having a substantial interest in the matter and having notified this to the Committee shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be disclosed without the specific permission of the person or government providing such information. Where such information is requested from the panel but release of such

**3.g 1979 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, relevant provisions** (*continued*)

- 37 -

information by the panel is not authorized, a non-confidential summary of the information, authorized by the person or government providing the information, will be provided.

4. Where the parties to the dispute have failed to reach a satisfactory solution, the panel shall submit its findings in writing. The report of a panel should normally set out the rationale behind its findings. Where a settlement of the matter is reached between the parties, the report of the panel may be confined to a brief description of the dispute and to a statement that a solution has been reached.

5. Panels shall use such report of the Technical Committee as may have been issued under Article 20.4 of this Agreement as the basis for their consideration of issues that involve questions of a technical nature.

6. The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, normally within a period of three months from the date that the panel was established.

7. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

(...)

3.h 1979 Agreement on Import Licensing Procedures, relevant provisions

151

**AGREEMENT ON IMPORT LICENSING  
PROCEDURES**

**ACCORD RELATIF AUX PROCÉDURES EN MATIÈRE DE  
LICENCES D'IMPORTATION**

**ACUERDO SOBRE PROCEDIMIENTOS PARA EL TRÁMITE  
DE LICENCIAS DE IMPORTACIÓN**

GENERAL AGREEMENT ON TARIFFS AND TRADE  
ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES  
ADUANEROS Y COMERCIO

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12 April 1979  
Geneva

3.h 1979 Agreement on Import Licensing Procedures, relevant provisions (*continued*)

AGREEMENT ON IMPORT LICENSING PROCEDURES

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to this Agreement on Import Licensing Procedures (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Taking into account the particular trade, development and financial needs of developing countries;

Recognizing the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;

Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT;

Recognizing also that the inappropriate use of import licensing procedures may impede the flow of international trade;

Desiring to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby agree as follows:

Article 1. General provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures<sup>1</sup> used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing country.

(...)

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<sup>1</sup>Those procedures referred to as "licensing" as well as other similar administrative procedures.

### 3.h 1979 Agreement on Import Licensing Procedures, relevant provisions (*continued*)

- 6 -

(...)

allocated among supplying countries, the licence shall clearly stipulate the country or countries;

- (n) In applying paragraph 8 of Article 1 above, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

#### Article 4. Institutions, consultation and dispute settlement

1. There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the Parties (referred to in this Agreement as "the Committee"). The Committee shall elect its own Chairman and shall meet as necessary for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

2. Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement, shall be subject to the procedures of Articles XXII and XXIII of the GATT.

#### Article 5. Final provisions

##### 1. Acceptance and accession

- (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.
- (b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.
- (c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.
- (d) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

##### 2. Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

(...)



3.i 1979 Agreement on Trade in Civil Aircraft, relevant provisions

155

**AGREEMENT ON TRADE IN CIVIL AIRCRAFT**

**ACCORD RELATIF AU COMMERCE DES AÉRONEFS CIVILS**

**GENERAL AGREEMENT ON TARIFFS AND TRADE**

**ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE**

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12 April 1979  
Geneva

3.i 1979 Agreement on Trade in Civil Aircraft, relevant provisions (*continued*)

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

PREAMBLE

Signatories<sup>1</sup> to the Agreement on Trade in Civil Aircraft, hereinafter referred to as "this Agreement";

Noting that Ministers on 12-14 September 1973 agreed the Tokyo Round of Multilateral Trade Negotiations should achieve the expansion and ever-greater liberalization of world trade through, *inter alia*, the progressive dismantling of obstacles to trade and the improvement of the international framework for the conduct of world trade;

Desiring to achieve maximum freedom of world trade in civil aircraft, parts and related equipment, including elimination of duties, and to the fullest extent possible, the reduction or elimination of trade restricting or distorting effects;

Desiring to encourage the continued technological development of the aeronautical industry on a world-wide basis;

Desiring to provide fair and equal competitive opportunities for their civil aircraft activities and for their producers to participate in the expansion of the world civil aircraft market;

Being mindful of the importance in the civil aircraft sector of their overall mutual economic and trade interests;

Recognizing that many Signatories view the aircraft sector as a particularly important component of economic and industrial policy;

Seeking to eliminate adverse effects on trade in civil aircraft resulting from governmental support in civil aircraft development, production, and marketing while recognizing that such governmental support, of itself, would not be deemed a distortion of trade;

Desiring that their civil aircraft activities operate on a commercially competitive basis, and recognizing that government-industry relationships differ widely among them;

Recognizing their obligations and rights under the General Agreement on Tariffs and Trade, hereinafter referred to as "the GATT", and under other multilateral agreements negotiated under the auspices of the GATT;

(...)

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<sup>1</sup>The term "Signatories" is hereinafter used to mean Parties to this Agreement.

3.i 1979 Agreement on Trade in Civil Aircraft, relevant provisions (*continued*)

- 5 -

(...)

Article 8 Surveillance, Review, Consultation, and Dispute Settlement

- 8.1 There shall be established a Committee on Trade in Civil Aircraft (hereinafter referred to as "the Committee") composed of representatives of all Signatories. The Committee shall elect its own Chairman. It shall meet as necessary, but not less than once a year, for the purpose of affording Signatories the opportunity to consult on any matters relating to the operation of this Agreement, including developments in the civil aircraft industry, to determine whether amendments are required to ensure continuance of free and undistorted trade, to examine any matter for which it has not been possible to find a satisfactory solution through bilateral consultations, and to carry out such responsibilities as are assigned to it under this Agreement, or by the Signatories.
- 8.2 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such review.
- 8.3 Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, Signatories shall undertake further negotiations, with a view to broadening and improving this Agreement on the basis of mutual reciprocity.
- 8.4 The Committee may establish such subsidiary bodies as may be appropriate to keep under regular review the application of this Agreement to ensure a continuing balance of mutual advantages. In particular, it shall establish an appropriate subsidiary body in order to ensure a continuing balance of mutual advantages, reciprocity and equivalent results with regard to the implementation of the provisions of Article 2 above related to product coverage, the end-use systems, customs duties and other charges.
- 8.5 Each Signatory shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by another Signatory with respect to any matter affecting the operation of this Agreement.
- 8.6 Signatories recognize the desirability of consultations with other Signatories in the Committee in order to seek a mutually acceptable solution prior to the initiation of an investigation to determine the existence, degree and effect of any alleged subsidy. In those exceptional circumstances in which no consultations occur before such domestic procedures are initiated, Signatories shall notify the Committee immediately of initiation of such procedures and enter into simultaneous consultations to seek a mutually agreed solution that would obviate the need for counter-vailing measures.
- 8.7 Should a Signatory consider that its trade interests in civil aircraft manufacture, repair, maintenance, rebuilding, modification or conversion have been or are likely to be adversely affected by any action by

3.i 1979 Agreement on Trade in Civil Aircraft, relevant provisions (*continued*)

- 6 -

another Signatory, it may request review of the matter by the Committee. Upon such a request, the Committee shall convene within thirty days and shall review the matter as quickly as possible with a view to resolving the issues involved as promptly as possible and in particular prior to final resolution of these issues elsewhere. In this connexion the Committee may issue such rulings or recommendations as may be appropriate. Such review shall be without prejudice to the rights of Signatories under the GATT or under instruments multilaterally negotiated under the auspices of the GATT, as they affect trade in civil aircraft. For the purposes of aiding consideration of the issues involved, under the GATT and such instruments, the Committee may provide such technical assistance as may be appropriate.

- 8.8 Signatories agree that, with respect to any dispute related to a matter covered by this Agreement, but not covered by other instruments multilaterally negotiated under the auspices of the GATT, the provisions of Articles XXII and XXIII of the General Agreement and the provisions of the Understanding related to Notification, Consultation, Dispute Settlement and Surveillance shall be applied, *mutatis mutandis*, by the Signatories and the Committee for the purposes of seeking settlement of such dispute. These procedures shall also be applied for the settlement of any dispute related to a matter covered by this Agreement and by another instrument multilaterally negotiated under the auspices of the GATT, should the parties to the dispute so agree.

Article 9 Final Provisions

9.1 Acceptance and Accession

- 9.1.1 This Agreement shall be open for acceptance by signature or otherwise by governments contracting parties to the GATT and by the European Economic Community.
- 9.1.2 This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.
- 9.1.3 This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Signatories, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.
- 9.1.4 In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

(...)

3.j 1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, relevant provisions

158

**AGREEMENT ON IMPLEMENTATION OF ARTICLE VI  
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE**

**ACCORD RELATIF À LA MISE EN ŒUVRE DE L'ARTICLE VI  
DE L'ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS ET LE COMMERCE**

**ACUERDO RELATIVO A LA APLICACIÓN DEL ARTÍCULO VI  
DEL ACUERDO GENERAL SOBRE ARANCELES ADUANEROS Y COMERCIO**

GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS  
ET LE COMMERCE

ACUERDO GENERAL SOBRE ARANCELES ADUANEROS  
Y COMERCIO

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12 April 1979  
Geneva

267

3.j 1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI  
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Parties to this Agreement (hereinafter referred to as "Parties"),

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if such dumping causes or threatens material injury to an established industry or materially retards the establishment of an industry;

Considering that it is desirable to provide for equitable and open procedures as the basis for a full examination of dumping cases;

Taking into account the particular trade, development and financial needs of developing countries;

Desiring to interpret the provisions of Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT") and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation; and

Desiring to provide for the speedy, effective and equitable settlement of disputes arising under this Agreement;

Hereby agree as follows:

PART I - ANTI-DUMPING CODE

Article 1

Principles

The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and pursuant to investigations initiated<sup>1</sup> and conducted in accordance with the provisions of this Code. The following provisions govern the application of Article VI of the General Agreement in so far as action is taken under anti-dumping legislation or regulations.

Article 2

Determination of Dumping

1. For the purpose of this Code a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one

<sup>1</sup>The term "initiated" as used hereinafter means the procedural action by which a Party formally commences an investigation as provided in paragraph 6 of Article 6.

(...)

3.j 1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

- 13 -

(...)

PART II

Article 14

Committee on Anti-Dumping Practices

1. There shall be established under this Agreement a Committee on Anti-Dumping Practices (hereinafter referred to as the "Committee") composed of representatives from each of the Parties. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Party. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Parties and it shall afford Parties the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.
2. The Committee may set up subsidiary bodies as appropriate.
3. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Party, it shall inform the Party involved. It shall obtain the consent of the Party and any firm to be consulted.
4. Parties shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports will be available in the GATT secretariat for inspection by government representatives. The Parties shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months.

Article 15<sup>14</sup>

Consultation, Conciliation and Dispute Settlement

1. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Party with respect to any matter affecting the operation of this Agreement.
2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded, by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultation. The Parties concerned shall initiate consultation promptly.

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<sup>14</sup>If disputes arise between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT.

### 3.j 1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

- 14 -

3. If any Party considers that the consultation pursuant to paragraph 2 has failed to achieve a mutually agreed solution and final action has been taken by the administering authorities of the importing country to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Committee for conciliation. When a provisional measure has a significant impact and the Party considers the measure was taken contrary to the provisions of paragraph 1 of Article 10 of this Agreement, a Party may also refer such matter to the Committee for conciliation. In cases where matters are referred to the Committee for conciliation the Committee shall meet within thirty days to review the matter, and, through its good offices, shall encourage the Parties involved to develop a mutually acceptable solution.<sup>15</sup>

4. Parties shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

5. If no mutually agreed solution has been reached after detailed examination by the Committee under paragraph 3 within three months, the Committee shall, at the request of any party to the dispute, establish a panel to examine the matter, based upon:

- (a) a written statement of the Party making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and
- (b) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing country.

6. Confidential information provided to the panel shall not be revealed without formal authorization from the person or authority providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the authority or person providing the information, will be provided.

7. Further to paragraphs 1-6 the settlement of disputes shall mutatis mutandis be governed by the provisions of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance. Panel members shall have relevant experience and be selected from Parties not parties to the dispute.

<sup>15</sup> In this connection the Committee may draw Parties' attention to those cases in which, in its view, there are no reasonable bases supporting the allegations made.

(...)



3.j 1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

ADP/2

12 May 1980

Special Distribution

Committee on Anti-Dumping Practices

DECISIONS BY THE COMMITTEE ON ANTI-DUMPING PRACTICES  
TAKEN ON 5 MAY 1980

1. The Committee, cognizant of the commitment in Article 13 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under the Agreement, takes the following decision concerning the application and interpretation of the Agreement in relation to developing countries:

- (i) In developing countries, governments play a large rôle in promoting economic growth and development in accordance with their national priorities, and their economic régimes for the export sector can be different from those relating to their domestic sectors resulting inter alia in different cost structures. This Agreement is not intended to prevent developing countries from adopting measures in this context, including measures in the export sector, as long as they are used in a manner which is consistent with the provisions of the General Agreement on Tariffs and Trade, as applicable to these countries.
- (ii) In the case of imports from a developing country, the fact that the export price may be lower than the comparable price for the like product when destined for domestic consumption in the exporting country does not per se justify an investigation or the determination of dumping unless the other factors mentioned in Article 5:1 are also present. Due consideration should be given to all cases where, because special economic conditions affect prices in the home market, these prices do not provide a commercially realistic basis for dumping calculations. In such cases the normal value for the purposes of ascertaining whether the goods are being dumped shall be determined by methods such as a comparison of the export price with the comparable price of the like product when exported to any third country or with the cost of production of the exported goods in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits.

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**3.j 1979 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, relevant provisions (*continued*)**

ADP/2  
Page 2

(iii) It is recognized that developing countries may face special problems initially in adapting their legislation to the requirements of the Code, including administrative and infrastructural problems, in carrying out anti-dumping investigations initiated by them. Accordingly, the Committee on Anti-Dumping Practices may grant, upon specific request and on conditions to be negotiated on a case-by-case basis, time-limited exceptions in whole or in part from obligations which relate to investigations undertaken by a developing country under this Agreement.

(iv) Developed countries Parties to this Agreement shall endeavour to furnish, upon request and on terms to be agreed, technical assistance to developing countries Parties to this Agreement, with regard to the implementation of this Agreement; including training of personnel, and the supplying of information on methods, techniques and other aspects of conducting investigations on dumping practices.

2. The Committee further decides that paragraph 7 of Article 15 of the Agreement is to be interpreted to mean that the measures which may be authorized by the Committee on Anti-Dumping Practices for the purpose of the Agreement may include all such measures as can be authorized under Articles XXII and XXIII of the General Agreement.

# 4

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## Documents of interest



**4.a Import Restrictions. Procedures for Dealing with New Import Restrictions Applied for Balance-of-Payments Reasons and Residual Import Restrictions. Approved on 16 November 1960**

18

DECISIONS, DECLARATIONS, ETC.

(…)

**IMPORT RESTRICTIONS**

**PROCEDURES FOR DEALING WITH NEW IMPORT  
RESTRICTIONS APPLIED FOR BALANCE-OF-PAYMENTS  
REASONS AND RESIDUAL IMPORT RESTRICTIONS**

*Approved on 16 November 1960*

**A. Introduction or substantial intensification of import restrictions  
applied for balance-of-payments reasons**

1. A contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under Articles XII or XVIII: B is required, under paragraph 4 (a) of Article XII or under paragraph 12 (a) of Article XVIII as the case may be, to enter into consultations with the CONTRACTING PARTIES as to the nature of its balance-of-payment difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties. Such consultation should take place immediately after the measure is taken or, in circumstances in which prior consultation is practicable, before the measure is taken.

2. In order to implement these provisions, any contracting party modifying its import restrictions is required to furnish detailed information promptly to the Executive Secretary, for circulation to the contracting parties.<sup>1</sup>

<sup>1</sup> Under established procedures, contracting parties should furnish such information not only when they wish to initiate a consultation pursuant to Articles XII: 4 (a) or XVIII: 12 (a) but whenever any significant changes are made in their restrictive systems.

**4.a Import Restrictions. Procedures for Dealing with New Import Restrictions Applied for Balance-of-Payments Reasons and Residual Import Restrictions. Approved on 16 November 1960 (*continued*)**

**IMPORT RESTRICTIONS**

**19**

3. Upon the receipt of a notification from a contracting party that it has taken measures requiring a consultation under Article XII: 4 (a) or Article XVIII: 12 (a), the Council should be convened to meet with the shortest possible delay, which should normally be not less than forty-eight hours and not more than ten days after the receipt of the notification, to carry out the consultation.
4. In cases where the contracting party applying the restrictions has not asked for a consultation with the CONTRACTING PARTIES, the Council may invite that contracting party to consult in accordance with Articles XII: 4 (a) or XVIII: 12 (a), if the Council considers that there is a *prima facie* case of "substantial intensification" requiring such a consultation.
5. The Council should carry out, or arrange for, consultations initiated under these provisions of the General Agreement, and submit reports to the CONTRACTING PARTIES for consideration normally at their subsequent regular session.
6. As soon as a consultation is initiated the International Monetary Fund should be invited to consult with the CONTRACTING PARTIES pursuant to paragraph 2 of Article XV of the General Agreement. This consultation will be conducted by the Council.

**B. Residual import restrictions**

*Notifications*

7. Contracting parties are invited to communicate to the Executive Secretary lists of import restrictions which they are applying contrary to the provisions of the General Agreement and without having obtained the authorization of the CONTRACTING PARTIES. Any subsequent changes in a list should likewise be communicated to the Executive Secretary who will circulate the lists received to all the contracting parties.

*Consultations under Article XXII*

8. Bilateral consultations may be sought, pursuant to paragraph 1 of Article XXII either by the contracting party applying the restrictions or by contracting parties affected by them. The Executive Secretary should be informed of consultations requested so that in cases where the restrictions in question affect the interests of a number of contracting parties, the procedures adopted by the CONTRACTING PARTIES on 10 November 1958 should apply.

*Consideration by the CONTRACTING PARTIES*

9. If consultations held under paragraph 1 of Article XXII do not lead to a satisfactory solution, any of the parties to the consultations may request

**4.a Import Restrictions. Procedures for Dealing with New Import Restrictions Applied for Balance-of-Payments Reasons and Residual Import Restrictions. Approved on 16 November 1960** (*continued*)

20

DECISIONS, DECLARATIONS, ETC.

that consultations be carried out by the CONTRACTING PARTIES pursuant to paragraph 2 of Article XXII. Alternatively, a country whose interests are affected may resort to paragraph 2 of Article XXIII, it being understood that a consultation held under paragraph 1 of Article XXII would be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII.

(...)

4.b Restrictive Business Practices. Arrangements for Consultations. Decision of 18 November 1960

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

L/1397

5 December 1960

Limited Distribution

DECISIONS OF SEVENTEENTH SESSION

Decisions, Declarations, etc. of the CONTRACTING PARTIES

Between the End of the Sixteenth Session and the End of the Seventeenth Session

(June to November 1960)

TABLE OF CONTENTS

	<u>Page</u>
1. Participation of <u>Argentina</u> in the work of the CONTRACTING PARTIES (Decision of 16 November 1960)	3
2. Provisional accession of <u>Argentina</u> (Declaration of 16 November 1960)	4
3. Provisional accession of <u>Switzerland</u> - closing date for signature (Decision of 16 November 1960)	5
4. Admission of <u>Nigeria</u> as a contracting party (Declaration of 18 November 1960)	5
5. Application of the General Agreement to <u>territories</u> <u>which acquire autonomy</u> in commercial matters (Recommendation of 18 November 1960)	7
6. <u>Amendment Protocols</u> - entry into force (Decision of 18 November 1960)	8
7. Balance-of-payments import restrictions extension of the " <u>Hard-Core</u> " Waiver (Decision of 19 November 1960)	8
8. Procedures for dealing with new import restrictions applied for <u>balance-of-payments</u> reasons and residual import <u>restrictions</u>	9
9. <u>European Free Trade Association</u> (Conclusions: 18 November 1960)	11
10. <u>Latin American Free Trade Area</u> (Conclusions: 18 November 1960)	12
11. <u>Article XVII</u> - release (textile products) accorded to <u>Ceylon</u> (Decision of 23 September 1960)	13
12. <u>Article XVIII</u> - extension of release (ceramic ware) accorded to <u>Ceylon</u> (Decision of 18 November 1960)	14



#### 4.b Restrictive Business Practices. Arrangements for Consultations. Decision of 18 November 1960 (continued)

L/1397  
Page 2

	<u>Page</u>
13. <u>Market disruption, avoidance of</u> (Establishment of Committee)	15
14. <u>Restrictive business practices</u> (Decision of 18 November 1960)	17
15. <u>Continued application of Schedules</u> (Decision of 19 November 1960)	18
16. <u>Declaration on Continued Application of Schedules</u> to the General Agreement (Declaration of 19 November 1960)	20
17. <u>Brazil tariff negotiations</u> - closing date for signature (Decision of 3 August 1960)	22
18. <u>Brazil Schedule</u> (Decision of 19 November 1960)	22
19. <u>New Zealand Schedule</u> (Decision of 18 November 1960)	24
20. <u>Turkey Schedule</u> (Decision 19 November 1960)	25
21. <u>Article XVI: Action by Australia</u> - extension of time-limit (Decision of 19 September 1960)	27
22. <u>Article XVI: Action by United States</u> - extension of time-limit (Decision of 18 November 1960)	28
23. <u>Chilean import charges</u> (Decision of 18 November 1960)	29
24. <u>Peruvian import charges</u> (Decision of 19 November 1960)	30
25. <u>Rhodesia and Nyasaland tariff</u> - base dates (Decision of 19 November 1960)	31
26. <u>Rhodesia and Nyasaland tariff</u> - United Kingdom territories (Decision of 19 November 1960)	33
27. <u>Article XVIII renegotiations</u> - closing date for notifications (Decisions of November 1960)	35
28. <u>Subsidies</u> - Article XVI:4 (prohibition) (Declaration of 19 November 1960)	36
29. <u>Subsidies</u> - Article XVI:4 (standstill) (Declaration of 19 November 1960)	37
30. <u>French trading arrangements with Morocco</u> (Decision of 19 November 1960)	39
31. <u>Italian customs treatment for certain products of Somalia</u> (Decision of 19 November 1960)	40
<u>List of reports of the seventeenth session</u>	42

(...)

4.b Restrictive Business Practices. Arrangements for Consultations. Decision of 18 November 1960  
(continued)

(...)

L/1397  
Page 17

14. RESTRICTIVE BUSINESS PRACTICES

(Decision of 18 November 1960)

Having considered the report (L/1015) submitted by the Group of Experts, which was appointed under the Resolution of 5 November 1958, and related documents<sup>1</sup>;

Recognizing that business practices which restrict competition in international trade may hamper the expansion of world trade and the economic development in individual countries and thereby frustrate the benefits of tariff reduction and removal of quantitative restrictions or may otherwise interfere with the objectives of the General Agreement on Tariffs and Trade;

Recognizing, further, that international co-operation is needed to deal effectively with harmful restrictive practices in international trade;

Desiring that consultations between governments on these matters should be encouraged;

Considering, however, that in present circumstances it would not be practicable for the CONTRACTING PARTIES to undertake any form of control of such practices nor to provide for investigations,

The CONTRACTING PARTIES

Recommend that at the request of any contracting party a contracting party should enter into consultations on such practices on a bilateral or a multilateral basis as appropriate. The party addressed should accord sympathetic consideration to and should afford adequate opportunity for consultations with the requesting party, with a view to reaching mutually satisfactory conclusions, and if it agrees that such harmful effects are present it should take such measures as it deems appropriate to eliminate these effects, and

Decide that

- (a) If the requesting party and the party addressed are able to reach a mutually satisfactory conclusion, they should jointly advise the secretariat of the nature of the complaint and the conclusions reached;
- (b) If the requesting party and the party addressed are unable to reach a mutually satisfactory conclusion, they should advise the secretariat of the nature of the complaint and the fact that a mutually satisfactory conclusion cannot be reached;
- (c) The secretariat shall convey the information referred to under (a) and (b) to the CONTRACTING PARTIES.

<sup>1</sup>The related documents are L/1287 and Add.1, L/1301, L/1333 and W.17/23.

(...)

## 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat

GENERAL AGREEMENT ON  
TARIFFS AND TRADERESTRICTED

MTN/SG/W/8

6 April 1976

Special Distribution

Multilateral Trade NegotiationsGroup "Safeguards"DISPUTE SETTLEMENT IN INTERNATIONAL  
ECONOMIC AGREEMENTSFactual Study by the Secretariat

1. The Group "Safeguards" has asked the secretariat at its last meeting on 17-20 November 1975 to draw up "a factual study on dispute settlement setting out the history of this question in the GATT and identifying alternative approaches used in other international bodies in the commercial policy field" (MTN/SG/3, paragraph 3(b)).

2. The secretariat has already circulated a Factual Note on Safeguards for Maintenance of Access which deals with Articles XXII and XXIII and the use that has been made of them (MTN/3D/2 and Corr.1). In the present paper the GATT procedures for dispute settlement are compared with those of other international economic agreements. The paper is organized as follows:

- I. The Organizational Structure of the Dispute Procedures
- II. Conditions of Access to the Dispute Settlement Bodies
  - (a) Bilateral Consultation
  - (b) Prior Conciliation
- III. Competence of the Dispute Settlement Bodies
  - (a) Legal Nature of the Dispute
  - (b) Parties to the Dispute
- IV. Procedures of the Dispute Settlement Bodies
  - (a) Voting
  - (b) Temporal Requirements
  - (c) Interim Measures
- V. Decision of the Dispute Settlement Bodies
  - (a) Legal Nature
  - (b) Means of Enforcement
- VI. Expenses

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 2

3. Under each of these headings the dispute settlement procedures under GATT, as they have been applied in the past, will be compared with those of six other international economic agreements: the Arrangement Regarding International Trade in Textiles; the Convention Establishing the European Free Trade Association; the ACP-EEC Convention of Lomé; the Treaty Establishing the Caribbean Community; the International Cocoa Agreement and the Articles of Agreement of the International Monetary Fund. These six agreements were selected because they seem representative of the various procedures for dispute settlement that are presently used in multilateral economic treaties. The rules for dispute settlement in the commodity agreements for tin, coffee, sugar and cocoa are so similar that only one - the Cocoa Agreement - has been chosen for this study. The International Monetary Fund does not deal directly with commercial policy matters but has been included for comparative purposes because the Fund has regulatory functions in the international economic sphere that are similar to, and related to, those of the GATT.

4. The relevant dispute settlement provisions of the GATT and the six other agreements are reproduced in Annex A. A brief bibliography on dispute settlement in international economic organizations is contained in Annex B.

282

##### I. The organizational structure of the disputes procedures

5. Under the General Agreement disputes not settled bilaterally may be referred to the CONTRACTING PARTIES acting as a whole. However, this body has generally been considered too large to take decisions without the assistance of a smaller body, and therefore the CONTRACTING PARTIES' function has been in most cases that of ratifying dispute settlement decisions prepared for them. In the very early days of GATT, disputes were sometimes referred to the Chairman of the CONTRACTING PARTIES for his decision. It was for instance in this way that a dispute between the Cuban and the Benelux Governments regarding the application of Article I to consular taxes was settled.<sup>1</sup> However, this procedure did not last very long. By the Third Session in 1949 the CONTRACTING PARTIES had already developed the practice of referring disputes to Working Parties. Working Parties consist of a number of delegations varying from about five to twenty according to the importance of the question and the interests involved. The countries who are parties to the dispute are always members of the Working Party and have the same status as other delegations. The report of the Working Party represents the views of all its members and therefore records different views if necessary. Since the tendency is to strive for unanimity, there is always some measure of negotiation and compromise in the formulation of the Working Party's report.

<sup>1</sup> CP.2/SR.11

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 3

6. The CONTRACTING PARTIES experienced difficulties with the Working Party approach, which were described in a note by the Executive Secretary as follows: "It often proved embarrassing for the representative of a country against which a complaint was lodged to associate himself with the Working Party report. On the other hand, it was often equally embarrassing for him to dissent from the report and to file a minority statement. Furthermore, the majority of the Working Party themselves were frequently inhibited in a frank expression of views in their report to the CONTRACTING PARTIES because of their desire to reach unanimous agreement in the Working Party".<sup>1</sup> The Executive Secretary's note also pointed to the difficulties that Working Parties had in preparing "an objective analysis for consideration by the CONTRACTING PARTIES, in which the special interests of individual governments are subordinated to the basic objective of applying the General Agreement impartially and for the benefit of the contracting parties in general".<sup>2</sup>

7. By the seventh session in 1952, the dissatisfaction with the Working Party approach had become so widespread that the CONTRACTING PARTIES adopted a fundamentally different procedure and established a Panel of Complaints for all legal disputes that arose during that session. The terms of reference of the Sessional Panel were: "To consider, in consultation with the representatives of the countries directly concerned and of other interested countries, complaints referred to the CONTRACTING PARTIES under Article XXIII and such other complaints as the CONTRACTING PARTIES may expressly refer to the Panel and to submit findings and recommendations to the CONTRACTING PARTIES."<sup>3</sup> Following the creation of an Intersessional Committee in 1955, the CONTRACTING PARTIES stopped appointing Sessional Panels and began establishing instead ad hoc Panels for each individual dispute. The terms of reference of the ad hoc Panels have generally been "to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII".<sup>4</sup> The Panels have been composed of about three to five persons from countries not directly affected by the charges to be examined, who are expected to act impartially without instructions from their governments. Whereas Working Parties negotiate disputes, Panels tend to adjudicate them. Panels therefore act to some extent in a court-like fashion. Each party is invited to present its case and the Panels then prepare, in the absence of the parties, their findings and recommendations in the light of the information and arguments laid before them. However, there is also an element of negotiation, albeit small, in the Panel proceedings. The Panels' conclusions and the form of their presentation are customarily discussed with the parties to the dispute before the Panel reports are submitted to the CONTRACTING

<sup>1</sup>L/392/Rev.1, paragraph 4

<sup>2</sup>Idem, paragraph 5

<sup>3</sup>SR.7/7

<sup>4</sup>Uf. for instance the terms of reference of the DISC Panel (C/M/89)

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MIN/EG/W/8  
Page 4

PARTIES. This practice has either encouraged bilateral settlements without a final Panel decision, or has facilitated the acceptance of the Panels' decisions by governments, when such decisions were necessary.

8. The reports of both the Working Parties and the Panels are advisory opinions, on the basis of which the CONTRACTING PARTIES take their final decision. Only in one exceptional case (disputes under a waiver from Article I given to the United Kingdom in 1953) did the CONTRACTING PARTIES decide that the Panel's determination would be final if the parties to the dispute so agree either before or after the Panel examination.<sup>1</sup> Failing such agreement, each party had the right of appeal to the CONTRACTING PARTIES. Under this procedure the CONTRACTING PARTIES thus either did not take a decision on the dispute at all, or acted only as a second instance. The Panel on Poultry, which was established in 1963 at the request of the United States and the European Economic Community, rendered an advisory opinion to the parties to the dispute, not to the CONTRACTING PARTIES. This was a special case because the parties to this dispute did not refer the matter to the CONTRACTING PARTIES under Article XXIII but asked for an advisory opinion from a GATT Panel to assist them in their bilateral Article XXVIII negotiations.<sup>2</sup>

9. A tabular analysis of twenty-five Article XXIII:2 cases that have arisen since 1948 can be found in the Annex of document MIN/3D/2.

