

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/5467

8 March 1983

Limited Distribution

Original: English

UNITED STATES - COPYRIGHT LEGISLATION, MANUFACTURING CLAUSE

Communication from the European Communities

The following communication, dated 3 March 1983, has been received from the Commission of the European Communities with the request that it be circulated to contracting parties.

Recourse to Article XXIII by the European Community

United States - Section 601 of United States Copyright Act
(the "Manufacturing Clause") re-enacted in
1976 and extended in 1982 by new legislation
(Public Law 97-215)

1. On July 1982, the Council was informed that consultations under Article XXII of the General Agreement were being held between the European Community and the United States concerning Section 601 of the United States Copyright Act of 1976 (the "Manufacturing Clause"), which was extended by new United States legislative action (Public Law 97-215) until 1986.
2. Section 601 of the Copyright Act of 1976 (the "Manufacturing Clause") which continues a provision dating back to 1891 has the general effect of prohibiting importation into or distribution within the territory of the United States of "non-dramatic literary material that is in the English language" by an American author, unless such material has been manufactured in the United States or Canada. This provision constitutes a deliberate and arbitrary barrier to trade, effectively excluding European printing and publishing industries from the United States market, for a specific class of products referred to above. The Manufacturing Clause also contains a deliberate element of discrimination in that works by American authors which are manufactured in Canada are permitted to be imported into and distributed in the United States.
3. The Copyright Act of 1976 provided that the Manufacturing Clause should be repealed with effect from 1 July 1982. In view of the assurances obtained from the United States during the Tokyo-Round, which confirmed that this legislation would expire on 1 July 1982, negotiations on this non-tariff-measure were not pursued. However, a Bill (HR 6198) which had the effect of enacting a new Manufacturing Clause until 1 July 1986, was passed into law on 13 July 1982 when both Houses of Congress overruled a veto by President Reagan (Public Law 97-215). In his veto message to the

Congress President Reagan declared that, "the clause was written into law nearly a century ago, in an effort to strengthen our relatively new printing industry by limiting foreign competition. However, the "infant industry" justification for protecting our printing industry is no longer valid, our industry is now one of the most modern and efficient in the world".

4. Consultations under Article XXII did not result in a satisfactory solution. Therefore the European Community notified the United States Delegation, on 28 September 1982, that it was seeking consultations under Article XXIII:1 of the General Agreement.

5. Up to now, three rounds of consultations under Article XXII and XXIII:1 have been held between the European Community and the United States. During these consultations the European Community has stated its position as follows:

- (i) The enactment of new legislation in July 1982 is contrary to the obligations of the United States in GATT. In this respect, the following points have to be made:
 - The "Manufacturing Clause" is in particular inconsistent with GATT Article XI, and is not covered by any of the exceptions provided for in the General Agreement;
 - In addition, exemption of works manufactured in Canada is discriminatory and therefore contrary to GATT Article XIII;
 - It is also clear that the new Manufacturing Clause, enacted in July 1982, is not covered by the Protocol of Provisional Application because this Protocol does not cover new legislation.
- (ii) The Community considers that the new legislation enacted in July 1982 is contrary to understandings reached between the United States and the European Community during the Tokyo-Round and has unbalanced the final equilibrium of concessions reached in the Tokyo-Round.

6. The European Community is of the view that the restrictive effects arising from the enactment of the new Manufacturing Clause in July 1982, constitute a nullification or impairment by the United States of the benefits otherwise accruing to the European Community under the GATT. The European Community intends to place this matter on the agenda of a future meeting of the GATT Council.