10. Under the Textiles Arrangement dispute settlement functions are assigned to the Textiles Committee, composed of representatives of the parties to the Arrangement, and the Textiles Surveillance Body (TSB) consisting of a chairman and eight members appointed by the parties to the Arrangement. The TSB is a standing body and continuously on call. The Arrangement provides for a rotation of its members as appropriate so as to keep the membership balanced and broadly representative. The members are appointed as experts in their own names and are expected to operate with a considerable degree of freedom from direction. One of the TSB's main responsibilities is to assist in the settlement of disputes regarding the implementation of the Arrangement, in particular disputes on the conformity of unilateral import restrictions with the provisions of the Arrangement.

11. The TSB's normal procedure in cases of dispute is to invite the parties to state their case, to present questions to them and then to formulate a recommendation in the light of the information received. It should be noted, however, that the TSB has in practice given much attention to its rôle as a conciliator rather than as a judge. A member of the TSB whose country is party to a dispute may not act as a spokesman and may not stand in the way of achieving a consensus on a recommendation or finding, although he remains present throughout the discussion of the TSB. To ensure equitable treatment in such cases, also, the spokesman of the other party to the dispute may remain present even if he is not a member of the TSB. If the recommendation of the TSB does not settle a dispute, the matter may be brought before the Textiles Committee or before the GATT Council.

<sup>1</sup>BISD, 2nd Supplement, page 20; BISD, 3rd Supplement, page 13

<sup>2</sup>C/M/18



#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 5

12. The authority to interpret the Textiles Arrangement is divided between the TSB and the Textiles Committee. Disputes regarding the interpretation of Article 12, which *inter alia* defines the term "textiles" for the purposes of the Arrangement, may be referred to the TSB. The interpretation of the remaining provisions of the Arrangement is formally reserved to the Textiles Committee.

13. Under the EFTA Convention, disputes among member States may be referred to the Council, in which each member State is represented. The Council may decide to refer the dispute to an examining committee consisting of "persons selected ~~/by the Council/~~ for their competence and integrity, who, in the performance of their duties, shall neither seek nor receive instructions from any State, or from any authority or organization other than the Association". The report of the examining committee has the status of an advisory opinion; the final decision on disputes is taken by the Council "in the light of the report".

14. The Lomé Convention regulates disputes between one or more ACP States on the one hand and the Community, or one or more member States of the Community, on the other. Such disputes may be placed before the Council of Ministers, in which all ACP States, and the members of the Council and the Commission of the European Communities are represented. If the Council of Ministers fails to settle the dispute, either party may notify the other of the appointment of an arbitrator. The other party then has to appoint a second arbitrator and the Council of Ministers a third. The arbitrators' decision is final and binding.

15. Disputes under the Caribbean Community Treaty, may, when they relate to the Caribbean Common Market established in the Annex to this Treaty, be referred to the Common Market Council, in which each member State is represented. The Council may, and at the request of any member State concerned must, refer the matter to an ad hoc Tribunal. For the purpose of establishing the Tribunal the Common Market secretariat maintains a list of arbitrators consisting of qualified jurists serving for renewable terms of five years. Each party to the Treaty may nominate two arbitrators for the list. When a dispute is referred to the Tribunal each party to the dispute appoints one arbitrator from the list. The two arbitrators appoint a third arbitrator who serves as chairman. If the arbitrators are not appointed within a specified time-limit, the Secretary-General of the Caribbean Common Market is authorized to make the appointment. The Tribunal decides its own procedures. If the Tribunal finds that any benefit conferred on a member State by the provisions relating to the Caribbean Common Market or any objective of the Common Market is being or may be frustrated, the Council may make to the member State concerned such recommendations as it considers appropriate. The members are obliged to employ the Tribunal procedure and to refrain from any other method of disputes settlement.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/3  
Page 6

16. Under the Cocoa Agreement disputes concerning the interpretation or application of the Agreement and complaints that a member has failed to fulfil its obligations may be referred to the Cocoa Council, a body composed of representatives of all member countries. If the dispute concerns the interpretation or application of the Agreement, the Council may seek the opinion of an ad hoc advisory panel. Unless the Council unanimously decides otherwise, the ad hoc advisory panel consists of:

two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting members;

two such persons nominated by the importing members; and

a chairman selected unanimously by the four persons nominated by the parties or, if they fail to agree, by the Chairman of the Council.

17. The persons appointed act in their personal capacities and without instructions from any government. The opinion of the panel and the reasons therefore are submitted to the Council which decides the dispute "after considering all relevant information".

18. Complaints that a member has failed to fulfil its obligations under the Cocoa Agreement may be referred to the Council, which considers it and makes a decision on the matter specifying the nature of the breach.

19. There are two different procedures for the settlement of disputes under the Articles of Agreement of the International Monetary Fund: one procedure for questions of interpretation arising between members of the Fund or between a member and the Fund, and another procedure for disagreements between the Fund and a former member, or between the Fund in liquidation and a member. Under the first procedure the decision is taken by the Fund's Executive Directors. Any member dissatisfied with the Directors' decision may request that the question of interpretation be referred to the Board of Governors. The Board of Governors appoints a Committee on Interpretation and establishes the Committee's procedures. The Committee's decision is that of the Board of Governors and is final, unless the Board decides otherwise. Disputes between a former member and the Fund or between a member and the Fund in liquidation are submitted to a tribunal of three arbitrators: one appointed by the Fund, another by the (former) member and an umpire who, unless the parties otherwise agree, is appointed by an authority to be prescribed by a Fund regulation. The umpire has the power to settle all questions of procedure if the parties disagree. While the interpretation procedures have frequently been used by the Executive Directors, no arbitration tribunal has ever been appointed.



#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 7

20. The organization of the dispute settlement procedures in GATT and the six other international economic agreements examined reflect two opposing desiderata: on the one hand, the wish to take into account the interests of governments and the need for negotiation and compromise, which led to the assignment of dispute settlement functions to bodies composed of government representatives; and, on the other hand, the desire to have an objective and fair evaluation of disputes by an impartial instance that takes into account community interests, which led to the creation of dispute settlement bodies composed of independent individuals. The agreements examined contain the whole spectrum of possible compromises between these two desiderata. On one end of the spectrum is the Lomé Convention, under which all disputes that are not settled through negotiation can be submitted by each party to binding third party adjudication; on the other end of the spectrum is the General Agreement, which confers the power to decide disputes on the CONTRACTING PARTIES.

#### II. Conditions of access to the dispute settlement bodies

##### (a) Bilateral consultation

21. Under the General Agreement bilateral consultations must take place before disputes can be referred to the CONTRACTING PARTIES.<sup>1</sup> While the secretariat does not have systematic information on bilateral consultations since contracting parties have no obligation to notify these, it seems clear from the fact that only twenty-five Article XXIII:2 cases have arisen in GATT's twenty-eight-year history that most disputes have been settled bilaterally. The existence of Article XXIII:2 appears to have acted as an inducement for contracting parties to resolve disputes

<sup>1</sup>The CONTRACTING PARTIES at their seventeenth session in 1960 agreed that "a consultation held under paragraph 1 of Article XXII would be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII" (BISD, 9th Supplement, pages 18-20, paragraph 9). Similarly, the CONTRACTING PARTIES agreed in April 1966 that "consultations held under paragraph 2 of Article XXVII:2 in respect of restrictions for which there is no authority under any provisions of the General Agreement will be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII if the parties to the consultations so agree" (BISD, 14th Supplement, pages 18-20, paragraph 11). Prior consultations are not required in Article XXIII:1(c) cases.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 8

bilaterally. The Textiles Arrangement prescribes that disputes may only be referred to the TSB if bilateral consultations have failed to achieve a mutually satisfactory solution. Similarly, under the EFTA Convention and the Caribbean Community Treaty, disputes may only be referred to the Council "if no satisfactory settlement is reached between the Member States concerned". The Lomé Convention provides that only disputes that could not be settled by the Council, in which the two parties to possible disputes are represented, may be referred to binding arbitration. The Cocoa Agreement prescribes prior consultations only for disputes concerning the interpretation or application of the Agreement, but not for complaints that a member has failed to fulfil its obligations. However, members of the Agreement have the right to have sympathetic consideration to their representations accorded to them by other members, and members are likely to make use of this right before filing a formal complaint. The Fund's Articles do not provide explicitly for prior consultations.

##### (b) Prior conciliation

22. The General Agreement itself does not provide for prior conciliation or good offices procedures. However, on 5 April 1966, the CONTRACTING PARTIES decided that:

1. If consultations between a less-developed contracting party and a developed contracting party in regard to any matter falling under paragraph 1 of Article XXIII do not lead to a satisfactory settlement, the less-developed contracting party complaining of the measure may refer the matter which is the subject of consultations to the Director-General so that, acting in an ex officio capacity, he may use his good offices with a view to facilitating a solution.
2. To this effect the contracting parties concerned shall, at the request of the Director-General, promptly furnish all relevant information.
3. On receipt of this information, the Director-General shall consult with the contracting parties concerned and with such other contracting parties or intergovernmental organizations as he considers appropriate with a view to promoting a mutually acceptable solution.
4. After a period of two months from the commencement of the consultations referred to in paragraph 3 above, if no mutually satisfactory solution has been reached, the Director-General shall, at the request of one of the contracting parties concerned, bring the matter to the attention of the CONTRACTING PARTIES or the Council, to whom he shall submit a report on the action taken by him, together with all background information.<sup>1</sup>

<sup>1</sup>BISD, 14th Supplement, pages 18-20

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 9

This good offices procedure has never been used even though it has now been available for a decade. Informally, however, the Director-General has frequently acted as conciliator in disputes.

23. Only two of the other agreements examined contain clauses on prior conciliation. Under the Cocoa Agreement, the Executive Directors may, at the request of both parties to a dispute, assist by establishing an appropriate conciliation procedure. The Lomé Convention permits the Contracting Parties to have recourse to a good offices procedure "where circumstances permit, and subject to the Council of Ministers being informed, so that any parties concerned may assert their rights". In both these cases, the conciliation or good offices procedures are voluntary and not a condition of access to the formal dispute settlement procedures.

#### III. Competence of the dispute settlement bodies

##### (a) Legal nature of the dispute

24. Under the Lomé Convention, the Cocoa Agreement and the Fund's Articles the dispute must concern the interpretation or application of the agreement. The General Agreement, the Textiles Arrangement, the EFTA Convention and the Caribbean Community Treaty however go further. Under the General Agreement, not only breaches of obligations but also measures not conflicting with the General Agreement, and even the existence of "any other situation" permits recourse to Article XXIII procedures provided the measure or situation nullifies or impairs benefits accruing under the Agreement or the objectives of the Agreement. It should be noted however that there has been no Article XXIII case in which a contracting party has claimed that there was a nullification or impairment of the "objectives" of the agreement, and only one case in which the claim was based on a nullification or impairment resulting from "any other situation".<sup>1</sup> The Textiles Arrangement authorizes the TSB to examine, at the request of any participating country, "any particular measures or arrangements, which that country considers to be detrimental to its interests". The EFTA Convention procedures are open to any member State who "considers that any benefit conferred upon it by this Convention or any objective of the Association is being or may be frustrated". The Caribbean Community Treaty contains a similarly worded provision.

25. The competence of the dispute settlement bodies examined thus varies greatly. They are all empowered to interpret the agreements and some may in addition determine whether the "objectives" of the agreements or "benefits" accruing under

<sup>1</sup>Cf. C/W/250

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 10

them are frustrated. The TSB may deal with all textiles measures adversely affecting trade interests. As a result the TSB plays not only the rôle of arbitrator applying norms but can also act as a mediator for conflicts of interests not involving norms. The GATT is the only agreement in which not only governmental actions but "any situation" may give rise to a suspension of obligations. This broadens the scope of Article XXIII beyond disputes over governmental actions and gives this provision the character of an emergency clause permitting the suspension of obligations by the CONTRACTING PARTIES in situations in which the Agreement's purposes or the negotiated balance of benefits cannot be realized. In the Fund's Articles the procedures for disputes and emergencies have been separated. The temporary suspension of obligations in the event of an emergency or the development of unforeseen circumstances is subject to regulations on voting, temporal requirements, decision making etc. that are completely different from those governing interpretations.<sup>1</sup>

##### (b) Parties to the dispute

26. The interpretation procedures under the Fund's Articles are designed not only for disputes between Fund members but also for disputes between a member and the organization. By contrast, the procedures in the other six agreements examined only refer to disputes between States. In GATT, for instance, a contracting party which feels that its balance-of-payments consultations were not conducted correctly or that it was unfairly refused a waiver has no recourse to an independent instance.<sup>2</sup> In 1955 the Executive Secretary proposed to extend the use of Panels to matters arising out of the relationship between individual contracting parties and the CONTRACTING PARTIES. He felt that also in respect of such matters "it may be especially desirable to obtain an objective and technical consideration of the issues involved ... which is difficult to obtain through the normal working party technique".<sup>3</sup> However, the Executive Secretary's proposal was not accepted. One delegation stressed the need for "negotiation and

<sup>1</sup>Cf. Articles XVI and XVIII of the Fund Agreement.

<sup>2</sup>It may be interesting to note in this context that in 1961 the Executive Secretary took the view that neither a contracting party nor the CONTRACTING PARTIES acting as a whole could take a ruling of the CONTRACTING PARTIES to the International Court of Justice (SR.19/7, page 88).

<sup>3</sup>L/392/Rev.1, paragraph 8

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 11

compromise" and another said that "for some problems it was most important that consideration be given not in a limited, specific and expert fashion but by the CONTRACTING PARTIES who could draw on the experience of the working of the General Agreement."<sup>1</sup>

27. Two years after its rejection in principle, the Executive Secretary's proposal was applied in one case. In 1957, the CONTRACTING PARTIES decided to appoint a Panel of five independent experts to examine and submit recommendations on a series of requests for releases from GATT obligations in accordance with Article XVIII:C.<sup>2</sup> The Panel operated until 1960, after which requests for releases ceased.<sup>3</sup> This case was the only one in GATT history in which a Panel was appointed to deal with a matter arising out of the relationship between a contracting party and the CONTRACTING PARTIES.

#### IV. Procedures of the dispute settlement bodies

##### (a) Voting

28. The decision of the CONTRACTING PARTIES under Article XXIII of GATT may legally be taken by majority vote, but in practice decisions are taken by consensus. The same applies to the EFTA Convention and the Caribbean Community Treaty. There are no formal rules on voting for the independent bodies that can be established under GATT, the EFTA Convention and Caribbean Community Treaty. These bodies act by consensus and would theoretically have to issue dissenting opinions if the need to do so ever arose. The Textiles Arrangement contains no rules on voting. The TSB decided to take its decisions by consensus. The TSB member representing a country which is party to a dispute may however not obstruct the consensus; in this case agreement among the other members of the TSB suffices. Disputes on which the necessary consensus in the TSB cannot be reached would have to be left undecided.

<sup>1</sup>SR 10/1

<sup>2</sup>SR 12/2

<sup>3</sup>Cf. Panel reports in: BISD, 6th Supplement, page 112; 7th Supplement, page 75; 8th Supplement, page 90; 9th Supplement, pages 95 and 100.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SQ/W/3  
Page 12

29. Under the Lomé Convention, the Council of Ministers acts by mutual agreement between the Community on the one hand and the ACP States on the other. The Community and the ACP States arrive at their respective positions on the basis of separate internal protocols. The decisions of the three arbitrators that may be appointed under the Lomé Convention is taken by majority vote. The Cocoa Agreement prescribes that the decisions of the Council, in the case of dispute settlements, are taken by a simple distributed majority vote. No voting rules are laid down for the decision of the ad hoc advisory panel. Under the Fund's Articles, the Executive Directors decide questions of interpretation by a majority of the weighted votes cast; in practice, however, formal votes are avoided. In the Committee on Interpretation of the Board of Governors each member has one vote. The Committee is the only Fund body in which votes are taken on a non-weighted basis. The voting majorities necessary for decisions of the Committee are established by the Board of Governors. The decision of the Committee on Interpretation is final, unless the Board, by an 85 per cent majority of the total weighted votes, decides otherwise.

##### (b) Temporal requirements

30. The General Agreement imposes no time-limits to be observed by the parties to a dispute or by the CONTRACTING PARTIES. This was considered unsatisfactory by some developing countries and, at their request, the CONTRACTING PARTIES established in 1966 specific time-limits for Article XXIII procedures when used for complaints of a developing country against a developed country. These time-limits are:

1. Duration of good offices procedures: two months
2. Preparation of Panel report: sixty days<sup>1</sup>
3. Implementation of decision: ninety days<sup>1</sup>

31. The Textiles Arrangement provides that the Textiles Surveillance Body shall make its recommendations or findings "within a period of thirty days whenever practicable". The EFTA Convention establishes no fixed time-limits for the dispute settlement procedures nor do the Caribbean Community Treaty and the Cocoa Agreement.

32. The Lomé Convention declares that disputes referred to the Council of Ministers must be dealt with at the next meeting. If one party to a dispute has appointed an arbitrator, the other party must appoint the second arbitrator within two months. The Fund's Articles specify that decisions of the Executive Directors must be referred to the Board of Governors within three months.

<sup>1</sup>BISD, 14th Supplement, pages 18-20



#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 13

(c) Interim measures

33. Under the EFTA Convention and the Caribbean Community Treaty a member State may request the Council at any time while the dispute is under consideration to authorize, as a matter of urgency, interim measures to safeguard the member States' position. None of the other agreements examined contain such emergency provisions. The EFTA Convention and the Caribbean Community Treaty are also the only agreements that permit recourse to the dispute settlement procedures when a benefit of the Convention or an objective of the Association "may be" frustrated, that is in the case of a threat of damage and not only when the damage has already occurred.

V. Decision of the dispute settlement bodies

(a) Legal nature

34. The decision of the CONTRACTING PARTIES under Article XXIII of the General Agreement is either a "recommendation" or a "ruling". However, independently of whether the CONTRACTING PARTIES have issued a recommendation or a ruling, in either case they may authorize the suspension of GATT concessions or obligations so that the concrete consequences of not abiding by a recommendation and a ruling may be the same. The Textiles Arrangement provides that the decisions of the TSB are recommendations. The participating countries are to endeavour to accept in full the recommendations, and, if they consider themselves unable to do so, to inform forthwith the TSB of the reasons therefor. Under the EFTA Convention the decisions of the Council in cases of disputes are recommendations. In contrast to GATT, however, a sanction (discriminatory suspension of obligations) may only be applied in cases in which an obligation has not been fulfilled. In cases in which a member State has frustrated a benefit accruing under the Convention or an objective of the Association but has fulfilled its obligations the EFTA Council may make recommendations but may not authorize the suspension of obligations. Under the Caribbean Community Treaty, the decision of the Council is a recommendation. The Council may authorize any member State to suspend in relation to the member State which has not complied with the recommendation the application of such obligations as the Council considers appropriate. Under the Lomé Convention, the decision of the Council of Ministers or the arbitrators is binding on the Contracting Parties, which must take the measures required to implement the decision. The Cocoa Agreement provides that members accept as binding all decisions of the Cocoa Council, including those in dispute settlement cases. Under the Fund Agreement, the decisions on questions of interpretation bind all members.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 14

##### (b) Means of enforcement

35. Under GATT, the only means to enforce the CONTRACTING PARTIES' decisions is to authorize the retaliatory suspension of trade concessions and other obligations. Retaliation has generally been regarded as an unsatisfactory enforcement technique because it leads to lower levels of trade liberalization; it may snowball, and the contracting party applying the sanction suffers itself to the extent that it loses the benefits of the international division of labour. Moreover, it is always very difficult to direct the retaliatory action only against those segments of the economy that have brought about, and that benefit from, the governmental action giving rise to the dispute. In most cases, retaliation will confer undeserved losses and benefits on sectors that had no part in the disputed action. It is probably for these reasons that the CONTRACTING PARTIES have authorized the suspension of obligations under Article XXIII only in a single exceptional case.<sup>1</sup> In 1966, some delegates proposed a system of monetary compensation for injuries resulting from breaches of the General Agreement. However, this proposal was rejected partly because of the difficulty of enforcing this enforcement mechanism.<sup>2</sup>

36. The Textiles Arrangement contains no provision on sanctions but the possibility of recourse to Article XXIII of the General Agreement is provided for. The EFIA Convention and the Caribbean Community Treaty follow the model of the General Agreement as far as sanctions are concerned. The Lomé Convention does not provide for sanctions in the case of a failure to abide by the decision of the Council or the arbitrators. The Cocoa Agreement declares that the Council may, if it finds that a member is in breach of an obligation, decide to:

1. Suspend that member's voting rights;
2. Suspend additional rights of such member, including that of being eligible for, or of holding, office in the Council or in any of its committees until it has fulfilled its obligations;
3. Exclude such member from the organization.

A member whose voting rights are suspended remains liable for its financial and other obligations under the Cocoa Agreement. The Fund Agreement provides that "if a member fails to fulfil any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund" and it further declares that "if, after the expiration of a reasonable period the

<sup>1</sup>BISD, 1st Supplement, page 32

<sup>2</sup>COM.TD/F/2, page 8; COM.TD/F/3, pages 3-6



#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SQ/W/8  
Page 15

member persists in its failure to fulfil any of its obligations... that member may be required to withdraw from membership ..."<sup>1</sup> There has only been one case of a compulsory withdrawal in the Fund's history.

37. The dispute settlement decisions and their legal consequences under the agreements examined can be categorized as follows:

1. Binding decision with possibility of sanctions (e.g. Cocoa Agreement)
2. Binding decision without possibility of sanctions (e.g. Lomé Convention)
3. Recommendation with the possibility of sanctions (e.g. Caribbean Community Treaty)
4. Recommendation without the possibility of sanctions (e.g. EFTA Convention in case of actions that are legal but frustrate benefits accruing under the Convention or objectives of the Association).

The CONTRACTING PARTIES may make recommendations or give rulings and may resort to sanctions in either case.

#### VI. Expenses

38. The expenses of the disputes under GATT, the Textiles Arrangement, the EFTA Convention and the Fund's Articles are paid out of the general budget of the respective organizations. Under the Caribbean Community Treaty, the Council has the power to decide how the expenses of the ad hoc tribunal are to be defrayed. The parties to the Lomé Convention have agreed, in a separate protocol, on the expenses of arbitration as follows: The arbitrators are entitled to a refund of their travel and subsistence expenditure. The latter is determined by the Council of Ministers. One half of travel and subsistence expenditure incurred by the arbitrators is borne by the Community and the other half by the ACP States. Expenditure relating to any Registry set up by the arbitrators, to preparatory inquiries into disputes and to the organization of hearings (premises, personnel, interpreting, etc.) are borne by the Community. Expenditures relating to special inquiries are settled together with the other costs and the parties have to deposit advances as determined by an order of the arbitrators.

39. The Cocoa Agreement provides that the cost of voluntary conciliation procedures is borne by the parties to the dispute; the expenses incurred in establishing an ad hoc advisory panel are paid by the organization.

<sup>1</sup> Gold, Joseph "Membership and Non-Membership in the International Monetary Fund" (Washington: 1974), pages 345-372.

**4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat**  
(continued)

MTN/SG/W/8  
Page 16

ANNEX A

The Dispute Settlement Provisions of GATT  
and Six Other International Economic Agreements

1. THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Article XXII

Consultation

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

Article XXIII

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of

- (a) the failure of another contracting party to carry out its obligations under this Agreement, or
- (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
- (c) the existence of any other situation,

the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 17

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultations necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

#### 2. THE ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

##### Article 10

1. There is established within the framework of GATT a Textiles Committee consisting of representatives of the parties to this Arrangement. The Committee shall carry out the responsibilities ascribed to it under this Arrangement.

2. -----

3. Any case of divergence of view between the participating countries as to the interpretation or application of this Arrangement may be referred to the Committee for its opinion.

##### Article 11

1. The Textiles Committee shall establish a Textiles Surveillance Body to supervise the implementation of this Arrangement. It shall consist of a Chairman and eight members to be appointed by the parties to this Arrangement on a basis to be determined by the Textiles Committee so as to ensure its efficient operation. In order to keep its membership balanced and broadly representative of the parties to this Arrangement provision shall be made for rotation of the members as appropriate.

**4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat**  
(continued)

MTN/SG/W/8  
Page 16

2. The Textiles Surveillance Body shall be considered as a standing body and shall meet as necessary to carry out the functions required of it under this Arrangement. It shall rely on information to be supplied by the participating countries, supplemented by any necessary details and clarification it may decide to seek from them or from other sources. Further, it may rely for technical assistance on the services of the GATT secretariat and may also hear technical experts proposed by one or more of its members.

3. The Textiles Surveillance Body shall take the action specifically required of it in articles of this Arrangement.

4. In the absence of any mutually agreed solution in bilateral negotiations or consultations between participating countries provided for in this Arrangement, the Textiles Surveillance Body at the request of either party, and following a thorough and prompt consideration of the matter, shall make recommendations to the parties concerned.

5. The Textiles Surveillance Body shall, at the request of any participating country, review promptly any particular measures or arrangements which that country considers to be detrimental to its interests where consultations between it and the participating countries directly concerned have failed to produce a satisfactory solution. It shall make recommendations as appropriate to the participating country or countries concerned.

6. Before formulating its recommendations on any particular matter referred to it, the Textiles Surveillance body shall invite participation of such participating countries as may be directly affected by the matter in question.

7. When the Textiles Surveillance Body is called upon to make recommendations or findings it shall do so, except when otherwise provided in this Arrangement, within a period of thirty days whenever practicable. All such recommendations or findings shall be communicated to the Textiles Committee for the information of its members.

8. Participating countries shall endeavour to accept in full the recommendations of the Textiles Surveillance Body. Whenever they consider themselves unable to follow any such recommendations, they shall forthwith inform the Textiles Surveillance Body of the reasons therefor and of the extent, if any, to which they are able to follow the recommendations.

9. If, following recommendations by the Textiles Surveillance Body, problems continue to exist between the parties, these may be brought before the Textiles Committee or before the GATT Council through the normal GATT procedures.

10. Any recommendations and observations of the Textiles Surveillance Body would be taken into account should the matters related to such recommendations and observations subsequently be brought before the CONTRACTING PARTIES to the GATT, particularly under the procedures of Article XXIII of the GATT.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 19

### 3. THE CONVENTION ESTABLISHING THE EUROPEAN FREE TRADE ASSOCIATION

#### Article 31

##### General Consultations and Complaints Procedure

1. If any member State considers that any benefit conferred upon it by this Convention or any objective of the Association is being or may be frustrated and if no satisfactory settlement is reached between the member States concerned, any of those member States may refer the matter to the Council.
2. The Council shall promptly, by majority vote, make arrangements for examining the matter. Such arrangements may include a reference to an examining committee constituted in accordance with Article 33. Before taking action under paragraph 3 of this Article, the Council shall so refer the matter at the request of any member State concerned. Member States shall furnish all information which they can make available and shall lend their assistance to establish the facts.
3. When considering the matter, the Council shall have regard to whether it has been established that an obligation under the Convention has not been fulfilled, and whether and to what extent any benefit conferred by the Convention or any objective of the Association is being or may be frustrated. In the light of this consideration and of the report of any examining committee which may have been appointed, the Council may, by majority vote, make to any member State such recommendations as it considers appropriate.
4. If a member State does not or is unable to comply with a recommendation made in accordance with paragraph 3 of this Article and the Council finds, by majority vote, that an obligation under this Convention has not been fulfilled, the Council may, by majority decision, authorize any member State to suspend to the member State which has not complied with the recommendation the application of such obligations under this Convention as the Council considers appropriate.
5. Any member State may, at any time while the matter is under consideration, request the Council to authorize, as a matter of urgency, interim measures to safeguard its position. If it appears to the Council that the circumstances are sufficiently serious to justify interim action, and without prejudice to any action which it may subsequently take in accordance with the preceding paragraphs of this Article, the Council may, by majority decision, authorize a member State to suspend its obligations under this Convention to such an extent and for such a period as the Council considers appropriate.

**4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat**  
(continued)

MTN/SG/W/8  
Page 20

4. ACP-EEC CONVENTION OF LOME

Article 81

1. Any dispute which arises between one or more member States or the Community on the one hand, and one or more ACP States on the other, concerning the interpretation or the application of this Convention may be placed before the Council of Ministers.
2. Where circumstances permit, and subject to the Council of Ministers being informed, so that any parties concerned may assert their rights, the Contracting Parties may have recourse to a good offices procedure.
3. If the Council of Ministers fails to settle the dispute at its next meeting, either Party may notify the other of the appointment of an arbitrator; the other Party must then appoint a second arbitrator within two months. For the application of this procedure, the Community and the member States shall be deemed to be one Party to the dispute.

The Council of Ministers shall appoint a third arbitrator.

The decisions of the arbitrators shall be taken by majority vote.

Each Party to the dispute must take the measures required for the implementation of the arbitrators' decision.

Lomé Convention: Protocol No. 4

Article 3

The arbitrators appointed in accordance with Article 81 of the Convention shall be entitled to a refund of their travel and subsistence expenditure. The latter shall be determined by the Council of Ministers.

One half of travel and subsistence expenditure incurred by the arbitrators shall be borne by the Community and the other half by the ACP States.

Expenditure relating to any Registry set up by the arbitrators, to preparatory inquiries into disputes, and to the organization of hearings (premises, personnel, interpreting, etc.) shall be borne by the Community.

Expenditure relating to special inquiries shall be settled together with the other costs and the parties shall deposit advances as determined by an order of the arbitrators.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 21

##### 5. THE TREATY ESTABLISHING THE CARIBBEAN COMMUNITY

###### Article 11

###### Disputes Procedure Within the Common Market

1. If any Member State considers that any benefit conferred upon it by this Annex or any objective of the Common Market is being or may be frustrated and if no satisfactory settlement is reached between the Member States concerned any of those Member States may refer the matter to the Council.
2. The Council shall promptly, make arrangements for examining the matter. Such arrangements may include a reference to a Tribunal constituted in accordance with Article 12 of this Annex. The Council shall refer the matter at the request of any Member State concerned to the Tribunal. Member States shall furnish all information which may be required by the Tribunal or the Council in order that the facts may be established and the issue determined.
3. If in pursuance of the foregoing provisions of this Article the Council or the Tribunal, as the case may be, finds that any benefit conferred on a Member State by this Annex or any objective of the Common Market is being or may be frustrated, the Council may, by majority vote, make to the Member State concerned such recommendations as it considers appropriate.
4. If a Member State to which a recommendation is made under paragraph 3 of this Article does not or is unable to comply with such recommendation the Council may, by majority vote, authorize any Member State to suspend in relation to the Member State which has not complied with the recommendation the application of such obligations under this Annex as the Council considers appropriate.
5. Any Member State may at any time while any matter is under consideration under this Article request the Council to authorize, as a matter of urgency, interim measures to safeguard its position. If the matter is being considered by the Tribunal such request shall be referred by the Council to the Tribunal for its recommendation. If it is found by a majority vote of the Council that the circumstances are sufficiently serious to justify interim action, and without prejudice to any action which it may subsequently take in accordance with the preceding paragraphs of this Article, the Council may, by majority vote, authorize a Member State to suspend its obligations under this Annex to such an extent and for such period as the Council considers appropriate.



**4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat**  
(continued)

MTN/SG/W/8  
Page 22

**Article 12**

**Reference to Tribunal**

1. The establishment and composition of the Tribunal referred to in Article 11 of this Annex shall be governed by the following provisions of this Article.
2. For the purposes of establishing an ad hoc tribunal referred to in Article 11 of this Annex, a list of arbitrators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General. To this end, every Member State shall be invited to nominate two persons, and the names of the persons so nominated shall constitute the list. The term of an arbitrator, including that of any arbitrator nominated to fill a vacancy, shall be five years and may be renewed.
3. Each party to the dispute shall be entitled to appoint from the list an arbitrator to an ad hoc tribunal. The two arbitrators chosen by the parties shall be appointed within thirty days following the date on which the notification was received by the Secretary-General. The two arbitrators shall within fifteen days following the date of the last of their own appointments, appoint a third arbitrator from the list who shall be the chairman; as far as practicable the chairman shall not be a national of any of the parties to the dispute.
4. Where the first two arbitrators fail to appoint a chairman within the period prescribed, the Secretary-General shall within fifteen days following the expiry of that period appoint a chairman. If any party fails to appoint an arbitrator within the period prescribed for such an appointment, the Secretary-General shall appoint an arbitrator within fifteen days following the expiry of such period. Any vacancy shall be filled in the manner specified for the initial appointment.
5. Where more than two Member States are parties to a dispute, the parties concerned shall agree among themselves on the two arbitrators to be appointed from the list. In the absence of such appointment within the prescribed period, the Secretary-General shall appoint a sole arbitrator whether from the list or otherwise, for the purpose.
6. An ad hoc tribunal shall decide its own procedure and may, with the consent of the parties to the dispute, invite any party to this Annex to submit its views orally or in writing.
7. The Secretary-General shall provide the ad hoc tribunal with such assistance and facilities as it may require.



#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 23

8. The expenses of the ad hoc tribunal shall be defrayed in such manner as determined by the Council.

9. Member States undertake to employ the procedures set out in this Article for the settlement of any dispute specified in paragraph 1 of Article 11 and to refrain from any other method of disputes settlement.

#### 6. THE INTERNATIONAL COCOA AGREEMENT

##### Article 61

##### Consultations

Each member shall accord sympathetic consideration to any representations made to it by another member concerning the interpretation or application of this Agreement and shall afford adequate opportunity for consultations. In the course of such consultations, on the request of either party and with the consent of the other, the Executive Director shall establish an appropriate conciliation procedure. The costs of such procedure shall not be chargeable to the Organization. If such procedure leads to a solution, this shall be reported to the Executive Director. If no solution is reached, the matter may, at the request of either party, be referred to the Council in accordance with Article 62.

##### Article 62

##### Disputes

1. Any dispute concerning the interpretation or application of this Agreement which is not settled by the parties to the dispute shall, at the request of either party to the dispute, be referred to the Council for decision.

2. When a dispute has been referred to the Council under paragraph 1, and has been discussed, a majority of members, or members holding not less than one third of the total votes, may require the Council, before giving its decision, to seek the opinion on the issues in dispute of an ad hoc advisory panel to be constituted as described in paragraph 3.

3. (a) Unless the Council unanimously decides otherwise, the ad hoc advisory panel shall consist of:

- (i) two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting members;

**4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat**  
(continued)

MTN/SG/W/8  
Page 24

- (ii) two such persons nominated by the importing members; and
  - (iii) a chairman selected unanimously by the four persons nominated under (i) and (ii) or, if they fail to agree, by the Chairman of the Council.
  - (b) Nationals of members shall not be ineligible to serve on the ad hoc advisory panel.
  - (c) Persons appointed to the ad hoc advisory panel shall act in their personal capacities and without instructions from any government.
  - (d) The costs of the ad hoc advisory panel shall be paid by the Organization.
4. The opinion of the ad hoc advisory panel and the reasons therefor shall be submitted to the Council which, after considering all the relevant information, shall decide the dispute.

Article 63

Complaints and Action by the Council

1. Any complaint that any member has failed to fulfil its obligations under this Agreement shall, at the request of the member making the complaint, be referred to the Council, which shall consider it and make a decision on the matter.
2. Any finding by the Council that a member is in breach of its obligations under this Agreement shall be made by a simple distributed majority vote and shall specify the nature of the breach.
3. Whenever the Council, whether as a result of a complaint or otherwise, finds that a member is in breach of its obligations under this Agreement it may, without prejudice to such other measures as are specifically provided for in other Articles of this Agreement, including Article 73, by special vote:
  - (a) suspend that member's voting rights in the Council and in the Executive Committee; and
  - (b) if it considers necessary, suspend additional rights of such member, including that of being eligible for, or of holding, office in the Council or in any of its committees until it has fulfilled its obligations.
4. A member whose voting rights are suspended under paragraph 3 shall remain liable for its financial and other obligations under this Agreement.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W/8  
Page 25

##### Article 73

##### Exclusion

If the Council finds, under paragraph 3 of Article 63, that any member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may by special vote exclude such member from the Organization. The Council shall immediately notify the Secretary-General of the United Nations of any such exclusion. Ninety days after the date of the Council's decision, that member shall cease to be a member of the Organization and, if such member is a Contracting Party, a Party to this Agreement.

#### 7. THE ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND

##### Article XVIII

##### Interpretation

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an executive director it shall be entitled to representation in accordance with Article XII, Section 3(j).

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require, within three months from the date of the decision, that the question be referred to the Board of Governors, whose decision shall be final. Any question referred to the Board of Governors shall be considered by a Committee on Interpretation of the Board of Governors. Each Committee member shall have one vote. The Board of Governors shall establish the membership, procedures, and voting majorities of the Committee. A decision of the Committee shall be the decision of the Board of Governors unless the Board by an eighty-five percent majority of the total voting power decides otherwise. Pending the result of the reference to the Board the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

(c) Whenever a disagreement arises between the Fund and a member which has withdrawn, or between the Fund and any member during liquidation of the Fund, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Fund, another by the member or withdrawing member and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted by the Fund. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

**4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat**  
(continued)

MIN/SG/W/8  
Page 26

Article XV

Withdrawal from Membership

Section 1. ---

Section 2. Compulsory withdrawal

(a) If a member fails to fulfil any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article IV, Section 6, Article V, Section 5, or Article VI, Section 1.

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfil any of its obligations under this Agreement, or a difference between a member and the Fund under Article IV, Section 6, continues, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the governors representing a majority of the total voting power.

(c) Regulations shall be adopted to ensure that before action is taken against any member under (a) or (b) above, the member shall be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing.

#### 4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat (continued)

MTN/SG/W.2  
Page 27

##### ANNEX B

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<sup>1</sup> Hudec's book is the most detailed study on dispute settlement in GATT. Attention is drawn to Appendix A of this book which compiles the disputes proceedings between 1948 and 1974.

**4.c Dispute Settlement in International Economic Agreements. Factual Study by the Secretariat**  
(continued)

MTN/SG/W/8  
Page 28

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## 4.d Notification and Surveillance. Proposal by the Director-General

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

C/111

14 March 1980

Limited Distribution

COUNCIL  
26 March 1980

NOTIFICATION AND SURVEILLANCEProposal by the Director-General

1.. At their thirty-fifth session, the CONTRACTING PARTIES adopted an Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (L/4907) drawn up in the Multilateral Trade Negotiations. An invitation to contracting parties to indicate at the beginning of every year to the Director-General the name of one or two persons who would be available to serve on panels has been issued in GATT/AIR/1607 in accordance with paragraph 13 of the Understanding. Some action is required with regard to the other parts of the Understanding and in paragraph 1.2.2 of the GATT Work Programme, also adopted at the thirty-fifth session (L/4884/Add.1, Annex VI), the CONTRACTING PARTIES specifically agreed that "the agreement relating to the conduct of the regular and systematic review of developments in the trading system as agreed in the Group "Framework" and in the Trade Negotiations Committee, should be referred to the Council, with the request that appropriate procedures be taken up at an early meeting of the Council".

2. This note makes a number of suggestions relating to action necessary to implement paragraphs 2, 3 and 24 of the Understanding which read as follows:

"Notification

"2. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.

"3. Contracting parties moreover undertake, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement, it being understood that such notification would of itself be without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement. Contracting parties should endeavour to notify such measures in advance of implementation. In other cases, where prior notification has not been possible, such measures should be notified promptly ex post facto. Contracting parties which have reason to believe that such trade measures have been adopted by another contracting party may seek information on such measures bilaterally, from the contracting party concerned.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 2

"Surveillance"

"24. The CONTRACTING PARTIES agree to conduct a regular and systematic review of developments in the trading system. Particular attention would be paid to developments which affect rights and obligations under the GATT, to matters affecting the interests of less-developed contracting parties, to trade measures notified in accordance with this understanding and to measures which have been subject to consultation, conciliation or dispute settlement procedures laid down in this understanding."

Action relating to paragraph 2

3. During the Multilateral Trade Negotiations the secretariat drew up a list of publication and notification requirements accepted by all contracting parties. The text of this document, originally circulated as MTN/FR/W/17, is reproduced in Annex I. As the introduction to Annex I makes clear, it deals only with requirements which apply to all governments to submit notifications to the CONTRACTING PARTIES. The secretariat has now completed the information contained in Annex I by drawing up a list of notification requirements which relate in each case only to some government or governments: this is contained in Annex II. The secretariat has also established a calendar of the dates on which regular notifications fall due: this is contained in Annex III.

4. It is suggested that the Council draw the attention of all contracting parties to paragraph 2 of the Understanding and to the notification requirements set out in Annexes I and II. It is also suggested that the Council invite contracting parties to submit notifications in accordance with the calendar set out in Annex III.

Action relating to paragraphs 3 and 24

5. Any arrangements which the Council might make at the present stage will necessarily be experimental and initially some amount of overlap may be unavoidable. This suggests that arrangements should be kept as simple as possible and that they should be reviewed, and if necessary modified, in the light of experience.

6. With these considerations in mind, the following suggestions are presented to the Council for discussion and adoption:

- (a) The attention of contracting parties should be drawn to paragraph 3 of the Understanding. Contracting parties should be invited to submit notifications under this paragraph, in particular when notifications covering the measures are not made under other GATT procedures.



4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 3

- (b) The reviews referred to in paragraph 24 of the Understanding should be conducted by the Council at sessions specially held for that purpose.
- (c) Reviews should be held twice a year, the first taking place in autumn 1980.
- (d) The secretariat should prepare a factual note, drawing on the notifications made and other relevant information, on which the first review could be based.
- (e) These arrangements should be reviewed by the Council in the light of the experience gained with the first review.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 4

ANNEX INOTIFICATIONS REQUIRED FROM CONTRACTING PARTIES<sup>1</sup>Note by the Secretariat

Under the provisions of the General Agreement and under special procedures established by the CONTRACTING PARTIES for the implementation of these provisions, the contracting parties are requested to submit notifications on a periodic basis or in connexion with certain trade policy actions, including actions for which prior approval by the CONTRACTING PARTIES is required. Furthermore, notification procedures have been established under certain special arrangements drawn up within the framework of the GATT and applicable only to contracting parties participating in such arrangements. Finally, certain notification procedures apply to particular contracting parties in accordance with their terms of accession or pursuant to certain waiver conditions.

In connexion with discussions in the Group "Framework", regarding notification, consultation, dispute settlement and surveillance, the question of the notifications required from contracting parties under various provisions of the General Agreement was raised. The present note is being circulated to facilitate discussions on this subject. The note is intended to give a comprehensive summary of the various notification procedures in force, as applicable to contracting parties generally, leaving aside notifications required under special arrangements or applicable to particular contracting parties only.

Article II:6(a) - Adjustment of specific duties

A contracting party wishing to adjust its specific duties under the provisions of Article II:6(a) is required to seek the concurrence of the CONTRACTING PARTIES pursuant to these provisions. Under current procedures the communication of the contracting party concerned is submitted to the Council for consideration. Since 1948, these procedures have been invoked ten times.

Article VI - Anti-dumping and countervailing duties

Article VI does not provide for the notification of specific anti-dumping or countervailing duty cases, although certain annual reports are required from the parties to the Agreement on Implementation of Article VI.

<sup>1</sup>This text was originally issued as MTN/FR/W/17.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)C/111  
Page 5

However, a contracting party wishing to impose an anti-dumping or countervailing duty for the purpose referred to in sub-paragraph 6(b) is required to seek the prior approval of the CONTRACTING PARTIES.

Article VI:6(c) requires that if in exceptional circumstances a contracting party levies a countervailing duty for the purpose referred to in sub-paragraph 6(b) of this Article without the prior approval of the CONTRACTING PARTIES such action shall be reported immediately to the CONTRACTING PARTIES.

The provisions of paragraphs 6(b) and 6(c) have, so far, not been invoked.

Article X - Publication of trade regulations

Under the provisions of Article X:1 contracting parties are required to publish promptly their trade regulations and matters relating thereto. In March 1964 the CONTRACTING PARTIES adopted a recommendation that contracting parties should forward promptly to the secretariat copies of the laws, regulations, decisions, rulings and agreements of the kind described in paragraph 1 of Article X (BISD 12S/49).

The response to this recommendation has been limited. The secretariat, however, does receive from a number of contracting parties copies of the national tariffs and amendments thereto.

At a meeting of the Council in November 1974 a representative referred to the serious deterioration of the international market for certain products and the need for rapid dissemination of information on developments in these markets and on the measures taken by governments. He considered it appropriate for contracting parties to make more use of the procedures for notification and information provided by GATT, independently of whether or not there was a formal obligation to provide such information. He referred in this connexion to the above-mentioned recommendation of 20 March 1964 (C/M/102).

There was no further response to this matter.

Quantitative restrictions(a) Residual restrictions

Quantitative restrictions applied by eighteen developed contracting parties were examined by a Joint Working Group set up by the Council in January 1970. In June 1971 the Council decided that the data assembled by the Joint Working Group should be kept up to date and contracting parties should be invited to notify annually by 30 September any changes which should be made concerning restrictions contained in the consolidated document.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 6

Every year the secretariat issues an airgram inviting contracting parties to communicate any necessary changes to the basic documentation (see L/4604 and Notes on individual import restrictions contained in COM.IND/W/67/Add.1 and MTN/3E/DOC/7). About half of the eighteen developed contracting parties concerned regularly respond to this invitation.

(b) Licensing

At their twenty-eighth session in November 1972 the CONTRACTING PARTIES decided that the data assembled on licensing systems should be kept up to date and that contracting parties should be invited to notify annually by 30 September any changes which should be made concerning the information contained in the consolidated document.

Every year the secretariat issues an airgram inviting contracting parties to communicate any necessary changes to the basic documentation (see L/4598 and COM.IND/W/55 - COM.AG/W/72). Since 1971 responses have been received from fifty-six contracting parties.

(c) Import restrictions applied for balance-of-payments purposes

(i) Articles XII:4(a) and XVIII:12(a)

Introduction or substantial intensification of import restrictions

A contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under Articles XII or XVIII:B is required, pursuant to the provisions of Article XII:4(a) or Article XVIII:12(a), to enter into consultations with the CONTRACTING PARTIES.

In November 1960 the CONTRACTING PARTIES established procedures for the implementation of these provisions under which the contracting party concerned is required to furnish detailed information promptly for circulation to the contracting parties, after which the consultation is conducted by the Council (BISD, 9S/18).

The number of notifications under this procedure has been limited.

(ii) Consultations under Articles XII:4(b) and XVIII:12(b)

In accordance with the provisions of Articles XII:4(b) and XVIII:12(b) the Committee on Balance-of-Payments Restrictions conducts consultations with contracting parties. The consulting countries submit a basic document or a statement to the Committee.

A series of consultations is held twice or three times a year in accordance with a programme established in consultation with the consulting contracting parties concerned and with the International Monetary Fund.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)C/111  
Page 7Article XVI - Subsidies

Article XVI requires that contracting parties which maintain subsidies having the effects described in paragraph 1 of the Article, are to notify in writing the nature and extent of the subsidization. The CONTRACTING PARTIES established procedures for such notifications and adopted a questionnaire with a view to achieving a standardized reporting system.

Under current procedures (BISD, 11S/59) the contracting parties are invited to submit by the end of January every third year, new and full responses to the questionnaire on subsidies (BISD, 9S/193) and to notify changes to the basic notifications in the intervening years.

Every year the secretariat circulates a document inviting contracting parties to submit such a notification (see L/4622).

The number of responses to the last full notification, in 1975, was seventeen (L/4141 and addenda).

Article XVII - State trading

Article XVII requires that contracting parties which maintain State-trading enterprises, in the sense of paragraph 1 of that Article, shall notify the CONTRACTING PARTIES of the products imported into or exported from their territories by such enterprises. The CONTRACTING PARTIES established procedures for such notifications and adopted a questionnaire designed to achieve a standardized reporting system.

Under current procedures (BISD, 11S/59) the contracting parties are invited to submit by the end of January every third year new and full responses to the questionnaire (BISD, 9S/184) and to notify changes to the basic notifications in the intervening years.

Every year the secretariat circulates a document inviting contracting parties to submit such a notification (see L/4623).

The number of responses to the last full notification, in 1975, was seventeen (L/4140 and addenda).

Article XVIII:A - Modification of concessions

A contracting party wishing to modify or withdraw a concession pursuant to the provisions of Article XVIII:7(a), in order to promote the establishment of a particular industry, is required to notify the CONTRACTING PARTIES and to enter into negotiations in this regard.

These provisions have been invoked eight times.

#### 4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 8

##### Article XVIII:C

A contracting party wishing to have recourse to the provisions of Section C of Article XVIII and to provide governmental assistance to promote the establishment of a particular industry is required to notify the special difficulties it meets and to indicate the specific measure which it proposes to introduce. A questionnaire for the guidance of contracting parties was approved in 1958 (BISD, 7S/85).

Since 1957 when the revised provisions of Article XVIII:C entered into force, the provisions have been invoked by two contracting parties. Since 1966 the provisions have not been invoked.

##### Article XVIII:D

A contracting party wishing to have recourse to the provisions of Section D of Article XVIII is required to seek the approval of the CONTRACTING PARTIES for the introduction of the measure it desires to take to promote the establishment of a particular industry.

These provisions have not been invoked.

##### Article XIX - Emergency action

Article XIX:2 requires any contracting party, before taking emergency action pursuant to the provisions of Article XIX:1, to give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable. However, in critical circumstances action may be taken provisionally without prior consultation. In virtually all cases it has been this latter provision which has been applied.

##### Article XXII - Consultation

Procedures under Article XXII on questions affecting the interests of a number of contracting parties were adopted in 1958 (BISD, 7S/24). Under these procedures any contracting party seeking a consultation under Article XXII is required to inform the Director-General for the information of all contracting parties, so as to enable any other contracting party to express its desire to be joined in the consultation.

##### Article XXIV - Customs unions and free-trade areas; regional agreements

###### (a) Notifications

Article XXIV:7(a) requires that any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)C/111  
Page 9

At its meeting in October 1972 the Council established procedures for the examination of such agreements. The Council decided, without prejudice to the legal obligation to notify in pursuance of Article XXIV, to invite contracting parties that sign an agreement falling within the terms of Article XXIV, paragraphs 5 to 8, to inscribe the item on the agenda for the first meeting of the Council following such signature. This should allow the Council to determine the procedures for examination of the agreement (BISD, 19S/13).

(b) Progress reports

At their twenty-seventh session the CONTRACTING PARTIES discussed the question of periodic reports on progress under customs unions and free-trade areas notified under Article XXIV. The CONTRACTING PARTIES instructed the Council to establish a calendar fixing dates for the examination, every two years, of reports on developments under regional agreements submitted by the parties to the agreements (see L/4445).

Biennial reports under these procedures are regularly provided.

Article XXVIII - Modification of schedules(a) Article XXVIII:1

A contracting party wishing to have recourse to the provisions of Article XXVIII:1 for the renegotiation or withdrawal of certain concessions in its schedule is required to notify the CONTRACTING PARTIES. Such notification is to take place not earlier than six months, nor later than three months before the termination date of the three-year period referred to in Article XXVIII:1 (see Notes and Supplementary provisions ad Article XXVIII). The current three-year period will terminate on 31 December 1978.

These provisions were invoked in 1966 by five, in 1969 by seven and in 1972 by four contracting parties. These provisions were not invoked in 1975.

(b) Article XXVIII:4

A contracting party intending to seek authorization of the CONTRACTING PARTIES to enter into negotiations for the modification or withdrawal of a concession under the provisions of Article XXVIII:4 should submit its request for consideration by the Council.

Since 1953 these provisions have been invoked fifty-six times.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 10

(c) Article XXVIII:5

Any contracting party wishing to reserve the right for the duration of the three-year period envisaged in paragraph 1, to modify its schedule is required to notify the CONTRACTING PARTIES before the termination of the current three-year period. The current three-year period will terminate on 31 December 1978.

In the three-year period 1970-72 these provisions were invoked by nine contracting parties of which eventually four carried out negotiations. The number of invocations for the three-year periods 1973-75 and 1976-79 was twelve in both cases, of which five in 1973-75 and four in 1976-79 eventually led to renegotiations.

Article XXXVII:2(a) - Non-fulfilment of Article XXXVII:1

The provisions of Article XXXVII:1 contain certain commitments of developed contracting parties. Under the provisions of paragraph 2(a) of Article XXXVII any contracting party not giving effect to any of the provisions of paragraph 1, or any other interested contracting party, is required to report the matter to the CONTRACTING PARTIES.

Review of implementation of Part IV

In order to enable the Committee on Trade and Development to keep under continuous review the application of the provisions of Part IV, the Committee agreed, in March 1965, on reporting procedures (BISD, 13S/79). Guidelines for the submission of notifications, the preparation of reports and the carrying out of reviews on the implementation of Part IV which provide that notifications made by governments should be as exhaustive and comprehensive as possible, and should relate both to measures specifically mentioned in paragraphs 1 and 3, or paragraph 4, as the case may be of Article XXXVII, as well as to all steps and measures of interest to the CONTRACTING PARTIES in relation to the objectives and provisions of Part IV, were adopted by the Committee on Trade and Development (COM.TD/24, paragraph 10).

Every year the secretariat issues an airgram inviting contracting parties to make the relevant information available.

In November 1977 the Committee on Trade and Development was of the view that the existing reporting procedures were not being complied with to the fullest extent possible (BISD, 24S/55, paragraph 24).



4.d Notification and Surveillance. Proposal by the Director-General (*continued*)C/111  
Page 11Border tax adjustments

Based on the recommendations of the Working Party on Border Tax Adjustments, the Council, in December 1970, introduced a notification procedure, on a provisional basis, whereby contracting parties would report changes in their tax adjustments (BISD, 18S/108). The notifications are to relate to any major changes in tax adjustment legislation and practices involving international trade, and in particular at bringing periodically up to date the information contained in the consolidated document on contracting parties' practices (L/3389) on tax adjustments drawn up in the course of the Working Party's work.

Notifications under this procedure are currently distributed as addenda to document L/3518. Five contracting parties have submitted such notifications (see L/3518 and addenda 1-13).

Liquidation of strategic stocks

Under the Resolution of 4 March 1955 a contracting party intending to liquidate a substantial quantity of strategic stocks should give at least forty-five days' prior notice of such intention (BISD, 3S/51).

Since 1970 one contracting party has submitted a number of notifications under this procedure.

Marks of origin

In 1958 the CONTRACTING PARTIES adopted certain rules on marks of origin which elaborated the basic principles of Article IX in order to reduce the difficulties and inconveniences which marking regulations may cause to the commerce and industry of the exporting country (Recommendation of 21 November 1958, BISD 7S/30). The Recommendation also invites contracting parties to report, before 1 September each year, changes in their legislation, rules and regulations concerning marks of origin.

A number of contracting parties have complied with this invitation, but since 1961 no further submissions have been received (see L/478 and addenda 1-20).

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 12

ANNEX II

Information Required from Some Contracting Parties

(a) Accession Protocols

- Hungary: The Protocol for the Accession of Hungary states, in its paragraph 6(b):

"(b) Particular attention shall be paid, in the course of these consultations, to the operation of paragraph 3(b) of this Protocol. The parties shall consult on the evolution of imports by Hungary from contracting parties as well as regulations affecting Hungarian foreign trade. To this effect the Working Party will examine all aspects of the development of Hungarian imports on the basis of inter alia relevant information to be provided by Hungary." (BISD, 20S/5)

- Poland: The Protocol for the Accession of Poland states, in its paragraph 5:

"5. Nine months after the date of this Protocol and annually thereafter the Polish Government shall consult with the CONTRACTING PARTIES with a view to reaching agreement on Polish targets for imports from the territories of the contracting parties as a whole in the following year. These consultations on Polish trade with contracting parties would follow the lines laid down in Annex A to this Protocol." (BISD, 15S/49)

- Romania: The Protocol for the Accession of Romania states, in its paragraph 5:

"5. Early in the second year after the entry into force of this Protocol and in alternate years thereafter, or in any other year at the specific request of a contracting party or Romania, consultations shall be held between Romania and the CONTRACTING PARTIES in a working party to be established for this purpose to review the development of reciprocal trade and measures taken under the terms of this Protocol. These consultations shall follow the lines laid down in Annex A to this Protocol..." (BISD, 18S/7)

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)C/111  
Page 13

- Switzerland: The Protocol for the Accession of Switzerland states, in its paragraph 4:

"4... Switzerland shall furnish annually to the CONTRACTING PARTIES a report on the measures maintained consistently with this reservation, and upon request of the CONTRACTING PARTIES enter into consultation with them regarding such measures. Furthermore, the CONTRACTING PARTIES shall conduct a thorough review of the application of the provisions of this paragraph every three years." (BISD, 14S/8)

- Other contracting parties in relation to Poland, Romania and Hungary: The Protocols for the accession of these countries to the General Agreement state respectively:

Hungary, paragraph 4(c):

"4.(c) To this end, contracting parties shall notify, on entry into force of this Protocol, on 1 January 1975, and thereafter before the consultations provided for in paragraph 6 below, discriminatory prohibitions and quantitative restrictions still applied to imports from Hungary. Such notifications shall include a list of the products subject to these prohibitions and restrictions, specifying the type of restrictions applied (import quotas, licensing systems, embargoes, etc.) as well as the value of trade effected in the products concerned and the measures adopted with a view to eliminating these prohibitions and restrictions under the terms of the preceding sub-paragraphs." (BISD, 20S/4)

Poland, paragraph 3(b):

"3.(b) The CONTRACTING PARTIES shall in the course of the annual consultations provided for in paragraph 5 below review measures taken by contracting parties pursuant to the provisions of this paragraph, and make such recommendations as they consider appropriate." (BISD, 15S/48)

Romania, paragraph 3(b):

"3.(b) Contracting parties shall notify, on entry into force of this Protocol, and before the consultations provided for in paragraph 5 below, discriminatory prohibitions and quantitative restrictions still applied at that time to imports

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 14

from Romania. Such notifications shall include a list of the products subject to these prohibitions and restrictions, specifying the type of restrictions applied (import quotas, licensing systems, embargoes, etc.) as well as the value of trade effected in the products concerned and the measures adopted with a view to eliminating these prohibitions and restrictions under the terms of the preceding sub-paragraph." (BISD, 18S/6)

(b) Waivers

- Australia: Products of Papua New Guinea, paragraph 3:

"3. The Government of Australia shall report annually to the CONTRACTING PARTIES on the measures taken and on the effects of those measures on the trade of Papua New Guinea and on imports of the products affected from all sources into Australia." (BISD, 2S/19)<sup>1</sup>

- Turkey: Stamp duty paragraph 3:

"3. The Government of Turkey shall, on 15 September 1964 and, so long as the stamp duty is maintained on products included in Schedule XXVII, annually thereafter, submit to the CONTRACTING PARTIES a report on the operation of the stamp duty in relation to the implementation of the Five-Year Plan and shall consult with the CONTRACTING PARTIES on the continued maintenance of the stamp duty taking into account any changes in the application of the stamp duty to individual products." (BISD, 12S/56)

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<sup>1</sup>The Report of the Working Party established to examine the provisions of the Agreement on Trade and Commercial Relations between Australia and Papua New Guinea adopted on 11 November 1977 states, in its paragraph 5: "It was anticipated that formal action to disinvoke the 1953 waiver would be taken shortly."

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)C/111  
Page 15

## - United States: Agricultural Adjustment Act, paragraph 6:

"6. The CONTRACTING PARTIES will make an annual review of any action taken by the United States under this Decision. For each such review the United States will furnish a report to the CONTRACTING PARTIES showing any modification or removal of restrictions effected since the previous report, the restrictions in effect under Section 22 and the reasons why such restrictions (regardless of whether covered by this waiver) continue to be applied and any steps it has taken with a view to a solution of the problem of surpluses of agricultural commodities."  
(BISD, 3S/36)

## - United States: imports of automotive products, paragraph 6:

"6. In addition to receiving an annual report as referred to in the procedures adopted by the CONTRACTING PARTIES on 1 November 1956, the CONTRACTING PARTIES will, two years from the date when this waiver comes into force and, if necessary, biennially thereafter, review its operation and consider how far, in the circumstances then prevailing, the United States would continue to need cover to implement the agreement with Canada, having regard to the provisions of paragraph 1 of Article 1 of the GATT." (BISD, 14S/39)

## - Generalized System of Preferences, paragraph (c):

"(c) That any contracting party, which introduces a preferential tariff arrangement under the terms of the present Decision or later modifies such arrangement, shall notify the CONTRACTING PARTIES and furnish them with all useful information relating to the actions taken pursuant to the present Decision;"  
(BISD, 18S/25)

- Trade Negotiations among Developing Countries, paragraph (e):<sup>1</sup>

"(e) That the CONTRACTING PARTIES will review annually, on the basis of a report to be furnished by the participating countries, the operation of this Decision in the light of the aforementioned objectives and considerations and after five years of its operation carry out a major review in order to evaluate its effects. Before the end of the tenth year, the CONTRACTING PARTIES will undertake another major review of its operations with a view to deciding whether this Decision should be continued or modified. In connexion with such annual reviews and major reviews, the participating contracting parties shall make available to the CONTRACTING PARTIES relevant information regarding action taken under this Decision." (BISD, 18S/27)

<sup>1</sup>The Committee on Trade and Development at its meeting of March 1980 agreed on arrangements which have a bearing on these notification requirements.

#### 4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 16

- (c) Differential and more favourable treatment reciprocity and fuller participation of developing countries, paragraph 4(a):<sup>1</sup>

"4.\* Any contracting party taking action to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall:

- (a) notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action;" (L/4903)

- (d) Trade arrangements between India, the United Arab Republic and Yugoslavia, operative paragraph:<sup>1</sup>

"The CONTRACTING PARTIES

Decide that, notwithstanding the provisions of Article I:1 of the General Agreement, the participating States may continue to implement the Agreement, as amended by the Protocol and with the inclusion of the additional products mentioned in document L/3933, subject to the relevant terms and conditions of the Decisions of 20 February 1970 and 13 November 1973, until 31 March 1983, it being understood, however, that this Decision shall be subject to review by the CONTRACTING PARTIES each two years as well as in the fifth year of the operation of the Decision on the basis of reports to be submitted by the participating States." (BISD, 25S/9)

- (e) Bangkok Agreement<sup>1</sup>, operative paragraph (c):

"(c) On the basis of a report by the participating States on developments under the Agreement, the operation of this Decision shall be reviewed biennially by the CONTRACTING PARTIES in the light of the provisions of the General Agreement and of the objectives stated above. The CONTRACTING PARTIES may, in the course of the reviews, make such recommendations to the participating contracting parties as may be appropriate, including any arising out of any consultations held in regard to the effects of the Agreement on the trade of contracting parties. The CONTRACTING PARTIES may also in the course of the reviews, take such decisions regarding the operation of this Decision as may be appropriate in the light of developments at that time." (BISD, 25S/8)

<sup>1</sup>The Committee on Trade and Development at its meeting of March 1980 agreed on arrangements which have a bearing on these notification requirements.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)C/111  
Page 17

- (f) Agreement on ASEAN Preferential Trading Arrangements<sup>1</sup>, operative paragraph (c):

"(c) on the basis of reports by the participating States on developments under the Agreement, the operation of this Decision shall be reviewed biennially by the CONTRACTING PARTIES in the light of the provisions of the General Agreement and of the objectives stated above. The CONTRACTING PARTIES may, in the course of the reviews, make such recommendations to the participating contracting parties as may be appropriate, including any arising out of any consultations held in regard to the effects of the Agreement on the trade of contracting parties. The CONTRACTING PARTIES may also in the course of the reviews, take such decisions regarding the operation of this Decision as may be appropriate in the light of developments at that time." (L/4768)

- (g) Committee on Trade and Development - Sub-Committee on Protective Measures

Developed contracting parties are expected to notify new protective measures affecting imports from developing countries having full regard to the provisions of Part IV and without prejudice to other GATT provisions.

- (h) Arrangement regarding International Trade in Textiles:

Article 10.4 of the Arrangement states:

"4. The Committee shall once a year review the operation of this Arrangement and report thereon to the GATT Council. To assist in this review, the Committee shall have before it a report from the Textiles Surveillance Body, a copy of which will also be transmitted to the Council. The review during the third year shall be a major review of this Arrangement in the light of its operation in the preceding years."

The report of the Textiles Surveillance Body contains a summary of notifications made under the Arrangement.

<sup>1</sup>The Committee on Trade and Development at its meeting of March 1980 agreed on arrangements which have a bearing on these notification requirements.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 18

(i) MTN Agreements and Arrangements

Each of the Agreements provides for regular reports to be made to the CONTRACTING PARTIES. At their thirty-fifth session, the CONTRACTING PARTIES decided that:

"1. The CONTRACTING PARTIES reaffirm their intention to ensure the unity and consistency of the GATT system, and to this end they shall oversee the operation of the system as a whole and take action as appropriate.

"2. The CONTRACTING PARTIES note that as a result of the Multilateral Trade Negotiations, a number of Agreements covering certain non-tariff measures and trade in Bovine Meat and Dairy Products have been drawn up. They further note that these Agreements will go into effect as between the parties to these Agreements as from 1 January 1980 or 1 January 1981 as may be the case and for other parties as they accede to these Agreements.

"3. The CONTRACTING PARTIES also note that existing rights and benefits under the GATT of contracting parties not being parties to these Agreements, including those derived from Article I, are not affected by these Agreements.

"4. In the context of 1 and 3 above, the CONTRACTING PARTIES would receive adequate information on developments relating to the operation of each Agreement and to this end there will be regular reports from the concerned Committees or Councils to the CONTRACTING PARTIES. The CONTRACTING PARTIES may request additional reports on any aspect of the various Committees' or Councils' work." (L/4905)



4.d Notification and Surveillance. Proposal by the Director-General (*continued*)C/111  
Page 19ANNEX IIICalendar of Notifications Required under  
Regular Reporting ProceduresDraft

The time-table below was established on the basis of agreed procedures or in the light of past practice.

(a) Requirements accepted by all contracting parties:

(i)	Subsidies (BISD,11S/59)	30 January
(ii)	State trading (BISD,11S/59)	30 January
(iii)	Marks of origin (BISD,7S/30)	1 September
(iv)	Licensing (SR.28/6 and L/3756)	30 September
(v)	Implementation of Part IV (BISD,13S/79)	30 September

(b) Requirements accepted by some contracting parties:

(i)	Joint Working Group on Import Restrictions (C/M/70)	30 September
(ii)	At its meeting of 14 November 1978 the Council agreed on the following biennial time-table for reporting by regional agreements (L/4725):	
	Arab Common Market	April 1979
	Caribbean Community and Common Market	April 1979
	Agreement Australia-Papua New Guinea	October 1979
	Agreements EEC-Algeria, Morocco, Tunisia	October 1979
	Agreements EEC-Austria, Finland, Iceland, Norway, Portugal, Sweden, Switzerland and Liechtenstein	October 1979
	EFTA-FINEFTA	October 1979
	Agreement Finland-Hungary	October 1979
	New Zealand-Australia Free-Trade Area	October 1979
	Agreement EEC-Cyprus	April 1980
	Agreements EEC-Egypt, Jordan, Lebanon, Syria	April 1980

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/111  
Page 20

Agreement EEC-Israel	April 1980
Agreement EEC-Malta	April 1980
Agreement EEC-Spain	April 1980
Agreement Finland-Czechoslovakia	April 1980
Central American Common Market	October 1980
ACP-EEC Convention of Lomé	October 1980
Agreement EEC-Greece	October 1980
Agreement EEC-Turkey	October 1980
LAFTA	October 1980
(iii) Accession Protocols:	
Hungary (every two years)	September 1981
Poland	September 1980
Romania (every two years)	January 1982
Switzerland	October
(iv) Waivers:	
Australia (products of Papua-New Guinea)	October
Turkey (stamp duty)	February
United States (Agricultural Adjustment Act)	November
United States (imports of automotive products)	October
Trade Negotiations among Developing Countries	October
(v) Other:	
Trade Arrangements between India, the United Arab Republic and Yugoslavia	November

Source: Document C/111 of 14 March 1980

Note: Adoption of the Proposal, Minutes of the Council Meeting held on 26 March 1980, C/M/139.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)GENERAL AGREEMENT ON  
TARIFFS AND TRADERESTRICTED

C/M/139

24 April 1980

Limited Distribution

COUNCIL  
26 March 1980MINUTES OF MEETINGHeld in the Centre William Rappard on 26 March 1980

Chairman: Mr. G.O. MARTINEZ (Argentina)

	<u>Page</u>
<u>Subjects discussed:</u> 1. Consultation on trade with Hungary	2
- Report of the Working Party	2
2. Agreement between Finland and Poland	2
- Report of the Working Party	2
3. Textiles Committee	3
- Report on the annual review	3
4. Tariff matters	4
- Introduction of a loose-leaf system for the schedules of tariff concessions	4
5. India - Auxiliary duty of customs	6
- Request for extension of waiver	6
6. United States - Agricultural Adjustment Act	7
7. Documentation on non-tariff measures	9
- Proposal by the Director-General	9
8. Notification and surveillance	11
- Proposal by the Director-General	11
9. United States - Prohibition of imports of tuna and tuna products from Canada	13
10. EEC - Refunds on exports of sugar	14
- Recourse by Australia	14
11. GATT - Work programme	20
- Communication from New Zealand	20
12. Administrative and financial questions	22
- Final position of the 1979 budget	22
13. Spain - Tariff treatment of unroasted coffee (L/4954)	22
14. EEC - Imports of beef from Canada	23
15. EEC - Co-operation Agreement with Yugoslavia	24
16. Turkey - Economic measures	24
17. United States - Proposed Article XIX action for leather wearing apparel	25

(...)

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/M/139  
Page 11

(...)

8. Notification and surveillance - Proposal by the Director-General (C/111)

The Chairman recalled that at their thirty-fifth session in November 1979 the CONTRACTING PARTIES had adopted an Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (L/4907). He said that in this connexion the Council had before it a Proposal by the Director-General in respect of Notification and Surveillance, contained in document C/111.

In introducing his proposal, the Director-General said that a number of informal consultations had been held on this subject and that he had attempted to strike a balance between different views expressed during these consultations and to present a pragmatic proposal designed to get the work started. He drew the attention of the Council to the calendar for regular notifications in Annex III of the document and said that there were some regional agreements, such as the Bangkok Agreement and the ASEAN Preferential Trading Arrangements, which had not been included pending further discussion in the Committee on Trade and Development regarding the implementation of the notification provisions of the Enabling Clause (L/4903). For some of the items that did appear in the calendar, the dates indicated could also be subject to change as a result of whatever decision could be taken in regard to the Enabling Clause. He also said that the date relating to the Turkish stamp duty was October instead of February.

In conclusion, he reminded the interested delegations that, in accordance with paragraph 25 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance, the technical assistance services of the secretariat were available to developing countries in connexion with any of the matters dealt with in his proposal.

4.d Notification and Surveillance. Proposal by the Director-General (*continued*)

C/M/139  
Page 12

The representative of Canada said that throughout the MTN Canada had attached considerable importance to a general improvement in the GATT dispute settlement process. His delegation believed that progress had been made toward that end, through provisions in the various MTN Agreements, and through the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance. He said that the Canadian delegation could accept the Director-General's proposal with respect to paragraph 2 of the Understanding, but wished to clarify three points relating to paragraphs 3 and 24 thereof, as follows. First, Canada agreed that arrangements at this stage should of necessity be experimental. While noting that some duplication would be unavoidable initially, every effort should be made to avoid it. Second, Canada agreed that it made good sense to consider paragraphs 3 and 24 as an integral package, as in the Director-General's proposal, taken together with paragraph 6(d), and that the review process should simply flow from a compilation of notifications. His delegation did not want to accept such an inference at this time, however, when it was not clear as to how such a review would relate to other reviews of developments of trade and trade measures within the GATT. Third, his delegation pointed to the element within paragraph 24 of the Understanding, on which it placed importance, and which seemed to call for a function not otherwise or elsewhere served in the GATT in a broad overview. He referred to the specific references that attention be paid to developments which affect rights and obligations under the GATT and to measures which have been subject to consultation, conciliation, or dispute settlement procedures. It was his delegation's understanding that from time to time the contracting parties should stand back in order to assess how well the system was working in dealing with trade problems and disputes. He felt that such a function, as it related to the interests of less-developed contracting parties, would play a different, but complementary rôle to functions now agreed within the Committee on Trade and Development, and under Part IV of the General Agreement. He recognized, however, that "a regular and systematic review of developments in the trading system" was a broad mandate, and he did not want to preclude a number of other elements that might be incorporated, as the ideas on this matter further developed.

He said that with respect to actual modalities, his delegation supported the idea that, initially at least, the Council should conduct the reviews at special sessions. The frequency of the reviews and the contents of the secretariat's factual note should be looked at in due course, in the light of further reflection and informal consultations.

The representative of Korea expressed support for the Canadian statement. He felt that the procedure should be preliminary and experimental and that it should be modified in the course of time. He supported the adoption of the proposal.

The Council adopted the proposal on Notification and Surveillance contained in document C/111, bearing in mind the statements made on its experimental nature. Contracting parties were invited to submit notifications in accordance with the calendar set out in Annex III of the document.

(...)

#### 4.e Uniform Interpretation and Effective Application of the Agreement. Report by the Chairman

## GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/53

29 November 1984

Special Distribution

Committee on Subsidies  
and Countervailing Measures

### UNIFORM INTERPRETATION AND EFFECTIVE APPLICATION OF THE AGREEMENT

#### Report by the Chairman

Past discussions in the Committee have revealed, on several occasions, divergent perceptions regarding the interpretations of Articles 8 and 10 and the application of Article 9. In this respect some delegations proposed that the Committee should undertake a review of these provisions in order to arrive at their uniform interpretation and application (SCM/M/18, paragraphs 14, 15, 17, 18, 24, 34, 47, 50 and 54).

Following these proposals and in pursuance of the agreement reached in the Committee (see SCM/M/18, paragraphs 38 and 59), the Chairman has, over the past several months, organized informal consultations. Interim reports on these consultations were made to the Committee at its meetings on 18 November 1983 (SCM/M/Spec/9, paragraph 2) and 10 May 1984 (SCM/M/Spec/10, paragraph 2).

Set out below are problems identified during the Chairman's consultations, relating to Article 8-10 of the Agreement, as well as proposals aimed at overcoming these problems and thus arriving at a uniform interpretation and effective application of the provisions of the Agreement mentioned above.

#### Article 8

1. In order to avoid differing interpretations as to the scope and application of Article 8, the following interpretative decision could be taken:
  - (a) Article 8 (Subsidies - General Provisions) is applicable to primary and non-primary products.
  - (b) Paragraph 4 does not explicitly cover all potential adverse effects arising from subsidies.
  - (c) The meaning of footnote 28 is the following: concerning certain primary products if the effects of the subsidized exports are to displace the exports of a like product of another signatory from a third country market, then the determination of whether these effects are such as to



#### 4.e Uniform Interpretation and Effective Application of the Agreement. Report by the Chairman (continued)

SCM/53  
Page 2

result in nullification or impairment or serious prejudice should be done under Article 10. The emphasis is therefore on the displacement effect. Other possible effects are not affected by this footnote.

- (d) For the above reasons and taking into account footnote 25, the limitation of application of Article 8, resulting from footnote 28, would not affect a finding of serious prejudice in the sense of Article XVI:1 under the Code when the effects of a subsidy on certain primary products are other than displacement from a third country market.

##### Article 9

2. The language of Article 9:1 seems to be clear, i.e. it prohibits the granting of export subsidies on products other than certain primary products. This prohibition is formulated in an unconditional way, i.e. it does not depend on other considerations, such as primary product component, methods of production or modalities of sale, etc.

3. If Article 9:1 were interpreted to allow the subsidization of primary product components then the scope and impact of Article 9 would be radically reduced as most processed products contain primary components.

4. There would, however, appear to be a certain contradiction between the flat prohibition in Article 9 and paragraph (d) of the Illustrative List. It has to be recognized that although paragraph (d) contains ambiguities it nevertheless allows an interpretation according to which not only primary components but any components used in the production of an exported product may, subject to certain conditions related to the modalities of delivery, be subsidized to cover the difference between their domestic and world market prices. In particular the economic effects on the export market of a system consistent with paragraph (d) could be the same as the effects of the present practices of some signatories to subsidize primary product components of exported processed agricultural products.

5. There is also a certain grey area between Article 9 and Article 10. A country subsidizing exports of a primary product makes it available to foreign producers at a reduced price. It seems therefore economically unsound to refuse the same benefits to its domestic producers. It is also argued that one reason for subsidizing exports or primary products is the need to dispose of surpluses. It seems that the most obvious channel to be used in such a situation is to encourage their domestic consumption, i.e. to offer them to the domestic processing industry at competitive (in relation to the world market) prices.

6. If, however, subsidization of a primary component as such were allowed there would, under the existing provisions, be no discipline applicable to those subsidized primary products contained in exported processed products in so far as Article 9 and Article 10 are concerned.

7. There is a need to overcome problems identified above and to avoid possible interpretations which would allow unlimited subsidization on the basis that each processed product contains primary components. Furthermore,

#### 4.e Uniform Interpretation and Effective Application of the Agreement. Report by the Chairman (continued)

SCM/53  
Page 3

there is a need to bridge the gap between Articles 9 and 10 and to address the issue of economic parity in the treatment of domestic producers producing for export and of foreign producers using the subsidized primary products. It is therefore necessary to address certain solutions. The solution should preferably establish a general rule based on an agreed interpretation. If a general rule is not possible, the scope for exceptions should be clearly defined.

8. A solution may be sought through an interpretative decision on paragraph (i) of the Illustrative List. Such a decision could read:

"For purposes of Article 9 the Committee decides:

If the imports of a primary agricultural product are subjected to a system for the stabilization of the domestic price or the return to domestic producers, the following interpretation of paragraph (i) of the Illustrative List will apply:

- (a) The domestic producer physically incorporating in a processed agricultural product a quantity of the domestic product equal to, and having the same quality and characteristics as, the product available to him on world markets, may obtain the remission or drawback of import charges (including variable levies) which would have been levied on the same quantity of imported product had he chosen to substitute the domestic primary component by the imported primary component.
- (b) Any remission or drawback in excess of what was or would have been levied by way of import charges on the corresponding quantity of primary component that has been physically incorporated will be subject to the provision of paragraph (i) of the Illustrative List.
- (c) In any case (including a situation where the domestic prices are maintained at a higher level not because of charges on imports but because of quantitative or similar restrictions), the remission or drawbacks shall not be higher than the difference between the domestic price and the world market price of the primary component.
- (d) The calculation of the amount of the remission or drawback will be effectuated according to the criteria to be established by the Group of Experts and approved by the Committee.
- (e) The Committee shall agree on measures to be taken so as to ensure full transparency regarding the actual amount of remission of drawbacks.
- (f) Domestic primary components used in accordance with paragraph (a) above shall be considered as being "internally exported" and, for the purpose of Article 10:1, shall be added to the quantities of the primary product which have been effectively exported.
- (g) The methods to be used for the calculation of the amounts "internally exported" shall be developed by the Group of Experts. The Group will also propose measures ensuring full transparency as to the quantities "internally exported".



#### 4.e Uniform Interpretation and Effective Application of the Agreement. Report by the Chairman (continued)

SCM/53  
Page 4

##### Paragraph (d) of the Illustrative List of Export Subsidies

9. Paragraph (d) in its present form, and more specifically its last part starting with "... if (in the case of products) ..." opens a door for an unlimited subsidization. In order to avoid a too permissive interpretation of this paragraph the Committee may adopt the following understanding:

The last part of paragraph (d) of the Illustrative List of Export Subsidies, starting with "... if (in the case of products) ..." shall not be taken into consideration in any determination as to the existence of a prohibited export subsidy.

##### Article 10

10. There is a certain ambiguity resulting from the "effect-oriented" approach of Article 10. There is, for example, sufficient imprecision in the concept of "more than an equitable share" to allow countries using export subsidies to argue that these subsidies do not result in obtaining such a share. On the other side it is not always possible to prove causality between the subsidy and the increased share. Article 10 also contains other notions which might escape objective criteria, such as special factors, normal market conditions and price undercutting. Furthermore there is a certain ambiguity as to the exact scope of Article 10, the question of newcomers and the rôle of non-commercial sales. Therefore clarification and agreed interpretations of some concepts and notions contained in this Article should facilitate its more effective application.

11. It seems that a more precise definition of special factors would be very helpful in the practical application of the notion of "more than an equitable share". One possible solution could be to make it clear that special factors are those which can be considered as exceptional and/or temporary and beyond the control of the country subject to the complaint, i.e. not present under normal market conditions. The following are illustrative examples of such special factors:<sup>1</sup>

- (i) embargo or similar quantitative limitation on exports of the given product from or imports from the complaining country;
- (ii) decision by a state trading country or a country operating a monopoly of trade in the product concerned to shift, for political reasons, imports from the complaining country to another country or countries;
- (iii) natural disasters, crop failures or other force majeure substantially affecting quantities, qualities or prices of the product available for exports from the complaining country;
- (iv) existence of a commodity arrangement limiting exports from the complaining country;

<sup>1</sup> The fact that certain actions are referred to in this paragraph does not, in itself, confer upon them any legal status in terms of either the GATT or the Code.

#### 4.e Uniform Interpretation and Effective Application of the Agreement. Report by the Chairman (continued)

SCM/53  
Page 5

- (v) significant voluntary decrease in the availability for exports of the product concerned in the complaining country;
- (vi) significant non-commercial transactions<sup>1</sup> by the complaining country in the market of the importing country/countries which lead the country/countries subject to complaint to subsidize in order to be competitive.

In assessing the relevance of special factors in each particular case an attempt shall be made to weigh their effects relative to the effects of the subsidy.

12. On the other side there are other factors which, although they could be described as special features of a given market, are not exceptional or unforeseeable but are within the scope of the commercial considerations characterizing a specific market and therefore should not be considered as special factors within the meaning of Article 10:1. Some examples of such commercial and other considerations are as follows:

- (i) historical links between the subsidizing and the importing country/countries;
- (ii) changes in consumer taste in the importing country/countries;
- (iii) particular taste or dietary demands in the importing country/countries;
- (iv) difference in transportation costs and related factors between the subsidizing country and other countries in their exports to the importing country/countries;
- (v) geographical and climatic situation of the subsidizing country;
- (vi) marketing techniques of respective traders;
- (vii) quality of the product in question;
- (viii) technological changes or new or increased production capacities in the subsidizing exporting or importing country/countries.

13. The concept of "normal market conditions" plays an important rôle in selecting "a previous representative period". If in a given period the world market conditions were affected in a significant way by one or some of the special factors, then these conditions would hardly be considered as normal. The situation is much less clear if world market conditions are influenced by subsidies granted by one or many exporting countries. The ideal solution would be to seek a period when there were no subsidies. However, in practice, such an ideal approach may not always be feasible. It seems therefore that the fact that subsidies have been used during any period should not necessarily exclude this period as being representative. In selecting such a period one should not lose sight of the fact that export

<sup>1</sup> Other than those referred to in paragraph 14(a) and (b).

#### 4.e Uniform Interpretation and Effective Application of the Agreement. Report by the Chairman (continued)

SCM/53  
Page 6

subsidies in existence during the selected representative period may have influenced the share of the trade obtained by the various exporting countries.

14. Special and concessional transactions<sup>1</sup>, despite their apparent non-commercial nature, affect normal market conditions and could have the same practical effects as subsidized sales. This can be easily demonstrated in a situation where a country ties its non-commercial transaction (for example a grant) to a commercial sale of the equivalent amount of a product. The commercial effect of these two transactions would be the same as if the whole delivery were done on commercial terms but benefiting from a 50 per cent subsidy. There is therefore a need to include non-commercial transactions having obvious commercial effects in the volume of world export trade for purposes of Article 10:1. This should not, however, be done in such a way as to discourage their use for humanitarian and economic assistance purposes. One solution could be to agree that for purposes of Article 10:1 of the Code "world export trade" does not include non-commercial transactions in a given market if:

- (a) there are no commercial sales at all from the same country to this market; or
- (b) the exporting country can demonstrate that the non-commercial transaction has been notified to and found by the FAO Consultative Sub-Committee on Surplus Disposal to be likely to be absorbed by additional consumption in the importing country and where the FAO Usual Marketing Requirements provision contains adequate assurances against resale or trans-shipment.

Non-commercial transactions that do not meet the above conditions (or in cases where doubts may persist on whether these conditions have been met), may constitute subsidized sales and may result in the concerned signatory obtaining more than an equitable share and therefore should be examined on a case by case basis.

15. Detailed analysis of hypothetical specific cases would indicate that a certain amount of subjectivity may be involved in determining whether a subsidy has resulted in a country obtaining more than an equitable share. It seems that in order to reduce this subjectivity and to avoid some other difficulties which appeared in the past in relation to the concept of "more than an equitable share", the best approach available under the existing provisions would be to proceed on a case-by-case basis, taking into account agreed interpretations of special factors, normal market conditions, rôle of non-commercial transactions, etc. This approach could also be facilitated by the following understanding:

For purposes of Article 10:1 of the Agreement:

In all cases where, in the absence of proof that special factors are responsible, the share of a country granting subsidies on the export of a primary product has increased compared to the average share it had

<sup>1</sup> As listed in Appendix F to FAO Principles of Surplus Disposal and Consultative Obligations of Member Nations.

**4.e Uniform Interpretation and Effective Application of the Agreement. Report by the Chairman**  
*(continued)*

SCM/53  
Page 7

during the previous representative period and that this increase results from a consistent trend over a period when subsidies have been granted "more than an equitable share" will be presumed to exist.

16. For purposes of applying Article 10:1 it is recalled that there is a consensus among contracting parties that the concept of increased exports in Article XVI:1 and XVI:3 includes maintaining exports at a level higher than would otherwise exist in the absence of a subsidy.

17. As there may be some doubts as to the linkage between Article 10:1 and 10:2(a) it may be useful to specify that in order to determine "more than an equitable share" it is not necessary to examine what happens in individual markets.

18. In order to avoid that Article 10:2(b) be used in a manner inconsistent with other provisions of Article 10, an understanding could be reached that invocation of Article 10:2(b) shall not override other provisions of Article 10.

19. In respect to the question of newcomers to the world market it may be appropriate to recall that in accordance with Note 1 to Article XVI:3 the fact that a signatory has not exported the product in question during the previous representative period would not in itself preclude that signatory from establishing its right to obtain a share of the trade in the product concerned.

20. The question of price undercutting will certainly require further (more technical) examination and it may be possible to work out certain technical guidelines (for example on the basis of export values). However, one point seems relatively clear, namely that Article 10:3 should be applicable only in a competitive situation, i.e. where at least two unrelated suppliers have been selling to a particular market. The term "unrelated" should be interpreted to mean that they are from different signatories and that there is no market sharing agreement between them.



#### 4.f Uniform Interpretation and Effective Application of the Agreement. Statement by the Chairman at the Meeting of 5 December 1984

### GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/56

13 December 1984

Special Distribution

Committee on Subsidies and  
Countervailing Measures

#### UNIFORM INTERPRETATION AND EFFECTIVE APPLICATION OF THE AGREEMENT

Statement by the Chairman at the Meeting of 5 December 1984

1. Past discussions in the Committee have shown that there were divergent views among signatories on fundamental provisions of the Code. These divergencies created uncertainty as to rights and obligations, seriously affected the application of the Code and practically blocked dispute settlement procedures. There is, however, I think, a unanimous recognition of the importance of the efficient functioning of the Committee and a strong wish to render the Code again fully operational. In this relation a number of delegations proposed that the Committee undertake a review of those provisions of the Code which created problems in order to arrive at their uniform interpretation and application. Starting from these proposals, the Committee authorized the Chairman to hold, as a matter of urgency, informal consultations with a view to proposing an appropriate solution. In pursuance of this mandate my predecessor, Mr. Ikeda, and I have held a series of bilateral and plurilateral consultations. As a result of these consultations I have prepared a report (SCM/53) which, in my view, might be the basis of a satisfactory solution.

2. I would like, from the outset, to make one point very clear. The purpose of these consultations was not to amend the Code or create new rights and obligations. The purpose was to clarify the existing rules and to arrive at their uniform application. With one exception, namely that concerning Article 9, all these clarifications do not go beyond what a reasonable panel could do on its own. But even in the case of Article 9 there are no new rights, only existing rights have been reformulated in such a way as to ensure more clarity and better transparency. You will see from the detailed analysis of my proposals that they are based on logic, common sense and the perceived spirit of the Code. They do not produce new obligations - only increased clarity which should bring about better disciplines in the application of the Code.

3. Another important point I would like to make is the relationship between this exercise and that which is going on in other GATT bodies, in particular the Committee on Trade in Agriculture. First, let me say that as signatories of the Subsidy Code, a multilaterally negotiated legal instrument, which is primarily charged with the responsibilities in the field of subsidies, we have an obligation to ensure the effective operation and application of this Code. This is clearly spelled out in Article 16 of the Code. This Committee has a special responsibility with respect to all sorts of subsidies and none of the other GATT bodies can deal with this matter in such a comprehensive

#### 4.f Uniform Interpretation and Effective Application of the Agreement. Statement by the Chairman at the Meeting of 5 December 1984 (*continued*)

manner as the Committee on Subsidies. The possibility that developments elsewhere on subsidies may take place in the rather distant future, or sooner, cannot justify the Committee's inertia. This Committee cannot stay idle and wait for an external rescue, especially if such a rescue is not promptly forthcoming. It must take concrete actions to overcome difficulties which have been created by divergent views on fundamental issues in the Subsidy Code. Secondly, other GATT bodies deal with the matter in a less complete manner, from the Subsidy Code perspective. For example the Committee on Trade in Agriculture discusses agricultural products which constitute only a part of products covered by Article 10 and an even lesser part of products covered by Article 9. In other words the sectoral approach, commendable and appropriate as it maybe, is not sufficient for the purposes of this Code as it extracts only some elements from the Code. Thirdly, and most importantly, our exercise is limited to the Subsidies Code only and its only aim is to clarify certain existing provisions and to facilitate the application of the Code. As no new obligations result from it, it cannot affect the rights and obligations of the contracting parties under relevant GATT provisions nor can it affect any balance of obligations or any compromise which may be laboriously worked out in future negotiations, for example in the Committee on Trade in Agriculture. Furthermore, this exercise does not jeopardise any bargaining position delegations may have elsewhere. Finally on this point, although the exercise is limited to the Code, the fact that certain provisions have been clarified and their application rendered more effective should give a good example to other GATT bodies and facilitate their efforts in finding a global solution in a given sector, applicable to all contracting parties. I have carefully examined, and consulted some signatories on all aspects of the relationship between this exercise and the work of other GATT bodies and the general conclusion was that this exercise can only help.

4. After these explanations, let me turn now to different parts of the report. It seems that they are self-explanatory. Nevertheless I would like to highlight certain points.

- (a) Article 8 - the proposed text does not intend to achieve anything else but to make it clear that serious prejudice that would be found under Article XVI:1 can also be found under Article 8. Indeed, given the objectives of the Code ("desiring to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory..."), one can hardly imagine a legal situation under which, in exactly the same case, one would find serious prejudice in terms of Article XVI:1 but not in terms of Article 8 of the Code. Any other interpretation would mean that the Code is, in fact, weaker than Article XVI:1 and, instead of strengthening disciplines, it rather weakens them. Neither the negotiating history nor the language of Article 8 justifies such an interpretation.
- (b) Article 9 is probably the most complicated issue. It was essential to have clarity as to the starting point and as to what should be achieved. The approach is this: we know what Article 9 says but we also know what it should say and we have to find a way for it to say what we want it to say. This approach seems to be logically more sound and legally much neater than another approach that would pretend, from the very beginning, that Article 9 says something else than what it actually

**4.f Uniform Interpretation and Effective Application of the Agreement. Statement by the Chairman at the Meeting of 5 December 1984 (continued)**

says. Starting from these premises a number of alternatives to arrive at the desired solution have been considered. The proposed solution seems to be the most convenient, although it may seem a little bit complicated. It does not require amending the existing Code provisions. Indeed it builds on them, in particular on paragraphs (d) and (i) of the Illustrative List. To be more specific - certain possibilities which, under certain conditions, exist under the present wording of paragraph (d) have been transferred to paragraph (i). At the same time those elements of paragraph (d) which make Article 9 meaningless have been eliminated. The proposed interpretative decision assimilates certain rights from paragraph (d) and follows the logic and the language of paragraph (i) of the Illustrative List as closely as possible. You will see that several, very technical issues still remain open but the interpretative decision makes it clear that a group of experts, to be established by the Committee, will have promptly to clarify them and propose appropriate solutions.

- (c) As to Article 10 - no modification of the existing obligation has been proposed but an attempt has been made to clarify certain concepts, the vagueness of which have always caused problems. For example it should be clear that special factors must be really special and that one does not confuse them with normal commercial considerations. Another example is the proposed understanding in paragraph 15 of SCM/53. It does not add anything to the existing obligations. It only paraphrases the present language of Article 10:1 and removes certain ambiguities related not to the substance but to proceedings in case this paragraph has to be applied. Furthermore, the relationship between paragraphs 1 and 2 of Article 10 has been somewhat clarified and more precision has been given to paragraph 3. Another example is the attempt to specify the rôle of special transactions in the concept of world market. As I have said before, all these clarifications do not go beyond what is strictly necessary to make Article 10 operative.

5. These are only preliminary comments. It is not possible for me to summarize, in a short statement, all the intellectual input that, over months and months, went into this proposal. I perfectly understand that, at first glance, some solutions proposed here may appear too simplistic or too complicated, that some people may wish to go, as I have done, through alternative solutions, but I think that finally we shall all come to the same conclusion, namely that as long as we have to stay within the existing framework of the Code rights and obligations, this proposal is simple, logical and effective for rendering the Code operative again. I should also add that one should not look at the proposed solutions from an immediate tactical viewpoint but from a long perspective one. The real question is: do we want to preserve the basic philosophy of this Code and of the relevant GATT provisions or do we prefer to sacrifice it for short-term, subjective interests.

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED  
MTN.GNG/NG13/W/31  
14 July 1989  
Special Distribution

Group of Negotiations on Goods (GATT)  
Negotiating Group on Dispute Settlement

NON-VIOLATION COMPLAINTS UNDER GATT ARTICLE XXIII:2

Note by the Secretariat

1. At its meeting on 12 May 1989, the Negotiating Group requested the Secretariat to prepare a note on "non-violation complaints under GATT Article XXIII:2" for the next meeting of the Group (MTN.GNG/NG13/14, paragraph 4). Part I of this note presents a brief analysis of the distinction between "violation complaints" and "non-violation complaints" in the text of Article XXIII. Part II summarizes the pertinent drafting history of Article XXIII. Part III surveys past GATT practice in respect of non-violation complaints. Part IV concludes with a list of questions which the Negotiating Group might wish to consider in its discussions on this matter. The note has been prepared on the sole responsibility of the Secretariat and does not commit any delegation.

I. The Distinction between "Violation Complaints" and "Non-Violation Complaints" in the Text of Article XXIII

2. The text of the dispute settlement provisions in Article XXIII (reproduced in Annex I) differs from the dispute settlement provisions of most other international agreements in several respects. Traditionally, the dispute settlement provisions of international treaties focus on legal concepts such as the rights and obligations of the contracting parties, infringement of treaty obligations, or "legal disputes concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation" (Article 36 of the Statute of the International Court of Justice). By contrast, Article XXIII makes use of certain concepts that are rather unique in the law. It proceeds from the concept of "nullification or impairment of any benefit ... accruing under this Agreement". Even breaches of obligations are described in GATT practice as "prima facie nullification or impairment of benefits". Article XXIII permits any contracting party to request consultations with other contracting parties and recommendations, rulings, and an authorization by the CONTRACTING PARTIES to suspend the application of concessions or other obligations, if the complaining party considers that:

- (1) any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or

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UR-89-0163



#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 2

(2) the attainment of any objective of the Agreement is being impeded as the result of

- (a) the failure of another contracting party to carry out its obligations under this Agreement, or
- (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
- (c) the existence of any other situation.

Many of these unusual legal concepts (e.g. "nullification or impairment" of "any benefit", "any objective ... being impeded", "any situation") have neither been defined in the General Agreement itself nor in subsequent GATT practice. This legal uncertainty has sometimes been criticized as reducing the legal predictability of GATT dispute settlement proceedings. It appears to make the procedural rules on the exercise of this broad grant of jurisdiction all the more important.

3. Article XXIII also differs from most other international dispute settlement provisions in that it grants a very broad jurisdiction to the CONTRACTING PARTIES to deal with

- complaints about government measures consistent with the General Agreement;
- matters arising from "any other situation" even if not related to specific governmental actions;
- impediments to "the attainment of any objective of the Agreement".

4. While complaints based upon an alleged "failure of another contracting party to carry out its obligations under this Agreement" (Article XXIII:1(a)) are sometimes referred to as "violation complaints", complaints invoking Article XXIII:1(b) have in a few instances been denoted as "non-violation complaints" or as being based on "the well-established principle of non-violation nullification or impairment".<sup>1</sup> But the term "non-violation complaint" has never been precisely defined by the CONTRACTING PARTIES. Nor have the differences between "non-violation complaints" based upon Article XXIII:1(b) and "situation complaints" based upon Article XXIII:1(c), or the relationship between "situations" in terms of Article XXIII:1(c) and "situations" referred to in other safeguard clauses (such as Articles XII, XVIII and XIX), or the relationship between

<sup>1</sup> E.g. in the Panel Report on EEC Production Aids on Canned Fruit (GATT doc. L/5778, paragraphs 14, 49 et seq.).

<sup>2</sup> GATT doc. C/M/194, at 24; C/M/186, at 17

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 3

the altogether six different types of complaints mentioned in Article XXIII:1 and the three different kinds of remedial actions by the CONTRACTING PARTIES mentioned in Article XXIII:2, been specifically regulated in the text of Article XXIII.

Table 1

Complaints and Remedies under Article XXIII

	If any contracting party should consider that
Two types of:	any benefit accruing to it ... is being nullified or impaired
	the attainment of any objective of the Agreement is being impeded
	as the result of
- "violation complaints"	(a) the failure of another contracting party to carry out its obligations under this Agreement, or
- "non-violation complaints" related to governmental measures	(b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
- "situation complaints"	(c) the existence of any other situation
Three types of remedial actions by the CONTRACTING PARTIES:	..... the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and
- recommendations	shall make appropriate recommendations ...
- rulings	or give a ruling on the matter ...
- authorizations to suspend obligations	they may authorize ... to suspend ... the application ... of such concessions or other obligations ...

#### II. Non-Violation Complaints and the Drafting History of Article XXIII

5. The concept of nullification and impairment originated in the bilateral trade agreements negotiated in the 1920s and 1930s. In order to protect the agreed tariff reductions as well as the reciprocal "balance of concessions" from being undermined by non-tariff trade barriers or by other governmental measures (e.g. outside the trade sphere), those agreements

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31

Page 4

made use of three complementary legal techniques: (1) substantive legal rules prohibiting or limiting the use of trade restricting or distorting trade policy measures; (2) procedural rules providing for legal remedies not only in case of treaty violations but also in situations where the commercial opportunities protected by those trade agreements were being nullified by other (e.g. purely domestic) measures; and (3) termination clauses allowing a disappointed party to terminate the trade policy obligations altogether on short notice (mostly three to six months). For instance, a report by a group of trade experts at the 1933 London Monetary and Economic Conference recommended the inclusion of the following general consultation and adjustment clause into international trade agreements:

"If, subsequent to the conclusion of the present treaty, one of the Contracting Parties introduces any measure, which even though it does not result in an infringement of terms of the treaty, is considered by the other Party to be of such a nature as to have the effect of nullifying or impairing any object of the treaty, the former shall not refuse to enter into negotiations with the purpose either of an examination of proposals made by the latter or of the friendly adjustment of any complaint preferred by it."<sup>3</sup>

Another example was the dispute settlement provision in the 1942 Reciprocal Trade Agreement between Mexico and the United States which provided that if either party

"should consider that any measure adopted by the other Government, even though it does not conflict with the terms of this Agreement, has the effect of nullifying or impairing any object of the Agreement, such other Government shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a mutually satisfactory adjustment of the matter".<sup>4</sup>

A 1931 League of Nations survey of dispute settlement procedures showed that in seventy-three bilateral commercial treaties between European States, not one distinguished between disputes on legal obligations and those on other claims involving an impairment of reciprocal commitments.<sup>5</sup>

6. During the drafting of the dispute settlement provisions which were later incorporated into GATT Article XXIII and into Chapter VIII of the 1948 Havana Charter for an International Trade Organization (reproduced in

<sup>3</sup>Monetary and Economic Conference, League of Nations, Reports Approved by the Conference on 27 July 1933, and Resolutions Adopted by the Bureau and the Executive Committee, document C.435.M.220.1933.II.Spec.4, at 29-30.

<sup>4</sup>Text in: US Department of State, Executive Agreement Series 276 (1943).

<sup>5</sup>Memorandum Relating to the Pacific Settlement of International Disputes Concerning Economic Questions in General and Commercial and Customs Questions in Particular, League of Nations Doc. E 666 (1931) II.B.1

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)MTN.GNG/NG13/W/31  
Page 5

Annex II), it was stated that the dispute settlement provisions (corresponding to Article XXIII) could be invoked also in situations in which considerations came up under Chapter II (on "Employment and Economic Activity") or Chapter III of the draft Havana Charter (on "Economic Development and Reconstruction") which were not dealt with under the specific Articles on restrictions to safeguard the balance of payments.<sup>6</sup> It was also stated that Article [XXIII] gave a country a right "to seek a modification of the undertakings it has given if, by the action of others, conditions are created in which it can no longer carry out those undertakings. In other words, if there is a world-wide collapse of demand; if a shortage of a particular currency places us all in balance-of-payments difficulties; if we become subject again to widespread fluctuations in the prices of primary products with devastating effects upon individual economies." A Havana Sub-Committee stated:

"The Committee was of the opinion that, in case of widespread unemployment or a serious decline in demand in the territory of another Member, a Member might properly have recourse to Article 93 [XXIII], if the measures adopted by the other Member under the provisions of Article 3 [of the Charter] had not produced the effects which they were designed to achieve and thus did not result in such benefits as might reasonably be anticipated."<sup>8</sup>

7. In accordance with this broad scope of application of Article XXIII, it was further said

"by the word 'benefits' we conceive not merely benefits accorded for instance, under the provisions of Article 24 [referring to tariff concessions], but the benefits which other countries derive from the acceptance of the wider obligations imposed by the Charter; that is the benefit which we, amongst other people, would derive from the acceptance of the employment obligations by major industrial countries, and the benefit which industrial countries would derive from the improvements in the standard of living resulting from the operations of Chapter IV to countries with under-developed economies. So I would like to make it quite clear that we have used benefit in this context in a very wide sense."<sup>9</sup>

In Article 93 of the Havana Charter, which corresponds to Article XXIII of the General Agreement, the terms used in Article XXIII:1 ("benefit accruing ... directly or indirectly") were further expanded ("benefit accruing ... directly or indirectly, implicitly or explicitly") so as to make sure that

<sup>6</sup>EPCT/TAC/PV/13 (1947), at 41

<sup>7</sup>EPCT/A/PV/5 (1947), at 14

<sup>8</sup>Reports of Committees and Principal Sub-Committees, UN Conference on Trade and Employment held at Havana, Cuba, from 21 November 1947 to 24 March 1948, ICITO 1948, at 155.

<sup>9</sup>EPCT/A/PV/12 (1947), at 7

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31

Page 6

nullification or impairment of "any benefit" could also be claimed to exist if the attainment of any objective of the Agreement was being impeded (the second clause in the heading of Article XXIII:1 on "attainment of any objective of the Agreement ... being impeded" was not included into the text of Article 93 of the Havana Charter on the ground that it had no discernible limits).<sup>10</sup>

8. The six different types of complaints provided for in Article XXIII:1, their undefined substantive conditions and the broad jurisdiction of the CONTRACTING PARTIES under Article XXIII:2 to adjust the mutual rights and obligations confirm that Article XXIII goes beyond the traditional dispute settlement provisions focusing on treaty violations and was meant to deal also with matters which are often addressed in separate "escape clauses" in other Agreements (see, for example, the "emergency provisions" in Article XXVII of the Agreement establishing the International Monetary Fund). But the vague legal concepts used in Article XXIII, the seemingly identical remedies for six different types of complaints, and the broad power of the CONTRACTING PARTIES to apply and "interpret this clause intelligently"<sup>11</sup> were also criticized in the drafting conferences. One participant stated:

"Of all the vague and woolly punitive provisions that one could make, this seems to me to hold the prize place. It appears to me that what it says is this: In this wide world of sin there are certain sins which we have not yet discovered and which after long examination we cannot define; but there being such sins, we will provide some sort of punishment for them if we find out what they are and if we find anybody committing them."<sup>12</sup>

The reply to this criticism was:

"We shall achieve ..., if our negotiations are successful, a careful balance of the interests of the contracting parties. This balance rests upon certain assumptions as to the character of the underlying situation in the years to come. And it involves a mutuality of obligations and benefits. If, with the passage of time, the underlying situation should change or the benefits accorded any contracting party should be impaired, the balance would be destroyed. It is the purpose of Article XXIII to restore this balance by providing for a compensatory adjustment in the obligations which the contracting party has assumed. What we have really provided, in the last analysis, is not that retaliation shall be invited or sanctions invoked, but that a balance of interest, once established, shall be maintained."<sup>13</sup>

<sup>10</sup> E/CONF.2/C.6/W.30 (1948)

<sup>11</sup> This expectation was expressed by the Australian delegate, see: EPCT/A/PV/12, at 21

<sup>12</sup> EPCT/186, at 53

<sup>13</sup> EPCT/A/PV6, at 5

**4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)**

MTN.GNG/NG13/W/31  
Page 7

At the Havana Conference the meaning of the dispute settlement provisions was clarified in several respects also as regards non-violation complaints. In particular:

- the number of the different types of complaints was reduced from six to three by deleting the second heading about "the attainment of any objective of this Agreement ... being impeded" as a separate cause of complaint (see Article 93, paragraph 1, of the Havana Charter);
- the enforcement and remedy provisions distinguished more clearly between "violation complaints" (e.g. Article 94, paragraph 2(d)) and "non-violation" and "situation complaints" (e.g. Article 94, paragraph 2(e), Article 95, paragraph 3);
- it was made clear in Article 93, paragraph 2(e), as well as in Committee Reports<sup>14</sup>, that the power to issue "recommendations" regarding measures not in violation of GATT rules does not comprise the power to "require" a member to suspend or withdraw a measure not in conflict with the Charter<sup>15</sup>;
- and it was further clarified that in the provisions authorizing withdrawal of concessions "the nature of the relief to be granted ... (under Article XXIII:2) is compensatory and not punitive. The word 'appropriate' in the texts should not be read to provide for relief beyond compensation."<sup>16</sup>

After the Havana Conference, none of these changes to the dispute settlement provisions was incorporated into the text of Article XXIII.

III. Non-Violation Complaints in GATT Practice

9. Article XXIII:1(b) or (c) was invoked in thirteen cases out of a total of about 130 complaints formally raised under Article XXIII since 1948 up to the end of 1988.<sup>17</sup> These cases were:

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<sup>14</sup> Reports of Committees (note 8), at 155

<sup>15</sup> Already at the 1947 preparatory meeting at Geneva, it was stated that members would be "under no specific and contractual obligations to accept those recommendations" (EPCT/A/PV/5, at 16). At the Havana Conference, it was even agreed in a Sub-Committee that the power to make recommendations did not empower to "propose" the suspension or withdrawal of a measure not in conflict with the Charter, see: E/CONF.2/C.6/83, at 2, and E/CONF.2/C.6/W/103, at 2. But the word "propose" was later changed in favour of the term "require" (see above note 14).

<sup>16</sup> Report of Committees (note 8), at 155

<sup>17</sup> See the chronological list of Article XXIII complaints in document MTN.GNG/NG13/W/4, at 51-79 (an update of this document is in preparation).

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31

Page 8

##### (1) Cuban Import Restrictions on Textiles

10. In 1948, the United States complained that certain import restrictions by Cuba on textiles, whether or not they were in violation of Article XI, were restricting trade and thereby impairing the value of tariff concessions granted by Cuba on textiles in October 1947. The dispute was referred to a GATT Working Party which reported that the two parties had agreed on a bilateral settlement of their dispute.<sup>18</sup>

##### (2) The Australian Subsidy on Ammonium Sulphate

11. In 1949, Chile complained that Australia's discontinuance of a policy of parallel subsidies on two competing fertilizer products, as a result of which a subsidy on imported sodium nitrate was removed whereas domestic ammonium sulphate continued to be subsidized, had nullified or impaired the tariff concession granted by Australia to Chile on sodium nitrate in 1947. The Working Party report, adopted by the CONTRACTING PARTIES on 3 April 1950, concluded "that no evidence had been presented to show that the Australian Government had failed to carry out its obligations under the Agreement".<sup>19</sup> But the Working Party agreed that "the injury which the Government of Chile said it had suffered represented a nullification or impairment of a benefit accruing to Chile directly or indirectly under the General Agreement" in terms of Article XXIII

"if the action of the Australian Government which resulted in upsetting the competitive relationship between sodium nitrate and ammonium sulphate could not reasonably have been anticipated by the Chilean Government, taking into consideration all pertinent circumstances and the provisions of the General Agreement, at the time it negotiated for the duty-free binding on sodium nitrate. The working party concluded that the Government of Chile had reason to assume, during these negotiations, that the war-time fertilizer subsidy would not be removed from sodium nitrate before it was removed from ammonium sulphate. In reaching this conclusion, the working party was influenced in particular by the combination of the circumstances that:

- (a) The two types of fertilizer were closely related;
- (b) Both had been subsidized and distributed through the same agency and sold at the same price;
- (c) Neither had been subsidized before the war, and the war-time system of subsidization and distribution had been introduced in respect of both at the same time and under the same war powers of the Australian Government;

<sup>18</sup>CP.2/43 (1948)

<sup>19</sup>BISD II (1952), 188-196, at paragraph 11



4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 9

(d) This system was still maintained in respect of both fertilizers at the time of the 1947 tariff negotiations.

For these reasons the working party also concluded that the Australian action should be considered as relating to a benefit accruing to Chile under the Agreement, and that it was therefore subject to the provisions of Article XXIII"....

The "Australian Government, in granting a subsidy on account of the war-time fertilizer shortage and continuing it in the post-war period, had grouped the two fertilizers together and treated them uniformly. In such circumstances it would seem that the Chilean Government could reasonably assume that the subsidy would remain applicable to both fertilizers so long as there remained a local nitrogenous fertilizer shortage. The working party has no intention of implying that the action taken by the Australian Government was unreasonable, but simply that the Chilean Government could not have been expected during the negotiations in 1947 to have foreseen such action or the reasons which led to it."<sup>20</sup>

The Working Party "thus concluded that there was a prima facie case that the value of a concession granted to Chile had been impaired as a result of a measure which did not conflict with the provisions of the General Agreement."<sup>21</sup> The Working Party submitted the following text of a draft recommendation to the CONTRACTING PARTIES so as to assist the Australian and Chilean governments to arrive at a satisfactory adjustment:

"The CONTRACTING PARTIES recommend that the Australian Government consider, with due regard to its policy of stabilizing the cost of production of certain crops, means to remove any competitive inequality between nitrate of soda and sulphate of ammonia for use as fertilizers which may in practice exist as a result of the removal of nitrate of soda from the operations of the subsidized pool of nitrogenous fertilizers and communicate the results of their consideration to the Chilean Government, and that the two parties report to the CONTRACTING PARTIES at the next session."<sup>22</sup>

But in making this recommendation, the Working Party drew attention to its view that:

"There is in their view nothing in Article XXIII which would empower the CONTRACTING PARTIES to require a contracting party to withdraw or reduce a consumption subsidy such as that applied by the Government of Australia to ammonium sulphate, and the recommendation made by the working party should not be taken to imply the contrary. The ultimate

<sup>20</sup> BISD II (1952), at 193, paragraph 12

<sup>21</sup> BISD II (1952), at 194, paragraph 13

<sup>22</sup> BISD II (1952), at 195, paragraph 17



#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 10

power of the CONTRACTING PARTIES under Article XXIII is that of authorizing an affected contracting party to suspend the application of appropriate obligations or concessions under the General Agreement. The sole reason why the adjustment of subsidies to remove any competitive inequality between the two products arising from subsidization is recommended is that, in this particular case, it happens that such action appears to afford the best prospect of an adjustment of the matter satisfactory to both parties."<sup>23</sup>

12. The annex to the Working Party report notes that agreement on this matter was reached between the two governments and notified to the CONTRACTING PARTIES on 6 November 1990. The annex further reproduces a statement by the Australian representative expressing his disagreement with the reasoning of the Working Party.

13. For the understanding of the scope and rationale of non-violation complaints, the following considerations of the Working Party are also worth mentioning:

"the Working Party considered that the removal of a subsidy, in itself, would not normally result in nullification or impairment. In the case under consideration, the inequality created and the treatment that Chile could reasonably have expected at the time of the negotiation, after taking into consideration all pertinent circumstances, including the circumstances mentioned above, and the provisions of the General Agreement, were important elements in the working party's conclusion.

The situation in this case is different from that which would have arisen from the granting of a new subsidy on one of the two competing products. In such a case, given the freedom under the General Agreement of the Australian Government to impose subsidies and to select the products on which a subsidy would be granted, it would be more difficult to say that the Chilean Government had reasonably relied on<sup>24</sup> the continuation of the same treatment for the two products."

14. In his statement annexed to the Working Party report, the Australian representative had criticized, *inter alia*, that the Working Party had gone to considerable trouble to show the reasonable expectations of Chile without attributing equal importance to the "question of what obligations with respect to ammonium sulphate Australia could reasonably have expected when she consented to a binding of the free-duty rate on sodium nitrate."<sup>25</sup>

<sup>23</sup> BISD II (1952), at 195, paragraph 16

<sup>24</sup> BISD II (1952), at 193, paragraph 12

<sup>25</sup> According to the Australian statement, "the history and practice of tariff negotiations show clearly that if a country seeking a tariff  
(Footnote Continued)

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 11

The relationship between tariff bindings and the "freedom under the General Agreement ... to impose subsidies", explicitly acknowledged in the Working Party, was further clarified in a Working Party report, adopted on 3 March 1955 during the 1954-55 Review Session of the CONTRACTING PARTIES, which agreed:

"that a contracting party which has negotiated a concession under Article II may be assumed, for the purpose of Article XXIII, to have a reasonable expectation, failing evidence to the contrary, that the value of the concession will not be nullified or impaired by the contracting party which granted the concession by the subsequent introduction or increase of a domestic subsidy on the product concerned."<sup>26</sup>

This 1955 Working Party

"also agreed that there was nothing to prevent contracting parties, when they negotiate for the binding or reduction of tariffs, from negotiating on matters, such as subsidies, which might affect the practical effects of tariff concessions, and from incorporating in the appropriate schedule annexed to the Agreement the results of such negotiations; provided that the results of such negotiations should not conflict with other provisions of the Agreement."<sup>27</sup>

The question of whether an assumption of "reasonable expectations" and of a "prima facie nullification or impairment" of tariff concessions is no longer justified when the subsidy was granted not on the concession product concerned but on a competitive substitute product, was not further elaborated in the report.

15. A Panel report on "Operation of the Provisions of Article XVI", adopted on 21 November 1961, noted in respect of the above-mentioned quotation from the 1955 Working Party report that the expression "reasonable expectation" was qualified by the words "failing evidence to the contrary". By this the Panel understood:

"that the presumption is that unless such pertinent facts were available at the time the tariff concession was negotiated, it was then reasonably to be expected that the concession would not be

(Footnote Continued)

concession on a product desires to assure itself of a certain treatment for that product in a field apart from rates of duty and to an extent going further than is provided for in the various articles of the General Agreement, the objective sought must be a matter for negotiation in addition to the actual negotiation respecting the rates of duty to be applied", see: BISD II (1952), at 196

<sup>26</sup> BISD, Third Supplement (1955), at 224

<sup>27</sup> BISD Third Supplement (1955), at 225

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31

Page 12

nullified and impaired by the introduction or increase of a domestic subsidy."<sup>28</sup>

##### (3) Treatment by Germany of Imports of Sardines

16. In 1952, Norway complained that the imposition by Germany of different tariff rates, border tax rates and quantitative restrictions on biologically distinct but commercially competitive kinds of sardines discriminated in favour of sardines exported mainly by Portugal ("clupea pilchardus") in a manner inconsistent with Articles I:1 and XIII:1 and nullified or impaired the German tariff bindings on "sprats" ("clupea sprattus") and "herrings" ("clupea harengus") negotiated by Norway in the 1951 Torquay negotiations. The Panel Report, adopted on 31 October 1952, concluded "that no sufficient evidence had been presented to show that the German Government had failed to carry out its obligations under Article I:1 and Article XIII:1."<sup>29</sup> But the Panel agreed that nullification or impairment in terms of Article XXIII would exist

"if the action of the German Government, which resulted in upsetting the competitive relationship between preparations of clupea pilchardus and preparations of the other varieties of the clupeoid family could not reasonably have been anticipated by the Norwegian Government at the time it negotiated for tariff reductions on preparations of clupea sprattus and clupea harengus. The Panel concluded that the Government of Norway had reason to assume, during these negotiations that preparations of the type of clupeae in which they were interested would not be less favourably treated than other preparations of the same family and that this situation would not be modified by unilateral action of the German Government. In reaching this conclusion, the Panel was influenced in particular by the following circumstances:

- (a) the products of the various varieties of clupaea are closely related and are considered by many interested parties as directly competitive;
- (b) that both parties agreed that the question of the equality of treatment was discussed in the course of the Torquay negotiations; and
- (c) although no conclusive evidence was produced as to the scope and tenor of the assurances or statements which may have been given or made in the course of these discussions, it is reasonable to assume that the Norwegian delegation in assessing the value of the concessions offered by Germany regarding preparations of clupeae and in offering counter concessions, had taken into

<sup>28</sup> ISD Tenth Supplement (1962), at 209, paragraph 28

<sup>29</sup> BISD First Supplement (1953), 53-59, at 58

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 13

account the advantages resulting from the continuation of the system of equality which had prevailed ever since 1925."<sup>30</sup>

Notwithstanding the lack of a panel finding as to whether the German Government actually had given any assurances and what it had said, the Panel Report concluded from this:

"As the measures taken by the German Government have nullified the validity of the assumptions which governed the attitude of the Norwegian delegation and substantially reduced the value of the concessions obtained by Norway, the Panel found that the Norwegian Government is justified in claiming that it had suffered an impairment of a benefit accruing to it under the General Agreement.

In the light of the considerations set out above, the Panel suggests to the CONTRACTING PARTIES that it would be appropriate for the CONTRACTING PARTIES to make a recommendation to Germany and Norway in accordance with the first sentence of paragraph 2 of Article XXIII. This recommendation should aim at restoring, as far as practicable, the competitive relationship which existed at the time when the Norwegian Government negotiated at Torquay and which that Government could reasonably expect to be continued."<sup>31</sup>

17. In a Recommendation adopted on 31 October 1952, the CONTRACTING PARTIES accordingly recommended

"that the Government of the Federal Republic of Germany consider ways and means to remove the competitive inequality between the preparations of *Clupea pilchardus* and those of other varieties of the Clupeoid family which may, in practice, exist as a result of the changes introduced in 1951 and 1952 in the treatment of preparations of *Clupea pilchardus* as regards the imposition of import duties and taxes and as regards the relaxation of quantitative restrictions on imports, and consult with the Government of Norway with respect to the results of their consideration, and that the two parties report to the CONTRACTING PARTIES not later than the opening day of the Eighth Session."<sup>32</sup>

In October 1953, the parties to the dispute informed the CONTRACTING PARTIES of their agreement on a settlement of the dispute, under which Germany undertook to correct all but one per cent of the tariff differential and to make satisfactory adjustments in the other areas.<sup>33</sup>

<sup>30</sup> BISD First Supplement (1953), at 59, paragraph 16

<sup>31</sup> *Idem*, paragraphs 17 and 18

<sup>32</sup> BISD First Supplement (1953), at 31

<sup>33</sup> GATT doc. G/52/Add.1 (1953)

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 14

##### (4) German Import Duties on Starch

18. In 1954, the Benelux countries complained that their 1950-51 exchange of tariff concessions with Germany had been out of balance as a result of the failure by Germany to bring down to the level of the Benelux tariff rates the German duties on certain starch products. During these tariff negotiations, the chief of the German delegation had agreed in a letter delivered to the Benelux delegations

"that the duties in the German draft custom tariff on these products should be reduced as soon as possible to the level of the duties applied by Benelux ... The Government of the Federal Republic of Germany is prepared to open negotiations with the Governments of the Benelux countries on the subject of a new reduction of German duties on starch and starch derivatives with a view to applying as soon as possible under the new German custom tariff a duty of 15 per cent on starch and potato flour and similar duties on starch derivatives."<sup>34</sup>

The Panel Report, which was "noted" by the CONTRACTING PARTIES on 16 February 1955, states that:

"it was not necessary for the Panel to submit definite recommendations to the CONTRACTING PARTIES since the German delegation was in a position to make an offer which was considered by the Benelux delegations as providing a satisfactory adjustment of the matter for the time being."<sup>35</sup>

The Panel nonetheless considered the case and found that the two parties agreed that the "two promises" contained in the letter by the chief of the German delegation, "formed part of the balance of concessions granted at Torquay and that the contemplated reduction of the German duties would be made without any further concession from the Benelux Governments."<sup>36</sup> The Panel findings appear to indicate that a "promise" to negotiate on progressive tariff reductions, even though it had neither been made part of the formal schedule of tariff concessions nor deposited formally with the Secretariat, can justify a finding of "non-violation nullification or impairment of benefits" in terms of Article XXIII if the failure to implement the promised tariff advantages upsets the "reasonable expectations" and the balance of reciprocal tariff concessions.

<sup>34</sup>The text of the letter is annexed to the Panel Report, in: BISD Third Supplement (1955) at 80

<sup>35</sup>Idem (note 34), at 78

<sup>36</sup>Idem (note 34), at 78

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 15

##### (5) Uruguayan Recourse to Article XXIII

19. In 1961, Uruguay complained that benefits accruing to it under the General Agreement had been nullified or impaired as the result of 562 listed trade restrictions in fifteen industrialized countries, each affecting an Uruguayan export product.<sup>37</sup> The three Panel reports, adopted on 16 November 1962 and 3 March 1963<sup>38</sup>, respectively, note that Uruguay did not "claim that there was infringement of GATT provisions or otherwise ... demonstrate the grounds for the invocation of the procedures relating to nullification and impairment"<sup>39</sup>, except for a reference to the "existence of any other situation" in terms of Article XXIII:1(c).<sup>40</sup> The Panel considered, inter alia, that:

"In cases where there is a clear infringement of the provisions of the General Agreement, or in other words, where measures are applied in conflict with the provisions of GATT and are not permitted under the terms of the relevant protocol under which the GATT is applied by the contracting party, the action would, prima facie, constitute a case of nullification or impairment and would ipso facto require consideration of whether the circumstances are serious enough to justify the authorization of suspension of concessions or obligations. While it is not precluded that a prima facie case of nullification or impairment could arise even if there is no infringement of GATT provisions, it would be in such cases incumbent on the country invoking Article XXIII to demonstrate the grounds and reasons for its invocation. Detailed submissions on the part of that contracting party on these points were therefore essential for a judgement to be made under this Article."<sup>41</sup>

The Panel initiated consultations with the contracting parties concerned and took the position that, in cases where Uruguay had not challenged the contention that the individual measures were not in violation of specific GATT obligations and where such contention was not contradicted by the available records of the CONTRACTING PARTIES, "it would be beyond its competence to examine whether the contention was or was not justified."<sup>42</sup> The Panel examined all restrictions on an individual basis, item by item, and - where the Panel found the measures to be inconsistent with the General Agreement - recommended the removal of the measures concerned. In respect of certain other import restrictions (such as import charges and State trading), the Panel report found there were "a priori grounds for assuming that they could have an adverse effect on Uruguay's exports" and

<sup>37</sup> L/1647, L/1679 (1961)

<sup>38</sup> BISD Eleventh Supplement (1963), 95-148; Thirteenth Supplement (1965), 33-55

<sup>39</sup> BISD Thirteenth Supplement (1965), at 47

<sup>40</sup> See L/1679 (1961)

<sup>41</sup> BISD Eleventh Supplement (1963), at 100, paragraph 15

<sup>42</sup> Idem (note 41), at 100, paragraph 16

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31

Page 16

"recalled the provisions of Article XXII pursuant to which the Government of ... would no doubt accord sympathetic consideration to any concrete representations which Uruguay might wish to make concerning these measures, or their administration, with a view to minimizing any such adverse effects."<sup>43</sup> The third Panel report, adopted on 3 March 1965, noted that certain contracting parties had complied with the recommended removal of the measures in question or of their adverse effects on Uruguayan exports also in cases where the Panel had been unable to find that the measures concerned had nullified or impaired benefits in terms of Article XXIII:1.<sup>44</sup>

##### (6) French Import Restrictions

20. In 1962, the United States complained that residual balance-of-payments restrictions maintained by France were inconsistent with Article XI and nullified or impaired tariff concessions granted by the EEC to the United States in the 1960-61 Dillon Round negotiations. France acknowledged the inconsistency of the quantitative restrictions with GATT Article XI but denied an additional nullification or impairment of the tariff concessions on the ground that the United States had negotiated and obtained these tariff concessions in full knowledge of the residual import restrictions and of the French policy toward their future liberalization.<sup>45</sup> The Panel report, adopted on 14 November 1962, did not specifically decide the issue and merely found that the import restrictions were inconsistent with GATT Article XI and, as a result, "there is nullification or impairment of benefits to which the United States is entitled under GATT."<sup>46</sup>

##### (7) Article XXIV:6 Renegotiations between Canada and the EEC

21. In 1974, when Article XXIV:6 negotiations between Canada and the European Communities in connection with the enlargement of the EEC did not produce satisfactory results, Canada referred the matter to the CONTRACTING PARTIES pursuant to paragraph 1(c) and 2 of Article XXIII and requested that a panel of experts be appointed to investigate whether the new Schedules LXXII and LXXIIbis maintained a general level of reciprocal and mutually advantageous concessions between Canada and the European Communities, not less favourable to trade than that provided for in Schedules XL, XLbis, XIX, XXII and LXI.<sup>47</sup> The representative of the European Communities recalled "that the negotiations that had led to this new Schedule covered practically the whole of the customs tariffs in question and a difficult assessment of both a quantitative and qualitative character was therefore called for. The Community could not accept the

<sup>43</sup> Idem (note 41), at 105, 108, 111, 113, 116, 119, 123, 127, 130, 133, 138, 141, 144, 148

<sup>44</sup> BISD Thirteenth Supplement (1965), at 48

<sup>45</sup> L/1899 (1962); SR.20/8, at 109-111 (1962)

<sup>46</sup> BISD Eleventh Supplement (1963), at 95

<sup>47</sup> GATT doc. L/4107 (1974), C/M/101, at 7



4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)MTN.GNG/NG13/W/31  
Page 17

proposal. The conciliation procedures of the GATT had hitherto mostly been used in cases of violations of the General Agreement; in the present case, a number of factors made this procedure inappropriate. Such an exercise would involve highly sophisticated assessments in complex trade fields where the criteria for reaching judgements were exceedingly imprecise."<sup>48</sup> At the following Council meeting, the Chairman "concluded that it was the wish of the Council, with the exception of the European Communities, to establish such a panel and that he should, in due course, discuss the question of the panel in consultation with the parties most concerned."<sup>49</sup> The Panel never met due to agreement reached between the parties in March 1975.

(8) EEC - Production Aids Granted on Canned Fruits and Dried Grapes

22. In 1982, the United States complained under Article XXIII:1(b) that production aids granted by the EEC on certain canned fruits and dried grapes had altered the previously existing competitive relationship between EEC and imported products and, thereby, nullified or impaired the competitive benefits deriving from previous tariff concessions granted by the EEC in 1962, 1967, 1973 and 1979 on the products in question. In the United States' view, the mere introduction of such subsidies constituted prima facie nullification and impairment of the tariff bindings. The Panel report of 20 February 1985, which was not adopted by the GATT Council after the parties to the dispute had agreed on a bilateral settlement, found, inter alia, that:

"the tariff bindings granted by the EEC in 1974/79 on the four product categories concerned had created for the United States benefits accruing to it directly or indirectly under this Agreement in terms of Article XXIII:1 of the General Agreement."<sup>50</sup>

"... nullification or impairment of the tariff concessions would exist if the introduction or increase of the EEC production aids could not have been reasonably anticipated by the United States at the time of the negotiations for the tariff concessions on those products and the aid systems had upset the competitive position of imported canned peaches, canned pears, canned fruit cocktail and dried grapes on the EC market."<sup>51</sup>

"The Panel was of the view that the three Panel reports which had examined 'non-violation complaints' under Article XXIII of the General Agreement (i.e. the Report of the Working Party on the Australian subsidy on ammonium sulphate, BISD II/188; the Report of the Panel on the treatment by Germany of imports of sardines, BISD 1S/53; and the

<sup>48</sup> C/M/101, at 8

<sup>49</sup> C/M/102, at 4

<sup>50</sup> GATT doc. L/5778 (1985), paragraph 49

<sup>51</sup> L/5778, paragraph 51

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31

Page 18

Panel Report on Uruguay's recourse to Article XXIII, BISD 11S/95) had not precluded the possibility that an unforeseeable subsequent introduction or increase of a domestic subsidy on a product, for which a tariff concession had been previously granted, could constitute an assumption of prima facie nullification or impairment of the tariff concession concerned ... "Since the Panel agreed that it had established the existence of nullification or impairment of tariff concessions and that this finding did not depend on any assumptions of prima facie nullification or impairment of tariff concessions, the Panel found that an examination of whether the production aid systems constitute prima facie nullification or impairment would have no bearing on the Panel conclusions. The Panel decided, therefore, not to include its deliberations on this legal question in the Panel report."<sup>52</sup>

"The Panel concluded that the production aids granted by the EEC since 1978 to processors of peaches and since 1979 to processors of pears nullified or impaired benefits accruing to the United States from tariff concessions granted by the EEC under Article II of the General Agreement in 1974 on canned peaches, ~~canned~~ pears and canned fruit mixtures and in 1979 on canned pears ..."<sup>53</sup>

"Having established the existence of nullification and impairment of tariff concessions with respect to canned peaches, canned pears, and canned fruit mixtures, the Panel considered what suggestions it could make so as to assist CONTRACTING PARTIES in their task of formulating recommendations to achieve a satisfactory settlement of the matter. The Panel noted that in past 'non-violation' complaints of nullification or impairment of tariff concessions (BISD II/195; 1S/30, 31, 59) the CONTRACTING PARTIES had recommended that the party against which the finding had been made consider ways and means to remove the competitive inequality brought about by the measure at issue. The Panel was aware of the finding of the Working Party Report on the Australian subsidy on ammonium sulphate that 'there is nothing in Article XXIII which would empower the CONTRACTING PARTIES to require a contracting party to withdraw or reduce a consumption subsidy' .. and that the 'ultimate power of the CONTRACTING PARTIES under Article XXIII is that of authorizing an affected contracting party to suspend the application of appropriate obligations or concessions under the General Agreement' (BISD II/195, para.16). In making the following draft recommendation, the Panel also wishes to emphasize that the recommendation cannot constitute a legal obligation for the EEC to remove or reduce its domestic production subsidies and does not preclude other modes of settling the dispute such as granting of compensation or, in the last resort, a request for authorization of

<sup>52</sup>L/5778, paragraph 76

<sup>53</sup>L/5778, paragraph 78. For a detailed justification of this Panel conclusion, see paragraphs 49 to 74 and 79 to 81.

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)MTN.GNG/NG13/W/31  
Page 19

suspension of concessions. The Panel also wishes to emphasize that this recommendation cannot detract from the rights of contracting parties under Article XXIV:6 of the General Agreement."<sup>54</sup>

"The Panel therefore suggests that the CONTRACTING PARTIES recommend to the EEC that it consider ways and means to restore the competitive relationship between imported US and domestic EC canned peaches, canned pears and canned fruit cocktail which derived from the tariff concessions granted in 1974 on these products and in 1979 on canned pears. In accordance with agreed dispute settlement procedures (BISD 29S/15, para. (viii)), the EEC should be invited to report within a reasonable, specified period on action taken pursuant to this recommendation."<sup>55</sup>

(9) EEC Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region

23. In 1982, the United States brought a complaint under Article XXIII that the preferences granted by the EEC on citrus products from certain Mediterranean countries were inconsistent with Article I and continued to have an adverse effect on United States' citrus exports.<sup>56</sup> The Panel report of 7 February 1985, which was not adopted by the GATT Council in view of the objections raised by a number of contracting parties and a bilateral agreement reached among the disputing parties on a settlement of their dispute, found, *inter alia*:

- "that the question of the conformity of the agreements with the requirements of Article XXIV and their legal status remained open..."<sup>57</sup>

- "The Panel considered that the practice, so far followed by the CONTRACTING PARTIES, never to use the procedures of Article XXIII:2 to make recommendations or rulings on the GATT-conformity of measures subject to special review procedures was sound. It felt that the purposes these procedures served and the balance of interests underlying them would be lost if contracting parties could invoke the general procedures of Article XXIII:2 for the purpose of requesting decisions by the CONTRACTING PARTIES, on measures to be reviewed under the special procedures. The Panel therefore concluded that it should, in the absence of a specific mandate by the Council to the contrary, follow this practice also in the case before it and therefore abstain from an overall examination of the bilateral agreements."<sup>58</sup>

<sup>54</sup> L/5778, paragraph 82

<sup>55</sup> L/5778, paragraph 83

<sup>56</sup> L/5337 (1982)

<sup>57</sup> GATT doc. L/5776 (1985), paragraph 4.10

<sup>58</sup> L/5776, paragraph 4.16

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 20

- "The Panel then examined if Article XXIII:1(b) applied to the case; i.e., whether the consequences of the implementation of the agreements could be considered as nullifying or impairing the benefits accruing from the General Agreement as the result of the application of measures not conflicting with the provisions of the General Agreement. In this respect the Panel noted that the absence of a pertinent decision by the CONTRACTING PARTIES did not create a legal vacuum. In fact the decision had to be considered as pending and could therefore be taken at any time in the future ... At this stage, on the multilateral level, the status of the agreements had to be considered as still undetermined ... The situation created by the CONTRACTING PARTIES suspended the normal impact of certain GATT rules. However, this could not mean that contracting parties no longer had any rights and obligations..."<sup>59</sup>

- "In the light of the above, the Panel proceeded to examine in accordance with Article XXIII:1(b) whether and how a benefit accruing to the US directly or indirectly under Article I:1 had been nullified or impaired as a result of the EEC's application of tariff preferences on citrus products from certain Mediterranean countries, whether or not these preferences conflicted with the provisions of the General Agreement (ref. para.4.2). The Panel considered that such an examination was in keeping with its terms of reference to examine the matter in the light of the relevant GATT provisions. The US, in its complaint, had not specified any particular provisions of Article XXIII:1, and therefore the matter could also be considered under Article XXIII:1(b). The US had indeed contended inter alia that the preferences continued to have an adverse effect on US citrus exports. Moreover the US had stated that even if the granting of tariff preferences was consistent with the General Agreement, Article XXIII:1(b) would justify the US complaint that GATT benefits were being nullified or impaired (ref. para.3.33)."<sup>60</sup>

- "The Panel considered whether it could be guided in its examination of the matter at hand by the two previous rulings that had been made by CONTRACTING PARTIES with reference to Article XXIII:1(b); i.e. the report of the Working Party on the Australian subsidy on ammonium sulphate (BISD Vol. II/188-196) and the report of the Panel on the treatment by Germany of imports of sardines (BISD 1S/53-59), which were adopted by CONTRACTING PARTIES on 3 April 1950 and 31 October 1952, respectively. In these two cases nullification or impairment (in one case prima facie nullification or impairment) of a benefit was found, as a result of the existence of the following three conditions:

"(a) a tariff concession was negotiated;

<sup>59</sup>L/5776, paragraphs 4.21 and 4.22

<sup>60</sup>L/5776, paragraph 4.25

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 21

- (b) a governmental measure, not inconsistent with the General Agreement, had been introduced subsequently which upset the competitive relationship between the bound product with regard to directly competitive products from other origins; and
- (c) the measure could not have been reasonably anticipated by the party to whom the binding was made, at the time of the negotiation of the tariff concession (BISD Vol.II/192-193, para.12, BISD 1S/58-59, paras.16 and 17)."<sup>61</sup>

The Panel concluded, inter alia:

- "(f) Given that the tariffs on some of the products covered by the complaint of the United States were not bound, that the preferences were already being granted by the EC to certain Mediterranean countries on certain fresh citrus before the negotiation of concessions by the Community of the Nine in 1973, and that it could be expected that these preferences would be deepened and extended thereafter, prima facie nullification or impairment of benefits accruing under Article II in the sense of Article XXIII:1(b) could not be concluded on the basis of past precedents;
- (g) One of the fundamental benefits accruing to the contracting parties under the General Agreement was the right to adjustment in situations in which the balance of their rights and obligations had been upset to their disadvantage. In view of the fact that:
  - the CONTRACTING PARTIES had refrained from making a recommendation under Article XXIV:7 on EEC agreements with the Mediterranean countries on the understanding that the rights of third countries would thereby not be affected,
  - the CONTRACTING PARTIES had not prevented the EEC to implement the agreements with the Mediterranean countries on the understanding that the practical effects of their implementation would be kept under review,
  - and further that the formation of customs unions or free-trade areas between the EEC and the Mediterranean countries concerned had not yet been realized since the examination of the agreements by the CONTRACTING PARTIES,

the balance of rights and obligations underlying Articles I and XXIV of the General Agreement had been upset to the disadvantage

<sup>61</sup>L/5776, paragraph 4.26

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 22

of the contracting parties not parties to these agreements. The United States was therefore entitled to offsetting or compensatory adjustment to the extent that the grant of the preferences had caused substantial adverse effects to its actual trade or its trade opportunities;

(h) Tariff preferences were obviously less favourable to a non-beneficiary exporter but the existence of the EEC tariff preferences in itself could not be presumed in the light of the conclusions contained in (d) and (f) above, as prima facie evidence of injury to trade or of adverse effect on trade based on past precedents;"<sup>62</sup>

"(j) On the basis of all the available evidence taken together, it appeared that the EC tariff preferences accorded to certain Mediterranean countries on fresh oranges and fresh lemons had operated in practice to affect adversely US trade in these products with the EC and upset the competitive relationship between the United States and the EC's Mediterranean suppliers;

(k) In light of the undetermined legal status of the EC agreements with certain Mediterranean countries under which the EC granted tariff preferences on certain citrus products and of the fact that the formation of a customs union or free-trade area had not yet been realized between the EC and the countries concerned, the benefit accruing to the United States directly or indirectly under Article I:1 has been impaired as a result of the EEC's application of tariff preferences on fresh oranges and lemons from certain Mediterranean countries in the sense of Article XXIII:1(b)."<sup>63</sup>

"The Panel did not feel it necessary for it to evaluate precisely the extent to which the US had suffered damage to its actual trade or trade opportunities, as a result of the EC tariff preferences on fresh oranges and lemons, or by what amount the preferences had upset the competitive relationship between the US and the Mediterranean countries. It believed such matters would best be left to the two parties concerned to establish, taking into account the Panel's findings and conclusions. Without prejudice to other solutions the two parties might ultimately arrive at, the Panel wished to submit to the CONTRACTING PARTIES the following draft recommendation, which after its lengthy examination of the matter, the Panel considered appeared to afford the best prospect of an adjustment of the matter

<sup>62</sup>L/5776, paragraph 5.1

<sup>63</sup>L/5776, paragraph 5.1

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 23

satisfactory to both parties, taking into account the interests of all other parties concerned:

The EEC should consider limiting the adverse effect on US exports of fresh oranges and fresh lemons, as a result of the preferential tariff treatment the EEC has accorded to these products originating in certain Mediterranean countries. This could be accomplished by reducing the most-favoured-nation tariff rates applied by the EEC on fresh lemons; and as regards fresh oranges, by extending the period of application of the lower m.f.n. tariff rates and/or reducing the m.f.n. tariff rates. In view of the passage of time on this trade problem, the EEC should take action to this effect by no later than 15 October 1985.<sup>64</sup>

(10) Japan - Nullification or Impairment of the Benefits Accruing to the EEC under the General Agreement and Impediment to the Attainment of GATT Objectives

24. In 1983, the EEC brought a complaint against Japan under Article XXIII:2 on the ground "that benefits of successive GATT negotiations with Japan have not been realized owing to a series of factors particular to the Japanese economy which have resulted in a lower level of imports, especially of manufactured products, as compared with those of other industrial countries." "The European Community is of the view that the present situation constitutes a nullification or impairment by Japan, of the benefits otherwise accruing to the European Community under the GATT, and an impediment to the attainment of GATT's objectives. In particular the general GATT objective of 'reciprocal and mutually advantageous arrangements' has not been achieved."<sup>65</sup> The EEC's request for the establishment of a Working Party under Article XXIII:2 was opposed by Japan and was not pursued.

(11) United States Trade Measures Affecting Nicaragua

25. In 1985, Nicaragua requested the establishment of a Panel under Article XXIII to review certain trade measures by the United States affecting Nicaragua. The terms of reference explicitly instructed the Panel not to "examine or judge the validity of or motivation for the invocation of Article XXI:(b)(iii) by the United States." The Panel report of 13 October 1986, which has not yet been adopted by the GATT Council, records, *inter alia*, the following arguments submitted by Nicaragua to the Panel:

"Nicaragua stressed that, whether the invocation of Article XXI:(b)(iii) was justified or not, in either case benefits accruing to Nicaragua under the General Agreement had been seriously

<sup>64</sup>L/5776, paragraph 5.3

<sup>65</sup>GATT doc. L/5479 (1983)



#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 24

impaired or nullified as a result of the embargo. As recognized by the CONTRACTING PARTIES in the Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement, recourse to Article XXIII was permitted if nullification or impairment resulted from measures taken by other contracting parties whether or not these conflicted with the provisions of the General Agreement (BISD 26S/216). It had also been recognized both by the drafters of the General Agreement (EPCT/A/SR.33) and by the CONTRACTING PARTIES (BISD 29S/29) that an invocation of Article XXI did not prevent recourse to Article XXIII. According to long-standing GATT practice, the benefits accruing to contracting parties under Article II could be nullified or impaired by measures consistent with the General Agreement that could not reasonably have been anticipated at the time when the tariff concessions were negotiated. Nicaragua had no reason to expect that an embargo would cut off all trade relations with the United States when the United States tariff concessions were negotiated, i.e. between 1949 and 1961. The benefits accruing to Nicaragua under Article II had therefore been nullified or impaired as a result of the embargo. Nicaragua further stated that it was clear from the drafting history of Article XXIII that this provision was intended to protect not only the benefits under Article II but any benefit accruing to contracting parties under the General Agreement (EPCT/A/PV.12). The embargo had in fact nullified or impaired the benefits accruing to Nicaragua under all the trade-facilitating provisions of the General Agreement. On previous occasions panels had recommended the withdrawal of measures which, though not inconsistent with the General Agreement, had nullified or impaired benefits accruing to the contracting parties under it (BISD Vol. II/195 and 13S/48). Nicaragua asked the Panel to do so also in the present case.<sup>66</sup>

365

The Panel report includes, inter alia, the following findings of the Panel:

"5.4 Being precluded from examining the embargo in light of paragraph (a) of Article XXIII:1, the Panel proceeded to examine it in the light of paragraph (b) of Article XXIII:1. Consequently, it considered the question of whether benefits accruing to Nicaragua under the General Agreement had been nullified or impaired by the embargo whether or not it conflicted with the provisions of the General Agreement.

5.5 The Panel noted that the previous cases under paragraph (b) of Article XXIII:1 (BISD Vol. II/192-193 and BISD 1S/58-59) involved measures that had been found to be consistent with the General Agreement while in the present case it could not be determined whether or not the measure was consistent with the General Agreement. The Panel nevertheless considered the principles established in the previous cases to be applicable in the present case because a

<sup>66</sup> L/6053 (1986), paragraph 4.8

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 25

contracting party has to be treated as if it is observing the General Agreement until it is found to be acting inconsistently with it.

5.6 The Panel noted that the embargo had virtually eliminated all opportunities for trade between the two contracting parties and that it had consequently seriously upset the competitive relationship between the embargoed products and other directly competitive products. The Panel considered the question of whether the nullification or impairment of the trade opportunities of Nicaragua through the embargo constituted a nullification or impairment of benefits accruing to Nicaragua within the meaning of Article XXIII:1(b). The Panel noted that this question raised basic interpretative issues relating to the concept of non-violation nullification and impairment which had neither been addressed by the drafters of the GATT nor decided by the CONTRACTING PARTIES. Against this background the Panel felt that it would only be appropriate for it to propose a ruling on these issues if such a ruling would enable the CONTRACTING PARTIES to draw practical conclusions from it in the case at hand.

5.7 The Panel then noted that Article XXIII:2 would give the CONTRACTING PARTIES essentially two options in the present case if the embargo were found to have nullified or impaired benefits accruing to Nicaragua under the General Agreement independent of whether or not it was justified under Article XXI. They could either (a) recommend that the United States withdraw the embargo (or, which would amount in the present case to the same, that the United States offer compensation) or (b) authorize Nicaragua to suspend the application of obligations under the General Agreement towards the United States.

5.8 As to the first of the above options the Panel noted the following: It is clear from the drafting history that in case of recommendations on measures not found to be inconsistent with the General Agreement, the contracting parties 'are under no specific and contractual obligations to accept those recommendations' (EPCT/A/PV/5, p.16). The report of the Sixth Committee during the Havana Conference notes with respect to the power of the Executive Board to make recommendations to member States in any matter arising under Article 93:1(b) or (c) of the Havana Charter (which corresponds to Article XXIII:1(b) and (c) of the General Agreement): 'It was agreed that sub-paragraph 2(e) of Article 94 does not empower the Executive Board or the Conference to require a Member to suspend or withdraw a measure not in conflict with the Charter'. The 1950 Working Party on the Australian Subsidy on Ammonium Sulphate took the same view as to the powers of the CONTRACTING PARTIES (BISD Vol. II/195). In their 1982 Ministerial Declaration, the CONTRACTING PARTIES stated that the dispute settlement process could not 'add to or diminish the rights and obligations provided in the General Agreement' (BISD 26S/16).

5.9 In the light of the above drafting history and decisions of the CONTRACTING PARTIES the Panel found that the United States, as long as

**4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)**

MTN.GNG/NG13/W/31

Page 26

the embargo was not found to be inconsistent with the General Agreement, was under no obligation to follow a recommendation by the CONTRACTING PARTIES to remove the embargo.

5.10 The Panel noted that in the past cases under paragraph (b) of Article XXIII:1, the CONTRACTING PARTIES had recommended that the contracting party complained against consider ways and means to restore the competitive relationship that existed when the tariff concession was made (BISD Vol. II/195 and BISD 1S/31). However, the Panel also noted that these recommendations had been made only because they were considered to offer the best prospect of a mutually agreed settlement of the dispute. ... The Panel noted that the United States had declared from the outset that it would not remove the embargo without a solution to the underlying political problem (paragraph 4.9 above). It also noted that Nicaragua had recognized that 'it seemed unfortunately unlikely that the United States would accept a recommendation to lift the embargo' (paragraph 4.10 above). The Panel therefore considered that a decision of the CONTRACTING PARTIES under Article XXIII:2 recommending the withdrawal of the embargo would not seem to offer the best prospect of an adjustment of the matter satisfactory to both parties and that, in these circumstances, it would not appear to be appropriate for the CONTRACTING PARTIES to take such a decision unless they had found the embargo to be inconsistent with the General Agreement.

5.11 The Panel then turned to the second option available to the CONTRACTING PARTIES under Article XXIII:2 in the present case, namely a decision to authorize Nicaragua to suspend the application of obligations to the United States. The Panel noted that, under the embargo imposed by the United States, not only imports from Nicaragua into the United States were prohibited but also exports from the United States to Nicaragua. In these circumstances, a suspension of obligations by Nicaragua towards the United States could not alter the balance of advantages accruing to the two contracting parties under the General Agreement in Nicaragua's favour. The Panel noted that the United States had stated that an authorization permitting Nicaragua to suspend obligations towards the United States 'would be of no consequence in the present case because the embargo had already cut off all trade relations between the United States and Nicaragua' (paragraph 4.9 above) and that Nicaragua had agreed that 'a recommendation by the Panel that Nicaragua be authorized to withdraw its concessions in respect of the United States would indeed be a meaningless step because of the two-way embargo' (paragraph 4.10 above). The Panel therefore had to conclude that, even if it were found that the embargo nullified or impaired benefits accruing to Nicaragua independent of whether or not it was justified under Article XXI, the CONTRACTING PARTIES could, in the circumstances of the present case, take no decision under Article XXIII:2 that would re-establish the balance of advantages which had accrued to Nicaragua under the General Agreement prior to the embargo. In the light of the foregoing considerations the Panel decided not to propose a ruling in this case on the basic question of whether actions under Article XXI

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31

Page 27

could nullify or impair GATT benefits of the adversely affected contracting party. "

##### (12) Japan - Trade in Semi-Conductors

26. In 1987, the EEC brought a complaint under Article XXIII:2 relating to certain aspects of a bilateral arrangement between Japan and the United States concerning trade in semi-conductor products.<sup>67</sup> The Panel report, adopted on 4 May 1988, noted the argument by the EEC that, even if the measures applied by the Japanese Government were considered to be consistent with the General Agreement, "they nullified or impaired benefits accruing to the EEC under the General Agreement and impeded the attainment of the objectives of the General Agreement".<sup>68</sup> The Panel report includes the following finding on this subsidiary "non-violation complaint":

"The Panel had not found that the measures relating to the access to the Japanese market were inconsistent with the provisions of the General Agreement. The Panel noted that the EEC had alleged that, even if the Japanese measures relating to exports and imports of semi-conductors were considered to be consistent with the General Agreement, they nullified or impaired benefits accruing to the EEC under the General Agreement and impeded the attainment of objectives of the General Agreement within the meaning of Article XXIII. According to the dispute settlement procedures adopted on 28 November 1979 (BISD 26S/216), a contracting party claiming that benefits accruing to it under the General Agreement had been nullified or impaired as a result of a measure consistent with the General Agreement would be called upon to provide a detailed justification. The Panel considered that the evidence submitted by the EEC relating to access to the Japanese market did not permit it to identify any measure by the Japanese Government that put EEC exporters of semi-conductors at a competitive disadvantage vis-à-vis those of the United States and that might therefore nullify or impair benefits accruing to the EEC under the General Agreement and impede the attainment of objectives of the General Agreement within the meaning of Article XXIII."<sup>69</sup>

##### (13) EEC - Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins

27. In 1988, the United States brought a complaint under Article XXIII:2 on the ground that certain payments by the EEC to processors and producers of oilseeds and related animal-feed proteins were inconsistent with Article III and also "constitute a *prima facie* nullification and impairment of tariff concessions granted by the EC in 1962 pursuant to Article II of

<sup>67</sup> GATT doc. L/6129 (1987)

<sup>68</sup> L/6309 (1988), paragraph 97

<sup>69</sup> L/6309, paragraph 131

#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31

Page 28

the General Agreement."<sup>70</sup> The matter is under examination by a Panel established by the GATT Council in June 1988.

#### IV. ISSUES FOR CONSIDERATION

28. The Negotiating Group might wish to consider the following questions relating to "non-violation complaints" under Article XXIII:1(b) or (c):

- (a) Is there a need to define in more detail the four different types of "non-violation complaints" which are distinguished in Article XXIII:1(b) and (c)? Should such definitions be left to GATT dispute settlement practice as in the past?
- (b) Is there a need to clarify the relationship between the first heading in Article XXIII:1 ("any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired") and the second heading ("any objective of the Agreement is being impeded") which was deleted at the Havana Conference on the ground that it had no discernible limits? Does the "any benefit clause" have "discernible limits" and, if so, what are these limits?
- (c) The CONTRACTING PARTIES have not used Article XXIII as broadly as it was conceived. Recommendations under Article XXIII:2 in respect of non-violation complaints have always related to the nullification or impairment of tariff concessions, or of the balance of reciprocal exchanges of tariff advantages. In this respect, Article XXIII:1(b) has served to supplement the provisions in Article XXVIII on "Modification of Schedules" by enabling compensatory adjustments also in situations where the competitive benefits accruing under tariff concessions were impaired not as a result of a formal withdrawal of tariff concessions in accordance with Article XXVIII, but by some other unexpected governmental measure. Have the substantive conditions for such "non-violation complaints" under Article XXIII:1(b) in respect of tariff concessions, or in respect of other "reliance-inducing behaviour" in the context of tariff negotiations (see cases Nos. 3 and 4 mentioned above in Part III), been satisfactorily defined in past GATT practice? Since tariff concessions merely promise a certain maximum rate of duty: what are the "benefits" deriving from tariff concessions? What is the rationale of non-violation complaints in respect of tariff concessions?
- (d) In a few non-violation complaints (see cases Nos. 5, 9-12 mentioned above in Part III), the terms "benefits accruing ...

<sup>70</sup> L/6328 (1988)

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)MTN.GNG/NG13/W/31  
Page 29

under this Agreement' were applied also outside the area of tariff benefits and tariff negotiations to larger "benefits" derived from the General Agreement. Are the "benefits" deriving from the GATT rules on non-tariff trade barriers larger than the GATT rules themselves (e.g. do they protect also freedom from market-distorting measures other than those explicitly prohibited in these GATT rules)? Or are expectations of market access protected only after a tariff has been bound under Article II? The "Citrus Panel report" was the only panel report which did not base its "non-violation" finding on Article II; it found that "the balance of rights and obligations underlying Articles I and XXIV of the General Agreement had been upset to the disadvantage of the contracting parties not parties to these agreements". Article 8.3 and 11:2 of the 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII (the "Subsidy Code") recognize that production subsidies, even though permitted under GATT Article XVI and Subsidy Code Article 11:1, may nullify or impair also benefits other than tariff benefits accruing to another signatory under the General Agreement.<sup>71</sup> The differences between the "benefits" deriving from reciprocal tariff concessions on particular concession products negotiated in successive "GATT Rounds", on the one hand, and the "benefits" deriving from the basic GATT obligations negotiated in 1947, on the other hand, may warrant consideration of a number of questions. For instance: Has the relationship between "violation complaints" and the supplementary protection offered by "non-violation complaints" been adequately defined in GATT practice? What benefits other than tariff benefits are "actionable" under Article XXIII:1(b) or (c)? Can the relationship between the "freedoms" protected under GATT law (e.g. the freedom to grant subsidies in accordance with Article XVI:1, the freedom to participate in free-trade areas pursuant to Article XXIV) and the "responsibility" under Article XXIII:1(b) or (c) for unexpected competitive distortions be properly determined by reliance on the "reasonable expectations" of one or both parties to the dispute? Or must there be an additional "wrong", failure of reciprocity or "reliance-inducing behaviour" on the part of the defendant government to justify a legal claim protected under Article XXIII:1(b) and (c), such as the non-fulfilment of the "two promises" identified by the Panel on the German Starch Duties, or the only incomplete formation of free-trade areas identified by the "Citrus Panel"?

- (e) During the drafting of Article XXIII, it was said that Article XXIII was designed to protect "a careful balance of the interests of the contracting parties", and that "this balance rests upon

<sup>71</sup> See: The Texts of the Tokyo Round Agreements, GATT, 1986, at 63 and



#### 4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 30

certain assumptions as to the character of the underlying situation in the years to come". Do the "balance-of-interests"-theory and reliance on the "reasonable expectations" of the drafters still provide adequate, predictable and justiciable standards of review more than forty years after the negotiation of the General Agreement?

- (f) The drafters conceived Article XXIII not only as a dispute settlement clause but, notably as regards "situations complaints" in terms of Article XXIII:1(c), also as a sort of escape clause in situations of changed circumstances (somewhat like the general legal concepts of "contract frustration" and "clausula rebus sic stantibus"). Yet, over the past forty years, the CONTRACTING PARTIES appear to have never based any ruling or recommendation on Article XXIII:1(c). Are there still adequate, predictable and justiciable standards of review for "situation complaints" in terms of Article XXIII:1(c)?
- (g) If it were to be found that the "non-violation" provisions in Article XXIII:1(b) and (c) do not offer an adequate definition of the regulatory purposes, of the "actionable conduct" and "actionable situations": Should it be left to the CONTRACTING PARTIES and to GATT panels established under Article XXIII:2 to elaborate more precise definitions and legal standards of review as disputed cases arise? Is there a need for additional substantive and/or procedural limitations on such a broad "common law jurisdiction" of the CONTRACTING PARTIES under Article XXIII:1(b) or (c)?
- (h) The text of Article XXIII:2 seems to suggest that the same basic remedies are available for violation complaints as for non-violation complaints. Subsequent GATT practice has recognized, however, that recommendations by the CONTRACTING PARTIES based upon Article XXIII:1(b) or (c) are not binding on the contracting party to which it is addressed and that, if the recommendation is not followed, their only power is to authorize adversely affected contracting parties to suspend their obligations towards the country that has impaired the tariff concessions. The impairing country can of course attempt to forestall the request for authorization to suspend obligations by offering compensation, but the General Agreement establishes no obligation to grant compensation.<sup>72</sup> Is there a need for regulating in more detail the legal remedies available in non-violation complaints under Article XXIII:1(b) or (c)?
- (i) Past panel reports on non-violation complaints, adopted by the CONTRACTING PARTIES, have emphasized that the concept of

<sup>72</sup>See: MTN.GNG/NG13/W/32



4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)MTN.GNG/NG13/W/31  
Page 31

"nullification or impairment of benefits" relates not to trade damage, but to unexpected changes in the conditions of competition; consequently, panels have found that it was not "necessary for a finding of nullification or impairment under Article XXIII first to establish statistical evidence of damage."<sup>73</sup> They have further admitted, also in non-violation cases, an assumption of "prima facie nullification or impairment of benefits" when competitive benefits deriving from tariff concessions were upset as a result of unexpected, subsequent government measures. These findings are in line with the findings of various panel reports on violation complaints, adopted by the CONTRACTING PARTIES, that GATT obligations "establish certain competitive conditions for imported products in relation to domestic products" and, consequently, "a change in the competitive relationship contrary to that provision must ... be regarded ipso facto as a nullification or impairment of benefits accruing under the General Agreement."<sup>74</sup> The Negotiating Group might nonetheless wish to consider the question of whether the concept of (prima facie) "nullification or impairment of benefits" requires further clarification in respect of non-violation complaints under Article XXIII:1(b) or (c).

- (j) Under Article XXIII:2, the CONTRACTING PARTIES "may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances". Is the purpose of such counter-measures in non-violation complaints under Article XXIII, as in the case of counter-measures under Article XXVIII, limited to the restoration of the balance of benefits agreed upon in GATT law? Should GATT panels be asked to assist the contracting parties in restoring the balance of benefits, for instance by means of a quantitative estimate of the competitive distortions caused by the defendant government? Should any such estimates be

<sup>73</sup> Panel report on German Treatment of Imports of Sardines, BISD First Supplement (1953), at 56. The same view was expressed by the Panel on EEC Production Aids on Canned Fruit: "The Panel was of the view that it was not necessary to establish statistical evidence of trade damage in order to make a finding of nullification and impairment under Article XXIII ... Benefits accruing from bound tariff concessions under Article II also encompass future trading opportunities. Consequently, complaints by contracting parties regarding nullification and impairment should be admissible even if there was not yet statistical evidence of trade damage ..." (L/5778, paragraph 77).

<sup>74</sup> Panel report on United States Taxes on Petroleum and Certain Imported Substances, BISD Thirty-Fourth Supplement (1988), 136-166, at 158 (paragraph 5.1.9)

**4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)**

MTN.GNG/NG13/W/31  
Page 32

separated from the ordinary panel report so as not to further complicate the adoption of the legal panel findings?

- (k) Many waivers granted under GATT Article XXV explicitly reserve "the right of affected contracting parties to have recourse to Article XXIII of the General Agreement."<sup>75</sup> Since the purpose of waivers is to authorize action that would otherwise be inconsistent with the General Agreement, this reference is presumably a reference to Article XXIII:1(b) or (c). Is there a need to clarify the meaning and implications of such waiver clauses?

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<sup>75</sup> For example, Basic Instruments and Selected Documents, Thirty-First Supplement (1985), at 23

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 33

ANNEX I

Text of Article XXIII (BISD IV/39)

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of:

- (a) the failure of another contracting party to carry out its obligations under this Agreement, or
- (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
- (c) the existence of any other situation,

the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate intergovernmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

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\* See Preface to BISD Vol. IV

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 34

ANNEX II

Text of Chapter VIII of the 1948 Havana Charter  
for an International Trade Organization

Settlement of Differences

Article 92

Reliance on the Procedures of the Charter

1. The Members undertake that they will not have recourse, in relation to other Members and to the Organization, to any procedure other than the procedures envisaged in this Charter for complaints and the settlement of differences arising out of its operation.
2. The Members also undertake, without prejudice to any other international agreement, that they will not have recourse to unilateral economic measures of any kind contrary to the provisions of this Charter.

Article 93

Consultation and Arbitration

1. If any Member considers that any benefit accruing to it directly or indirectly, implicitly or explicitly, under any of the provisions of this Charter other than Article 1, is being nullified or impaired as a result of

- (a) a breach by a Member of an obligation under this Charter by action or failure to act, or
- (b) the application by a Member of a measure not conflicting with the provisions of this Charter, or
- (c) the existence of any other situation

the Member may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to such other Member or Members as it considers to be concerned, and the Members receiving them shall give sympathetic consideration thereto.

2. The Members concerned may submit the matter arising under paragraph 1 to arbitration upon terms agreed between them; Provided that the decision of the arbitrator shall not be binding for any purpose upon the Organization or upon any Member other than the Members participating in the arbitration.

3. The Members concerned shall inform the Organization generally of the progress and outcome of any discussion, consultation or arbitration undertaken under this Charter.

4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)

MTN.GNG/NG13/W/31  
Page 35

Article 94

Reference to the Executive Board

1. Any matter arising under sub-paragraphs (a) or (b) of paragraph 1 of Article 93 which is not satisfactorily settled and any matter which arises under paragraph 1(c) of Article 93 may be referred to any Member concerned to the Executive Board.

2. The Executive Board shall promptly investigate the matter and shall decide whether any nullification or impairment within the terms of paragraph 1 of Article 93 in fact exists. It shall then take such of the following steps as may be appropriate:

- (a) decide that the matter does not call for any action;
- (b) recommend further consultation to the Members concerned;
- (c) refer the matter to arbitration upon such terms as may be agreed between the Executive Board and the Members concerned;
- (d) in any matter arising under paragraph 1(a) of Article 93, request the Member concerned to take such action as may be necessary for the Member to conform to the provisions of this Charter;
- (e) in any matter arising under sub-paragraph (b) or (c) of paragraph 1 of Article 93, make such recommendations to Members as will best assist the Members concerned and contribute to a satisfactory adjustment.

3. If the Executive Board considers that action under sub-paragraphs (d) and (e) of paragraph 2 is not likely to be effective in time to prevent serious injury, and that any nullification or impairment found to exist within the terms of paragraph 1 of Article 93 is sufficiently serious to justify such action, it may, subject to the provisions of paragraph 1 of Article 95, release the Member or Members affected from obligations or the grant of concessions to any other Member or Members under or pursuant to this Charter, to the extent and upon such conditions as it considers appropriate and compensatory, having regard to the benefit which has been nullified or impaired.

4. The Executive Board may, in the course of its investigation, consult with such Members or inter-governmental organizations upon such matters within the scope of this Charter as it deems appropriate. It may also consult any appropriate commission of the Organization on any matter arising under this Chapter.

5. The Executive Board may bring any matter, referred to it under this Article, before the Conference at any time during its consideration of the matter.

**4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (continued)**

MTN.GNG/NG13/W/31  
Page 36

**Article 95****Reference to the Conference**

1. The Executive Board shall, if requested to do so within thirty days by a Member concerned, refer to the Conference for review any action, decision or recommendation by the Executive Board under paragraphs 2 or 3 of Article 94. Unless such review has been asked for by a Member concerned, Members shall be entitled to act in accordance with any action, decision or recommendation of the Executive Board under paragraphs 2 or 3 of Article 94. The Conference shall confirm, modify or reverse such action, decision or recommendation referred to it under this paragraph.

2. Where a matter arising under this Chapter has been brought before the Conference by the Executive Board, the Conference shall follow the procedure set out in paragraph 2 of Article 94 for the Executive Board.

3. If the Conference considers that any nullification or impairment found to exist within the terms of paragraph 1(a) of Article 93 is sufficiently serious to justify such action, it may release the Member or Members affected from obligations or the grant of concessions to any other Member or Members under or pursuant to this Charter, to the extent and upon such conditions as it considers appropriate and compensatory, having regard to the benefit which has been nullified or impaired. If the Conference considers that any nullification or impairment found to exist within the terms of sub-paragraphs (b) or (c) of paragraph 1 of Article 93 is sufficiently serious to justify such action, it may similarly release a Member or Members to the extent and upon such conditions as will best assist the Members concerned and contribute to a satisfactory adjustment.

4. When any Member or Members, in accordance with the provisions of paragraph 3, suspend the performance of any obligation or the grant of any concession to another Member, the latter Member shall be free, not later than sixty days after such action is taken, or if an opinion has been requested from the International Court of Justice pursuant to the provisions of Article 96, after such opinion has been delivered, to give written notice of its withdrawal from the Organization. Such withdrawal shall become effective upon the expiration of sixty days from the day on which such notice is received by the Director-General.

**Article 96****Reference to the International Court of Justice**

1. The Organization may, in accordance with arrangements made pursuant to paragraph 2 of Article 96 of the Charter of the United Nations, request from the International Court of Justice advisory opinions on legal questions arising within the scope of the activities of the Organization.

2. Any decision of the Conference under this Charter shall, at the instance of any Member whose interests are prejudiced by the decision, be

**4.g Non-violation Complaints under GATT Article XXIII:2. Note by the Secretariat for the Uruguay Round Negotiating Group on Dispute Settlement (*continued*)**

MTN.GNG/NG13/W/31  
Page 37

subject to review by the International Court of Justice by means of a request, in appropriate form, for an advisory opinion pursuant to the Statute of the Court.

3. The request for an opinion shall be accompanied by a statement of the question upon which the opinion is required and by all documents likely to throw light upon the question. This statement shall be furnished by the Organization in accordance with the Statute of the Court and after consultation with the Members substantially interested.

4. Pending the delivery of the opinion of the Court, the decision of the Conference shall have full force and effect; Provided that the Conference shall suspend the operation of any such decision pending the delivery of the opinion where, in the view of the Conference, damage difficult to repair would otherwise be caused to a Member concerned.

5. The Organization shall consider itself bound by the opinion of the Court on any question referred to it by the Court. In so far as it does not accord with the opinion of the Court, the decision in question shall be modified.

**Article 97**

**Miscellaneous Provisions**

1. Nothing in this Chapter shall be construed to exclude other procedures provided for in this Charter for consultation and the settlement of differences arising out of its operation. The Organization may regard discussion, consultation or investigation undertaken under any other provisions of this Charter as fulfilling, either in whole or in part, any similar procedural requirement in this Charter.

2. The Conference and the Executive Board shall establish such rules of procedure as may be necessary to carry out the provisions of this Chapter.



# 5

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## Historical documents of disputes



5.a Working Party 7 on the Cuban Schedule, membership and terms of reference

RESTRICTED  
LIMITED C  
GATT/CP.2/WP.7/1  
11 September, 1948  
ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

WORKING PARTY 7 ON THE CUBAN SCHEDULE

Membership:

Mr. L.D. WILGROSS, Chairman

Cuba

India

Netherlands

United States

Terms of reference:

To consider, in the light of the factual evidence submitted to it, the request of the Government of Cuba relating to the renegotiation of certain tariff items listed in Schedule IX of the General Agreement and the statement of the United States representatives relating to Resolution 530 of the Government of Cuba on the importation of textiles, and to recommend to the CONTRACTING PARTIES a practical solution consistent with the principles and provisions of the General Agreement.

5.b Working Party 7 on Brazilian Internal Taxes, membership and terms of reference

GENERAL AGREEMENT	ACCORD GENERAL SUR	RESTRICTED
ON TARIFFS AND	LES TARIFS DOUANIERS	LIMITED C
TRADE	ET LE COMMERCE	GATT/CP.3/WP.7/1
		29 April 1949
		ORIGINAL: ENGLISH

Contracting Parties  
Third Session

Working Party 7 on Brazilian Internal Taxes

To examine, in the light of the provisions of Article III and of the Protocol of Provisional Application and taking into account the remarks made during the discussion in the meeting of the Contracting Parties, the discriminatory internal taxes imposed by the Government of Brazil on products of foreign origin.

Membership

Brazil	France
China	India
Cuba	United Kingdom
United States	

The Working Party will elect its own Chairman.

5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED  
LIMITED B  
GATT/CP.4/SR.15  
14 March, 1950.  
ORIGINAL: ENGLISH

CONTRACTING PARTIES  
Fourth Session

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at the Palais des Nations, Geneva,  
On Tuesday, 14 March 1950 at 2.30 p.m.

Chairman: Hon. L.D. WILGRESS (Canada)

- Subjects discussed:
1. Australian Subsidy on Ammonium Sulphate - (continued discussion).  
(GATT/CP.3/61 and GATT/CP.4/23).
  2. 1950 Tariff Negotiations: other plans and arrangements.
  3. Review of Brazilian internal taxes  
(GATT/CP.3/42).

1. Australian Subsidy on Ammonium Sulphate (GATT/CP.3/61 and GATT/CP.4/23).

Mr. EVANS (United States) said that his delegation had followed the deliberations with great interest, and had come to the conclusion that this difficult question, involving both matters of fact<sup>and</sup> interpretation of provisions of the Agreement, deserved the closest attention by the Contracting Parties. At this stage his delegation found it difficult to agree that Australia had infringed the provisions of Article I and III of the Agreement; but held the view that concessions granted by Australia, at Geneva, had been impaired in a way that Chile might not be reasonably expected to accept. Steps, therefore, should be taken under Article XXIII of the Agreement, which provided for such cases not necessarily involving any violation of the obligations a contracting party under the Agreement. This delegation, therefore, supported the proposal that a working party should be set up and entrusted with the tasks of studying the facts in relation to the provisions of the Agreement. The report of such a working party would be valuable in guiding the Contracting Parties in dealing with similar cases in future.

Mr. DEUTSCH (Canada) was doubtful whether the case came at all within the preview of Articles I or III; in his view it was more likely to fall under Articles XXIII and XVI. The Working Party should be asked especially to study the provisions of the latter article in relation to this particular case. It would be useful if Australia could supply statistical information on its trade in

**5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)**

GATT/CP.4/SR.15  
Page 2.

past years in the products in question, and on their production.

Mr. WALKER (Australia) replied that the statistics of local production of the two products were not satisfactory, and could not be readily supplied. He could give figures relating to consumption and importation of the products and further details would be supplied to the Working Party if the latter considered it necessary. With regard to the suggestion that Geneva concessions had been nullified, he felt it reasonable to say that changes in such war-time measures as subsidies must have been envisaged even at Geneva. When the war-time price-control powers of the Government lapsed, a revision of the existing subsidies became necessary. Such measures were being reviewed annually and revisions made from time to time in accordance with the changing needs of the country. In this connection, he would mention that even the existing subsidy on Ammonium Sulphate was to be reviewed in the course of the present year.

In reply to the Chilean representative, he said that whatever words might have been used by the Australian representative at the negotiations in London, Australia had definitely not accepted that it had infringed any provision of the Agreement, but, in view of the importance attached by Chile to the problem, Australia had agreed to undertake negotiations under Article XXIII with a view to providing a certain degree of satisfaction for Chile. The concessions offered by Australia were, unfortunately, not accepted.

Referring to remarks of the Chilean representative at a previous meeting, Mr. WALKER said he had not meant to cast any doubt on the quality of Chilean Nitrate as a fertilizer, nor had he implied that Nitrate as a fertilizer was intrinsically inferior to Ammonium Sulphate. But, the two fertilizers did have different properties making them more suitable for different purposes and different conditions. The preference in other countries, such as the United Kingdom and Sweden, for one or the other of them was, therefore, not necessarily relevant. The chief characteristics of the two products might be briefly mentioned: Except in the growing of sugar, nitrate could be used only when mixed with other fertilizers. In view of the mechanical process of such mixing account had to be taken of the chemical properties of a fertilizer, such as its moisture absorbing qualities and its readiness to crystalize. It was clear that a fertilizer had to be chosen with

**5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)**

GATT/CP.4/SR.15  
Page 3.

due regard to the conditions of agriculture, the properties of the soil, and the nature of the product. Furthermore, the Chilean representative had viewed the question merely as one of the comparative benefits to the industries producing the two fertilizers. From the Australian point of view, however, the abolition or maintenance of such subsidies had to be decided with regard to their impact on agricultural development, and it was in the light of the needs of Australian agriculture that the government had decided provisionally to withdraw the subsidy on one of the products, and to retain it on the other. In other words, it was not a question of two mutually substitutable fertilizers, but a question of the Government's policy with respect to the users of the two products. The present policy of the Australian Government happened to require the discontinuance of the indirect subsidy on green vegetables which were benefiting from the fact that their prices were not controlled.

Mr. SHACKLE (United Kingdom) agreed to the proposal to set up a working party, believing that this was exactly the type of question suitable for detailed study by a working group. The legal question involved seemed to hinge on two facts, namely, the extent of actual damage Chile was likely to suffer from the suspension of the subsidy, and the intrinsic values of the two products with respect to their particular use in Australia. Besides these, there might be technical questions in studying which the Working Party would need help from independent technical experts. He would therefore suggest that the F.A.O. be approached in the first instance and requested to give assistance.

Mr. CASSIERS (Belgium) also agreed to the proposal to refer the question to a working party, and added that in studying the question the working party should not confine its attention to Article XVI, but also to Article III, paragraph 8 (b) and 9, because it was a question of the impact of subsidies on substitutable goods rather than of an impairment of negotiated benefits. Reference should also be made to paragraph 1 of Article XI, which prohibits the use of restrictions other than duties, taxes or other charges, whether made effective through quotas, benefits or other measures.

Mr. ALFONSO (Chile) thought it was necessary for him to re-  
fute certain facts given by the Australian representative.



**5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)**

GATT/CP.4/SR.15  
Page 4.

Referring to the statement by Australia that the demand for nitrate was limited to industrial purposes, Mr. ALFONSO said that Australia was known to have been desirous of obtaining nitrate in great quantities for agricultural uses, and supported his argument by quoting from various statements made by Australian representatives at F.A.O. meetings, and further illustrated figures for Australian import of Chilean nitrate.

Mr. ALFONSO then emphasized again that his Government was not asking for a preferential treatment for Chilean nitrate, but only that it be given an equal opportunity to compete in a free market, and pointed out that if nitrate was not relatively suitable for Australian soil, then competition would naturally not help its sale in that country. The present greater demand by Australian producers for ammonium sulphate than nitrate could not be regarded as indicating their preference for the former as it had been made cheaper by the discriminatory subsidy.

Referring to the remarks of the Belgian representative Mr. ALFONSO pointed out that the unequal treatment accorded to the two like products clearly interfered with competition, and hence nullified Australia's undertaking to admit nitrate on a competitive basis under duty. The action clearly also contravened the basic principle of most-favoured-nation treatment embodied in Article I: 1. Furthermore, the spirit of Article XVI was not respected, although it would not be necessary to go into the details of the provision. Wherever Article XXIII: 1 (b) referred to "any measure, whether or not it conflicts with the provisions of this agreement, the case clearly falls under the latter category."

Mr. WALKER (Australia) replied that most of the points mentioned by the Chilean representative were suitable for detailed study by the working party, but he would reply briefly as follows: It was not his impression that the decline in the import of nitrate into Australia was attributable to the abolition of subsidy; figures showed clearly that the decline had begun before that action was taken. He would further point out that the figures presented by Chile did not agree with his own data, but this might be due to the inclusion or exclusion of re-exports or to dissention between Chilean export and Australian import subsidies owing to the lapse of time for shipments to reach Australia. The

**5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)**

GATT/CP.4/SR.15  
Page 5.

import of nitrate for industrial uses, as for the manufacture of other fertilizers, was never covered by the subsidy designed to benefit agricultural producers.

The CHAIRMAN summed up the discussions and suggested a procedure for the study of this question. Besides the facts in relation to Australia's trade and production of the products, and the legal implications of the provisions of the Agreement, the working party might have to study several technical questions, and for this purpose they might need to consult with inter-governmental organizations. He suggested that the Executive Secretary should, in the first instance, enquire if the F.A.O. regional office attached to the E.C.E. in Geneva had any experts on fertilizers, and if not, then other organizations should be approached. If the Working Party so desired, consultation with experts could be arranged by the Executive Secretary. With regard to the legal aspects of the question, certain articles of the Agreement referred to in the Chilean declaration (GATT/CP.4/23), and the representatives of the United States and Canada had supported the view that discussion should take place under paragraph 1 of Article XXIII. The Working Party, therefore, had to determine whether benefit accruing to Chile had been impaired. Other provisions of the Agreement referred to at this discussion were Article XVI, Article I and Article II: 2 and 4. The applicability of these provisions was, however, doubted by certain other representatives. These, as well as those referred to by the Belgian representative, namely Article XI: 1 and Article III: 8 (b) and 9, should also be examined by the Working Party. Following the precedent of past sessions, the CHAIRMAN suggested that a small working party consisting of 5 members should be set up and given sufficiently broad terms of reference which, he proposed as follows:

"To consider the arguments submitted by the delegations of Australia and Chile, with respect to the Australian subsidy on ammonium sulphate, and to make appropriate recommendations to the Contracting Parties with reference to the relevant provisions of the Agreement".

In reply to a question by the Chilean representative, the CHAIRMAN said that the Executive Secretary would make an enquiry about the availability of experts in Geneva, and would notify the Working Party what technical assistance could be obtained.

**5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)**

GATT/CP.4/SR.15  
Page 6.

Mr. EVANS (United States) suggested that the Working Party should consider first whether, and to what extent, it needed technical assistance before steps were taken by the Executive Secretary to obtain it, since otherwise a massive amount of information might be assembled to serve no useful purpose.

In reply the CHAIRMAN said it was his understanding that the Executive Secretary should be asked to ascertain whether expert assistance was available; the decision as to whether such assistance was called for would in any case be made by the Working Party itself.

The proposal to set up a Working Party, and the proposed terms of reference having been approved, the CHAIRMAN, with the concurrence of the meeting, appointed the following contracting parties as members of the Working Party:

Australia	United Kingdom
Chile	United States
Norway	

with Mr. OFTEDAL (Norway) as Chairman.

(...)

5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary  
Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED  
LIMITED B  
GATT/CP.5/SR.6  
9 November 1950  
ORIGINAL : ENGLISH

CONTRACTING PARTIES  
Fifth Session

SUMMARY RECORD OF THE SIXTH MEETING

Held at the Marine Spa, Torquay  
on Monday, 6 November 1950, at 3 p.m.

Chairman: Hon. L. D. WILGESS (Canada)

- Subjects discussed:
1. Informal Guidance for the Press  
(Press Release/15 - draft)
  2. Draft Agreement on the Importation  
of Insecticides (GATT/CP/79)
  3. Brazilian Internal Taxes (GATT/CP.3/42,  
para.17, GATT/CP.4/SR.21 and GATT/CP/72)
  4. Australian Subsidy on Ammonium Sulphate  
(GATT/CP.4/39)

(...)

389

(...)

3. Brazilian Internal Taxes (GATT/CP.3/42, para.17, GATT/CP.4/SR.21, GATT/CP/72)

The CHAIRMAN explained the purpose of this agenda item by drawing attention to the information contained in GATT/CP/72.

Mr. CASTRO RENEZES (Brazil) confirmed the information that the executive department of the Brazilian Government had submitted to Parliament on June 2nd a message requesting the approval of a draft law designed for the purpose of adjusting the discriminatory internal taxes which had been judged by the Contracting Parties to be in conflict with the principles of Article III

**5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950**  
(continued)

GATT/CP.5/Sk.6  
page 4

of the Agreement and the Protocol of Provisional Application. In view of the length of the draft law, the Brazilian delegation would request that the Contracting Parties set up a working party to examine it with a view to advising as to the adequacy of the measures proposed and their conformity with the relevant provisions of the General Agreement.

Mr. CASTRO LEMEZEES further explained that, this year being an election year in Brazil in which members of the legislature had to spend much time in campaigning, the proposed law had not received consideration by Parliament. He hoped, however, that it would receive consideration in the near future.

M. LECUYER (France) said he was satisfied with the explanation as regards the delay on the part of Brazil to take final action, but pointed out that this was the third time the question had come up for consideration. He agreed to the request of the representative of Brazil for the setting up of a working party which would consider measures for the rectification of the present rather unsatisfactory situation.

Sir Stephen HOLLES (United Kingdom) was doubtful what terms of reference could be given to the working party. Would the working party be asked to recommend modifications to the Brazilian bill, which it was understood was already before the Brazilian Congress?

Mr. CASTRO LEMEZEES (Brazil) replied that the purpose would be for the Contracting Parties to ascertain whether the contents of the draft law adequately met the complaints. The matter had not been settled up to now, chiefly because of the involved procedures required for the passing of a legislation, and the Brazilian Government had done its best to meet the wishes of the Contracting Parties.

M. LECUYER (France) said that, while he understood the difficulties, his delegation would hope that the agenda item could be disposed of before the end of this session.

Mr. SCHMITT (New Zealand) thought it was awkward to suggest that a ruling could be given by the Contracting Parties on the merits of domestic legislation. If the Brazilian delegation would make available the necessary data and consult with the other contracting parties interested in the matter, including France, satisfactory adjustment might be reached between these contracting parties without the help of a working party. It might, therefore, be more expeditious for the Contracting Parties merely to take note of the facts and ask the Brazilian delegation to consult direct with the affected contracting parties. The item could be kept on the agenda and the Contracting Parties could return to it at the end of the consultation between the interested parties.

Mr. BROWN (United States) thought that since a question of principle was involved, and since the question had been examined by the Contracting Parties as a group, it would be appropriate that the matter be again examined by the Contracting Parties.

Mr. CASTRO LEMEZEES (Brazil) thought that it would be contrary to procedure under Article XXIII if direct consultation were carried out once again at this stage.

Mr. REISMAN (Canada) was of the opinion that although the Contracting Parties should always give such guidance as was requested by any contracting party, such an obligation did not necessarily involve the procedure suggested - i.e., consideration by a working party. In the present case, however, as both parties had agreed to such a procedure it would perhaps be advisable to set up a working party as requested.

Mr. SCHMITT (New Zealand) thought that the Contracting Parties would be establishing a dangerous precedent if they proceeded to pass judgment on a draft legislation which had already been submitted by a government to its

**5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950**  
(continued)

GATT/CP.5/SR.6  
page 5

legislature. It should therefore be made very clear in the present case that the examination of the Brazilian bill had been carried out at the explicit request of the contracting party concerned.

M. LECUYER (France) suggested that as the question had been submitted to the Contracting Parties and studied by a Working Party in the past, it could be regarded merely as a continuation of the unfinished work of a past session. The French delegation had not ventured to suggest any other procedure because, if for no other reason, the Brazilian delegation had thought this was the most expeditious way of dealing with the question.

Mr. CASTRO MENEZES (Brazil) said that the Brazilian delegation believed that its government had done all in its power to regularise the discrepancies, and that the proposed legislation contained provisions which adequately met the views of the Contracting Parties. The present request was calculated to make manifest its attitude and to acquaint the Contracting Parties with the measures its government had adopted. Either course proposed would be acceptable to the Brazilian delegation.

M. LECUYER (France) pointed to some possible confusions in the discussions. It had been understood by the French delegation that the Brazilian delegation had requested the setting up of a working party in order to make known what had been proposed by its government in response to the recommendations of the Contracting Parties. It had not been contemplated that changes in the legislation should be proposed by the Contracting Parties to the Brazilian government.

Mr. DI NOLA (Italy) was not sure whether Article XXIII was applicable in the present case, but believed that the remarks made by the New Zealand delegate were pertinent and deserved attention. An impasse would be created if the working party should propose any recommendations which happened to be unacceptable to the Brazilian delegation. In his opinion, the best procedure would be to request that the two delegations carry out consultations and see whether the Brazilian bill was satisfactory to the directly affected contracting party or parties.

Mr. OLDINI (Chile) said that since the Brazilian delegation had no objection to either solution, it would be up to the Contracting Parties to make a choice. In his opinion, the fact that the Brazilian Government had asked the Contracting Parties for technical advice ruled out any question of sovereignty.

The CHAIRMAN, summing up the situation, said that the Brazilian delegation had proposed that a working party be set up - a procedure which had received the support of the representatives of the United Kingdom and France; on the other hand, the representatives of New Zealand and Italy had drawn attention to the danger of creating a precedent in which the Contracting Parties regarded themselves competent to consider a draft legislation which was before a national parliament. It was up to the Contracting Parties to decide which was the more appropriate course to take.

A vote was taken, and the Contracting Parties approved by 18 votes to 3 the proposal to set up a working party to study the Brazilian draft legislation. Upon the proposal of the CHAIRMAN, the following terms of reference and composition for the working party were adopted:

"As requested by the delegation of Brazil, to examine the draft legislation prepared by the Government of Brazil for presentation to its legislature, which legislation is intended to settle the matters covered by item 17 of the Agenda, and to advise on the conformity of such draft legislation with the relevant provisions of the General Agreement and the Protocol of Provisional Application".

**5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary  
Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950**  
*(continued)*

GATT/CP.5/SR.6  
page 6

Chairman: Dr. A. ARGIROPOULOS (Greece)  
Members: Brazil Greece  
Chile United Kingdom  
France United States

(...)

Source: Document GATT/CP.5/SR.6 of 9 November 1950.



## 5.e Working Party 8 on Netherlands Action under Article XXIII:2, membership and terms of reference

GENERAL AGREEMENT	ACCORD GENERAL SUR	
ON TARIFFS AND	LES TARIFS DOUANIERS	<u>RESTRICTED</u>
TRADE	ET LE COMMERCE	W.7/1/Add.8
		28 October 1952
		Special Distribution

WORKING PARTY 8 ON NETHERLANDS ACTION UNDER ARTICLE XXIII:2Membership:

Chairman: Dr. Treu

Austria	Germany
Burma	Haiti
Brazil	Sweden
	Southern Rhodesia

Terms of reference:

To consider the measure which the Government of the Netherlands has notified that it intends to take in accordance with Article XXIII:2 and to report to the CONTRACTING PARTIES as to the appropriateness of such measures, having regard to the equivalence of the measure proposed to the impairment suffered by the Netherlands as a result of United States restrictions on imports of dairy products.

GROUPE DE TRAVAIL N° 8 SUR LES MESURES PRISES PAR LE GOUVERNEMENT DES PAYS-BAS CONFORMEMENT AU PARAGRAPHE 2 DE L'ARTICLE XXIIIComposition:

Président: Dr. Treu

Allemagne	Brésil
Autriche	Haiti
Birmanie	Rhodésie du Sud
	Suède

Mandat:

Examiner les mesures que le gouvernement des Pays-Bas a l'intention de prendre, au titre du paragraphe 2 de l'article XXIII, ainsi qu'il l'a notifié aux PARTIES CONTRACTANTES; faire rapport aux PARTIES CONTRACTANTES sur le point de savoir si ces mesures sont indiquées du point de vue de leur équivalence avec les avantages découlant de l'Accord pour les Pays-Bas et qui se trouvent annulés du fait des restrictions à l'importation de produits laitiers instituées par les Etats-Unis d'Amérique.

- 5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958

**GENERAL AGREEMENT ON  
TARIFFS AND TRADE**

RESTRICTED

IC/SR.38  
19 May 1958

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Intersessional Committee

SUMMARY RECORD OF THE MEETINGS

Held at the Palais des Nations and the  
Bâtiment Electoral, Geneva,  
on 14 April – 2 May 1958

Chairman: Mr. L.K. JHA (India)

- Subjects discussed:
1. Adoption of Agenda
  2. German Import Restrictions
  3. Administrative Questions
  4. Arrangements for Thirteenth Session
  5. Panels for Conciliation
  6. United States Action under Article XIX
  7. Italian Discrimination against Imported  
Agricultural Machinery
  8. French Assistance to Exports of Wheat and Flour
  9. European Coal and Steel Community
  10. European Economic Community
  11. European Free-Trade Area
  12. Article XXVIII Negotiations
  13. New Zealand Consultations under Articles XII and  
XIV
  14. Request by Denmark for Authority to enter into  
Renegotiations
  15. Definitive Application of the Agreement
  16. Next Meeting of the Committee

1. Adoption of Agenda

The CHAIRMAN introduced the Agenda as distributed in IC/W/69 for approval.

The Agenda was adopted.

(...)

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

(...)

5. Nomination of Panels

The CHAIRMAN drew attention to the disputes and differences on the Agenda which had been referred to the Committee for consideration. Should the Committee decide to establish panels to examine any of these matters it might be appropriate to adopt procedural arrangements designed to meet certain practical difficulties that had been experienced in the past with regard to the availability of members when meetings of a panel are deferred to give time for further bilateral discussion. He also proposed that in future such panels should be called "panels for conciliation" instead of "panels on complaints".

In order to meet the problems referred to by the Chairman, the Committee agreed to the following procedures for the nomination of panels for conciliation during the period prior to the Thirteenth Session:

- (1) The Intersessional Committee, when seized of a matter arising under Article XXIII, may, upon the request of the applicant contracting party, establish a panel to enquire into, and report on, the matter.
- (2) If however, it is desired that the convening of the panel shall be deferred to some unspecified future date, in order to afford a further opportunity for bilateral consultation, the Intersessional Committee shall designate the panel but it shall be understood that the Chairman of the CONTRACTING PARTIES may appoint substitutes, if necessary, for any member or members of the panel who may not be available at the time when the need to convene it arises.

(...)

395

(...)

10. European Economic Community

As instructed by the CONTRACTING PARTIES the Committee continued the examination of the relevant provisions of the Treaty establishing the European Economic Community, pursuant to Article XXIV:7, in the light of the Twelfth

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38  
Page 17

Session Reports on tariffs, the use of quantitative restrictions, trade in agricultural products and the association of overseas countries and territories; it also considered what means could be developed to establish effective and continuing co-operation between the CONTRACTING PARTIES and the EEC. The Committee furthermore had before it the Report of the Working Party appointed by the Committee to study the problems which the association of overseas territories raised for the trade of other contracting parties to the General Agreement (L/805/Rev.1 and Addenda).

The Committee heard a statement from the representative of the European Economic Community in which he outlined the progress made in setting up the basic institutions of the Community since the entry into force of the Treaty on 1 January 1958.

The following is a brief summary of the views and proposals put forward in the discussion in which most members participated<sup>1</sup>:

Common External Tariff

Members expressed the view that if the objectives of the Community and of the GATT were to be attained the common external tariff should be as low as possible. In order to assist contracting parties in their analysis of the common tariff and to enable them to consider proposed procedures for the negotiations envisaged in Article XXIV:6 the EEC was requested to provide the common external tariff and the following explanatory material as soon as possible, and in any case by 1 July 1959:

- (1) a "key" permitting cross-reference and comparison of rates and commodity descriptions in the common tariff and of related statistical classifications with those in the previous individual tariffs and trade statistics of the Member States;
- (2) an indication of all changes in rates, commodity descriptions and statistical classifications;
- (3) an indication of how the common tariff rates are derived from the previous tariff rates;
- (4) an exact description of the products upon which concessions have been made in the individual GATT schedules of the Six;

<sup>1</sup> The views of the Six Member States and the EEC, however, are set out in the statement by Baron Sneyers de Meeûs, appended hereto.



5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38

Page 18

- (5) an indication of the country or countries with which concessions were initially negotiated and of the principal suppliers, with the amounts of trade involved.

Quantitative Restrictions

Many members held the general view that until such time as the financial and economic relations of the Member States were fully integrated, so as to constitute in effect one unit for balance-of-payments purposes, the maintenance or imposition of quantitative restrictions must be justified in accordance with basic GATT rules and on an individual country basis.

Agricultural Provisions of the Treaty of Rome

Members pointed out that it was essential that in the formulation of a common agricultural policy the Community should take due account of the importance of preserving both traditional trade patterns and the GATT objective of expanding multilateral trade. Such regard for the trade interests of third countries, exporters of agricultural products, took on added significance in view of the tendencies for excessive short-term fluctuations in prices of primary products and widespread resort to agricultural protectionism that have become so pronounced in recent years. Accordingly, a number of members expressed the desire for the immediate provision of some appropriate machinery which would enable the CONTRACTING PARTIES to follow and consider together with the Six the measures to be taken in the course of establishing the common agricultural policy and organization and the relationship of these measures with the provisions of the General Agreement.

It was further observed that effective channels of communication could be established with the Community in the agricultural field within the framework of usual GATT methods and procedures. Such communication would consist of normal collaboration and continuing exchanges of information and views on matters of common concern among trading partners.

Attention was drawn to a conference of Member States to be convened at Stresa in July 1958 in accordance with Article 43(1) of the Treaty of Rome with the aim of comparing their agricultural policies. Some members considered it would be useful if, when this conference had ended, the Six, using the normal machinery of the CONTRACTING PARTIES, could provide information on that conference. It would also be desirable to afford contracting parties some means of commenting on the information received.

The Association of the Overseas Territories to the European Common Market

Some members considered that the Working Party's Report to the Committee established the fact that the arrangements proposed would clearly prejudice the trade interests of many under-developed countries which were dependent for their economic development on the export of only a few tropical or semi-tropical products. It was inequitable that the economic development of the

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38  
Page 19

overseas territories should be artificially promoted at the expense of the aspirations of other under-developed countries and there could be serious political consequences in some adjacent areas. These members proposed, therefore, that some procedures be set up which provided for multilateral consultations between the Six and producing countries which considered that their trade would be affected with a view to discussing the value and extent of any measures that could be taken to alleviate any resulting damage to their trade; each commodity could be dealt with separately and some co-ordinating machinery should be established to supervise the discussions.

Most members recognized the importance of this question to contracting parties in the process of economic development, and considered that where problems were shown to exist realistic solutions should be sought within a multilateral framework and that any arrangements reached should be consistent with the GATT rule of non-discrimination. The object of any such arrangements should be to prevent any significant diminution of third countries' present export trade to the Six as a result of the association of the overseas territories. They should also provide a reasonable opportunity for third countries to share in any increased demand resulting from the establishment of the Common Market. These members considered that traditional GATT principles and methods of procedure, in particular the provisions for consultations under Article XXII, were flexible enough to deal effectively with the problem.

Several members proposed that the Working Party on the Association of the Overseas Territories should continue its work as recommended in paragraphs 7 and 9 of its report including an examination of the effects of the association on the import trade of the A.O.T's.

Statement by the representative of the EEC

The representative of the European Economic Community then made a statement which summarized the Community's point of view in reply to certain points that had been raised. The full text of this statement is appended hereto.

Conclusions

There was general agreement on the following conclusions, but it was noted that the Six Member States of the European Economic Community could not give their concurrence until after reference to the Council of Ministers. The representative of the EEC undertook to communicate the views of the Council to the Executive Secretary by the end of May. It was agreed that if the conclusions proved unacceptable to the Council, the CONTRACTING PARTIES would be confronted with a new situation which would require early consideration:

1. The Committee noted with satisfaction that the rapid progress towards the establishment of the institutions described in the statement by the representative of the Six would facilitate early and close co-operation between the CONTRACTING PARTIES.

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38  
Page 20

2. The Committee noted the reports of the sub-groups established at the Twelfth Session, as well as the reports of the Working Party which had been carrying out an examination of the possible effects of the provisions of the Rome Treaty relating to the association of the overseas territories with the EEC. The Committee also heard a series of statements by members of the Committee relating to these various matters and a similar statement from the representative of the Community.

3. In the light of these statements and reports, the Intersessional Committee:

- (a) Felt that it would be more fruitful if attention could be directed to specific and practical problems, leaving aside for the time being questions of law and debates about the compatibility of the Rome Treaty with Article XXIV of the General Agreement.
- (b) Noted that the normal procedure of the General Agreement and the techniques and traditions of the CONTRACTING PARTIES in applying them, were well adapted to the handling of such problems.
- (c) Suggested that in the first instance the procedures of Article XXII would be the most appropriate for this purpose. This Article enables any contracting party or contracting parties to seek consultation with other contracting parties on any matter affecting the operation of the General Agreement. Moreover, under this Article it is the obligation of contracting parties to afford adequate opportunity for such consultations.
- (d) Felt that the procedures of paragraph 1 of Article XXII were adequate to deal with questions affecting more than one contracting party, and that for such questions it would be perfectly consistent with the terms of the Article, and would facilitate the attainment of results consistent with the basic principles and objectives of the General Agreement, for the countries concerned to arrange for joint consultations in which all contracting parties which consider that they have a substantial trade interest in the matter might join, and also for the outcome of the consultations to be communicated to the CONTRACTING PARTIES. The Committee therefore recommends that in such cases it will be appropriate to adopt the procedures indicated in the annex below.
- (e) Pointed out that the normal procedures of Article XXII were of general applicability and could, therefore, be invoked by those contracting parties whose most immediate concern related to the various matters covered by the terms of reference of



5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38

Page 21

the Working Party on Associated Overseas Territories. If these matters were to be handled in this way, it would be possible to suspend the activities of the Working Party for the time being, after the completion of the reports on commodities which have already been discussed by it.

4. During the Committee's discussion, a number of contracting parties expressed the desire for close contact with the Community regarding the working-out of the agricultural policy of the Community. The representatives of the EEC pointed out that the working-out of this policy would be a lengthy process and that the work of the Ministerial Conference at Stresa would be confined to comparing the agricultural policies of the Member States and in particular to establishing a balance sheet of their requirements and resources. The Committee recognized that the working-out of the agricultural policy would be a matter of years. The Committee took note of this statement, but assumed that the Community would furnish to the CONTRACTING PARTIES from time to time such information as the Six Member States would have furnished initially to comply with paragraph 7 of Article XXIV if the agricultural policy were developed and set out in the Rome Treaty itself.

5. Members of the Committee and the representatives of the Community re-affirmed the views they had expressed at the Twelfth Session concerning the maintenance or imposition of quantitative restrictions for balance-of-payments reasons. As regards the common tariff, the Committee noted with satisfaction the statement by the representative of the Community to the effect that the latter will endeavour to supply within the envisaged time-limit the common external tariff and the fullest possible documentary material regarding this tariff.

6. The Committee welcomed the spirit of co-operation and understanding which had prevailed in these discussions, which they felt would greatly facilitate the discussion when the CONTRACTING PARTIES resume their examination of the Rome Treaty pursuant to Article XXIV.

Annex on Procedures

The contracting parties interested in possible consultations under Article XXII on questions affecting the interests of a number of contracting parties, as a matter of convenience and in order to facilitate the observance of the basic principles and objectives of the General Agreement, agree on the following procedures:

- (a) any contracting party seeking such a consultation under Article XXII shall at the same time so inform the CONTRACTING PARTIES;
- (b) any other contracting party asserting a substantial trade interest in the matter, shall advise the consulting countries of its desire to be joined in the consultation;

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38  
Page 22

- (c) such contracting party shall be joined in the consultation providing the consulting countries agree that the claim of substantial interest is well founded;
- (d) if the claim to be joined in the consultation is not accepted, the contracting party concerned shall be free to refer its claim to the CONTRACTING PARTIES;
- (e) at the close of the consultation, the consulting countries shall advise the CONTRACTING PARTIES of the outcome;
- (f) the Executive Secretary shall provide such assistance in these consultations as the parties may request.

(...)

Source: Document IC/SR.38 of 19 May 1958.

5.g French Exports of Wheat and Flour, appointment of the Panel. Summary Record of the Eighth Meeting of the CONTRACTING PARTIES held on 23 October 1958

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

SR.13/8

30 October 1958

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CONTRACTING PARTIES  
Thirteenth Session

Pages 30/31

SUMMARY RECORD OF THE EIGHTH MEETING

Held at the Palais des Nations, Geneva,  
on Thursday, 23 October 1958, at 2.30 p.m.

Chairman: Mr. L.K. JHA (India)

- Subjects discussed:
1. Election of Officers
  2. Rules of Procedure, amendment
  3. Closing Date for the Thirteenth Session
  4. Panel on French Exports of Wheat and Flour
  5. United States Agricultural Waiver
  6. United States Restrictions on Dairy Products
  7. Report on Consultation under Article XII:4(b)  
with New Zealand
  8. Consultations under Article XXII
  9. Italian Discrimination against Imported  
Agricultural Machinery

(...)

(...)

SR.13/8

Page 33

4. Panel on French Exports of Wheat and Flour

The CHAIRMAN recalled that at a meeting held in April 1958 the Inter-sessional Committee had appointed a Panel to examine a complaint by the Government of Australia concerning subsidized exports of wheat and flour. The Panel was composed of Mr. F. Gundelach (Denmark), and Mr. R. Arents (Belgium), under the chairmanship of Mr. T. Swaminathan (India). The Panel was to meet again during the Session, but Mr. R. Arents would not be available. The Chairman proposed that Mr. E.C. Boissvain (Kingdom of the Netherlands) be invited to serve on the Panel in place of Mr. Arents.

This was agreed.

(...)

5.h Turkey - EEC Customs Union, terms of reference and membership of the Working Party.  
Summary Record of the Eleventh Meeting of the CONTRACTING PARTIES held on  
25 March 1965

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

SR.22/11  
8 April 1965

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CONTRACTING PARTIES  
Twenty-Second Session

Page 120/121

SUMMARY RECORD OF THE ELEVENTH MEETING

Held at the Palais des Nations, Geneva,  
on Thursday, 25 March 1965 at 2.30 p.m.

Chairman: Mr. J. LACARTE (Uruguay)

	<u>Page</u>
<u>Subjects discussed:</u>	
1. Trade of less-developed countries - report by the Committee on Trade and Development (cont'd)	120/121
2. European Economic Community - Agreement of Association with Turkey (cont'd)	124
3. United States/Canada Agreement on Automotive Products - report by Working Party	125
4. Definitive application of the GATT (cont'd)	133
5. Programme of meetings	133
6. Election of officers	133
7. Closing statement by the Chairman	134

(...)

403

(...)

2. European Economic Community - Agreement of Association with Turkey (cont'd)

The CHAIRMAN recalled that discussion on this item had been adjourned at the tenth meeting to allow time for consultations between interested delegations on the terms of reference for the working party which had been proposed by the United Kingdom delegation. Agreement had been reached on the following text:

To carry out, under the provisions of paragraph 2 of Article XXII, a consultation in respect of the following question raised by the United Kingdom:

"The application by Turkey of Article XXIV:5(a) and of Article XXIV:6 when in the course of forming a customs union with the European Economic Community the Turkish Government reduces its tariff in successive stages towards the Community on the one hand and towards other contracting parties on the other."

**5.h Turkey - EEC Customs Union, terms of reference and membership of the Working Party.  
Summary Record of the Eleventh Meeting of the CONTRACTING PARTIES held on  
25 March 1965 (continued)**

SR.22/11  
Page 125

The CONTRACTING PARTIES agreed to establish a working party with these terms of reference, and the Chairman proposed the following membership under the Chairmanship of Mr. F.P. Donovan (Australia):

Austria	Nigeria
Brazil	Norway
European Economic Community	Turkey
India	United Kingdom
Madagascar	United States

This was agreed and the CONTRACTING PARTIES concurred in requests by Canada, Israel, Sweden and Switzerland to be added to the Working Party.

The CHAIRMAN then enquired whether the five points he had proposed at the tenth meeting as the conclusions of the discussion were acceptable.

The five points proposed by the Chairman were agreed, as follows:

- (a) to adopt the report of the Working Party;
- (b) to note the diverging views which exist with regard to the compatibility of the Ankara Agreement with the General Agreement;
- (c) to note that the parties to the Agreement are prepared to provide further information on the plan and schedule for the formation of the customs union and, in particular, to provide the text of the Additional Protocol;
- (d) to keep the matter on the agenda of the CONTRACTING PARTIES, so that at any time when any contracting party feels that it would be useful to resume the examination of the provisions and implementation of the Agreement, it could bring the matter forward for discussion either during the course of a session or at a meeting of the Council which would also have the authority to submit the matter to a working party if so requested;
- (e) to note that this would not prejudice the responsibilities of the CONTRACTING PARTIES under the General Agreement nor the rights of individual governments under relevant provisions of the GATT.

(...)

## 5.i Working Party on United States Tobacco Subsidy, membership and terms of reference

GENERAL AGREEMENT  
ON TARIFFS AND  
TRADE

ACCORD GENERAL SUR RESTRICTED  
LES TARIFS DOUANIERS L/2902  
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CONTRACTING PARTIES  
Twenty-Fourth Session

PARTIES CONTRACTANTES  
Vingt-quatrième session

WORKING PARTY ON UNITED STATES TOBACCO SUBSIDY

Chairman: Mr. A. Mahmood (Pakistan)

Membership

Canada	Jamaica	Switzerland
Germany, Fed. Rep.	Japan	Turkey
India	Malawi	United Kingdom
		United States

The Commission of the European Communities will participate in the Working Party.

Terms of reference

To conduct on behalf of the CONTRACTING PARTIES consultations under Article XXII:2 with respect to the export subsidy on unmanufactured tobacco introduced by the Government of the United States in June 1966 and to report to the CONTRACTING PARTIES.

GRUPE DE TRAVAIL DE LA SUBVENTION DES ETATS-UNIS  
AUX EXPORTATIONS DE TABAC

Président: M. A. Mahmood (Pakistan)

Composition

Rép. féd. d'Allemagne	Inde	Malawi
Canada	Jamaïque	Royaume-Uni
Etats-Unis	Japon	Suisse
		Turquie

La Commission des Communautés européennes participera aux travaux du Groupe.

Mandat

Procéder, au nom des PARTIES CONTRACTANTES, aux consultations prévues à l'article XXII:2 en ce qui concerne la subvention appliquée par le gouvernement des Etats-Unis depuis juin 1966 à l'exportation des tabacs non fabriqués; faire rapport aux PARTIES CONTRACTANTES.

5.j Greece – Preferential Tariff Quotas to the USSR, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 15 July 1970

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

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C/M/63  
31 July 1970

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COUNCIL  
15 July 1970

MINUTES OF MEETING

Held in the Palais des Nations, Geneva,  
on 15 July 1970

Chairman: Mr. Erik THRAE (Denmark)

	<u>Page</u>
<u>Subjects discussed:</u>	
1. Greek preferential tariff quotas to the USSR	1
2. Central African Economic and Customs Union	2
3. Agriculture Committee	3
4. Committee on Trade in Industrial Products	3
5. Article XXVIII:1 - Renegotiations 1969	5
6. Article XXVIII:4 - Request by Japan	5
7. Import Restrictions	7
8. Anti-Dumping Practices	9
9. Balance-of-Payments import restrictions - reports of the Committee on consultations with:	10
(a) Peru	
(b) Uruguay	
10. Uruguay - import surcharges	11
11. EEC emergency action on table apples	12
12. Financial and administrative questions	13
(a) Final position of the 1969 budget of the GATT	13
(b) Final position of the 1969 budget of the International Trade Centre	13
(c) Deviation from United Nations Staff Rules	14
(d) Provision of funds for Conference on Effective Protection	14
(e) Committee on Budget, Finance and Administration	14
13. Trade with Poland	15
14. Committee on Anti-Dumping Practices	15

1. Greek preferential tariff quotas to the USSR (L/3406)

The Chairman recalled that at the last Council meeting the United States delegation had raised the question of preferential tariff reductions granted by Greece to the USSR for specified quantities of certain commodities. The Council had agreed to revert to the matter at its next meeting and had urged the Greek



**5.j Greece – Preferential Tariff Quotas to the USSR, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 15 July 1970 (*continued*)**

C/M/63  
Page 2

Government to consider appropriate ways for bringing the arrangement into conformity with the GATT. In the meantime, the Greek delegation had circulated a request for a waiver, contained in document L/3406.

The representative for Greece drew attention to the exceptional circumstances under which this request for a waiver had been made. Greece was a developing country with balance-of-payments problems, which it was trying to solve. With this aim in view, the Government had concluded a number of bilateral trade agreements for the export of certain agricultural products. Its bilateral agreement with the USSR covered such agricultural products which were not readily saleable elsewhere. He also recalled that, as a result of Greece's association with the European Economic Community, imports from the USSR had fallen. In an effort to achieve trade balance the Greek authorities had granted special tariff quotas to the USSR for the total value of US\$4,250,000, which represented only one sixth of Greek imports from the USSR. He also recalled that despite the various difficulties Greece was encountering in its development, the Government applied a liberal import régime; it was clear that should the Greek balance of trade deteriorate his authorities would no longer be in a position to pursue such a liberal policy. He appealed to the Council to examine favourably his Government's request in the light of these special circumstances and suggested that it be considered in a working party.

The Council established a Working Party with the following terms of reference and membership:

Terms of Reference

"To examine the request by the Government of Greece for a waiver from its obligations under Article I of the General Agreement in order to reduce the customs duties on certain products manufactured in, and coming from the USSR, as specified in the Special Protocol of 13 December 1969; and to report to the Council."

Membership

Argentina	Greece
Canada	Japan
Ceylon	Nordic countries
Chile	United Kingdom
European Communities	United States
and their member States	Yugoslavia

Chairman: Mr. B. Meers (Australia)

(...)

5.k Canadian Import Quotas on Eggs, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 25 September 1975

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

C/M/108  
6 October 1975

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COUNCIL  
25 September 1975

MINUTES OF MEETING

Held in the Palais des Nations, Geneva,  
on 25 September 1975

Chairman: Mr. K.A. SAHLGREN (Finland)

	<u>Page</u>
<u>Subjects discussed:</u> 1. Canada - Import quotas on eggs	1
2. Committee on Balance-of-Payments Restrictions - Consultation with Portugal	3
3. Association between the European Economic Community and Greece	4
4. Brazil - Increase of bound duties in Schedule III	4
5. Brazil - Prior import deposits	5
6. Developments in United States trade policy	5
7. Greece - Increase of bound duty	6

1. Canada - Import quotas on eggs (L/4222, L/4223, L/4207)

The Chairman drew attention to document L/4207 containing a notification by Canada on the introduction of import quotas for eggs and egg products.

The representative of the United States said that the Canadian action had been discussed bilaterally, but that it had so far not been possible to arrive at a solution of the problem. The key issues in the discussion concerned the question of the consistency of the Canadian action with the provisions of Article XI and whether there existed a nullification or impairment of tariff concessions in respect of these products. His delegation was, therefore, looking for an advisory ruling from the Council in order to assist the parties in finding an amicable solution to this problem. His delegation had asked for this meeting of the Council in order to present a request for a working party to consider the three issues set out in document L/4223 and to report to the Council by 1 December 1975.

**5.k Canadian Import Quotas on Eggs, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 25 September 1975 (continued)**

C/M/108  
Page 2

As to the nature of the problem, he said that the quantity of United States fresh, processed and frozen eggs permitted to enter Canada since 5 July had been limited by a quota. According to the Canadian Government, this quota was part of a comprehensive domestic supply management and market control system for eggs. He expressed doubt that the Canadian Government could control egg production in this way. His authorities had been informed by the Canadian Government that the actual level of imports for 1975 had been calculated on the basis of average annual global imports during the period 1969-73. As a consequence, United States access to the Canadian market in 1975 had been limited to 1/3 per cent of estimated production for the same period. This had prevented the continuation of a recently-established upward trend in United States egg exports to Canada.

The representative of Canada said that the global import quota on eggs and egg products had been introduced to support a domestic supply management programme that fulfilled the criteria set out in paragraph 2(c) of Article XI. He stated that, in his opinion, the measures taken did not reduce the total of imports relative to the total of domestic production of eggs in Canada. In setting the actual levels under the quota his Government had paid due regard to the proportion of imports to production during a previous representative period (1969-1973). His delegation was ready to accept the United States proposal to establish a working party and to co-operate in its deliberation.

The representative of the European Communities felt that as in the present case an advisory opinion was being sought, the usual conciliation procedure would have required the establishment of a panel rather than of a working party, composed of government representatives.

The representative of the United States replied that the setting up of a panel would have implied that the bilateral consultations had already proved unsuccessful. His delegation did not seek a decision under the provisions of Article XXIII:2, but rather asked the CONTRACTING PARTIES or the Council to assist the parties in their consultations to solve a particular issue which had arisen. In this respect the use of a working party which could meet at short notice was appropriate and not inconsistent with GATT procedures.

The representative of the European Communities pointed out that in his view on the basis of earlier precedents a panel would have been more appropriate for the rendering of an advisory opinion. Furthermore, if as a result of the work of the working party the parties concerned could not arrive at a solution, a possible recourse to Article XXIII would still require the setting up of a panel. He noted that the two parties had agreed on a procedure so that the Community would not maintain its objections. This did not imply however that the Community could agree that the procedure was the appropriate one in this case.

**5.k Canadian Import Quotas on Eggs, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 25 September 1975 (*continued*)**

C/M/108  
Page 3

The Council agreed to set up a working party with the following terms of reference and membership:

Terms of Reference:

To examine the matters referred to the CONTRACTING PARTIES by the Government of the United States (L/4223) concerning the imposition of import quotas for eggs and egg products by the Government of Canada (L/4207) and report thereon to the Council.

Membership:

Australia	India
Brazil	Japan
Canada	United States
EEC and member States	

Chairman:

Mr. Eggert (Finland)

The Chairman said that the working party would be convened at a date to be set in consultation with the parties concerned.

(...)

**5.1 United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977**

**GENERAL AGREEMENT ON  
TARIFFS AND TRADE**

RESTRICTED

C/M/120

2 June 1977

Limited Distribution

COUNCIL  
23 May 1977

MINUTES OF MEETING

Held in the Palais des Nations, Geneva  
on 23 May 1977

Chairman: Mr. C. DE GEER (Sweden)

<u>Subjects discussed:</u>	<u>Page</u>
1. Arrangement Regarding International Trade in Textiles - Annual Review	1
2. Consultations on trade with Poland	3
3. Agreement between Finland and Hungary	4
4. United States - Imports of automotive products	5
5. United States - Suspension of customs liquidation regarding certain Japanese consumer electronic products	5
6. Tax legislation	
(a) United States tax legislation (DISC)	
(b) Income tax practices maintained by France	
(c) Income tax practices maintained by Belgium	
(d) Income tax practices maintained by the Netherlands	8
7. Revision of salary scales	11
8. Erosion of salaries	11
9. Working Party on trade with Hungary	13
10. Greece - Increase of bound duty	14
11. Sweden - Renegotiation under Article XXVIII:4	14
12. European Communities - Agreements with Egypt, Jordan, Syria and Lebanon	14
13. Papua New Guinea-Australia Agreement	15

(...)

**5.I United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977 (*continued*)**

C/M/120  
Page 5

(...)

5. United States - Suspension of customs liquidation regarding certain Japanese consumer electronic products (L/4500)

The representative of Japan<sup>1</sup> stated that following countervailing duty investigations by the United States since 1972 the United States Treasury Department had determined that the exemption from commodity taxes upon the export of certain electronic products from Japan should not be subject to countervailing duties. Thereupon, a United States corporation, the Zenith Radio Corporation, had instituted an action for a review of this determination and on 12 April 1977 the United States Customs Court ruled that the exemption or refund of the Japanese commodity tax on the products concerned constituted a bounty or grant under United States law and the Court directed that countervailing duties be assessed. Subsequently, customs liquidation regarding these products had been suspended and a bonding procedure had been introduced requiring bonds equal to the amount of estimated countervailing duty.

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<sup>1</sup>The text of the statement had been distributed in document C/W/288.

(...)

**5.1 United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977 (*continued*)**

(...)

C/M/120  
Page 6

It was Japan's view that the Court ruling and the subsequent United States action was in clear contravention of the provisions of the General Agreement, in particular paragraph 4 of Article VI and the note to Article XVI, and consequently impaired Japan's rights under the GATT.

He said that the present administrative action, which had been put into effect pending the final outcome of the judiciary, already seriously affected trade in the products concerned, which amounted to \$1.89 billion in 1976. The potential impact of the action could go much further through possible proliferation of similar actions affecting a large number of contracting parties. Because of these serious trade implications he requested the Council to establish a Working Party to examine the decision of the United States Customs Court in Zenith Radio Corporation versus United States, and the subsequent United States action, in the light of the provisions of Article VI:4 of the GATT and the note to Article XVI, and to report to the Council. It was his understanding that such consideration would also include the examination of the consistency or otherwise of the United States action with the provisions of the General Agreement.

He also called the Council's attention to the fact that Japanese electronic products had been subject to numerous harassments in the United States, due to often duplicating procedures under different legal provisions. These required Japanese companies to invest heavily in man-hours and legal expenses and constituted a major trade issue.

The representative of the United States said that he could not agree with some of the conclusions drawn by the representative of Japan with regard to the effect on trade of the United States action, and the question of its consistency with the GATT. He pointed out that the United States had not imposed countervailing duties and he did not believe that the bonding procedures were a serious impediment to trade. Furthermore, the Court decision was not part of any programme to harass Japanese products. His Government was appealing the decision of the Customs Court. He agreed to the creation of a working party with the terms of reference proposed by the representative of Japan.

The representative of the European Communities expressed his delegation's deep concern at the decision of the United States Customs Court in this case. He said that this decision ran counter to rules established for over fifty years in a number of bilateral agreements and confirmed in the General Agreement. The decision of the Customs Court raised serious implications for world trade in general, since it asserted as a matter of law that the reimbursing of indirect taxes was, in fact, a subsidy and was subject to the payment of countervailing duties. He said that the European Communities expected the United States Government to fulfil its obligations under the GATT. If the measure was not abolished soon, it could easily be extended to other products and thus threaten



**5.1 United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977 (*continued*)**

C/M/120  
Page 7

world trade as a whole, since the United States trading partners would not remain passive in case of such a development. He further pointed out that Zenith Radio Corporation itself was domiciled in five Federal States and obtained exemption from sales taxes in those States. It furthermore enjoyed the fiscal benefits of DISC, which were considered by a panel as being inconsistent with the provisions of the GATT. He supported the setting up of a working party to examine these questions and stressed that his delegation reserved all its rights under the relevant provisions of the General Agreement, to which the EEC might wish to have recourse in the light of further developments of the situation. He suggested that the matter be examined not only in the light of the Articles mentioned but also bearing in mind all other relevant provisions of the GATT.

The representatives of Finland, speaking on behalf of the Nordic countries, and Canada supported the creation of the working party.

The Council agreed to set up a Working Party on the United States/Zenith case with the following terms of reference and membership:

Terms of Reference:

To consider the decision by the United States Customs Court in Zenith Radio Corporation versus the United States and the subsequent United States action in the light of the provisions of paragraph 4 of Article VI of the General Agreement and the Note to Article XVI, and to report expeditiously to the Council.

Membership:

Australia	Japan
Brazil	Malaysia
Canada	Sweden
European Communities and their member States	Switzerland
India	United States
	Yugoslavia

Chairman: Mr. E. Farnon (New Zealand)

The Council agreed that the Working Party was free to discuss the matter under other relevant provisions of the GATT, even though this was not specifically mentioned in the terms of reference.

The Chairman said that in view of the need for the Working Party to carry out its work expeditiously, the Working Party should be convened as soon as possible.

(...)

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