GATT DISPUTE SETTLEMENT SYSTEM

Note by the Secretariat

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. This note is a compilation of the relevant texts and sets out the requested information.

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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. 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 (RISD 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\(^1\) 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\(^2\)

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 contracting party complaining of the measure may refer the

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\(^1\) See Preface to BISD Vol. IV

\(^2\) 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.
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 session¹, 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.

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

¹BISD, Seventh Supplement, page 7.
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. 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.

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1It 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.
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 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 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 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.

1 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 The coverage of travel expenses should be considered within the limits of budgetary possibilities.
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, 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.

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1A statement is included in the Annex describing the current practice with respect to inclusion on panels of persons from developing countries.
20. The time required by panels will vary with the particular case. 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.

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.

1An 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".
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 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.

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. 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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¹ The Council is empowered to act for the CONTRACTING PARTIES, in accordance with normal GATT practice.
² 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.
³ BISD 14S/18
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:

(1) 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.
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.
(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
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.
(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
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. It is understood that decisions in this process cannot add to or diminish the rights and obligations provided in the General Agreement.

1This does not prejudice the provisions on decision making in the General Agreement.

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.

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.

1 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).
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. 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.

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.

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.

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.
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.
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.
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.

8. 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.
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.
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.

9. 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.
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 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 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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1 Any time periods mentioned in this Article and in Article 18 may be extended by mutual agreement.

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

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. 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 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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1 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.

2 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.

3 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.
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 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

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

10. 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 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 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.

1It 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.
11. 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.
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.
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.
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.

12. 1979 Agreement on Import Licensing Procedures, Article 4 (BISD 265/159)

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. 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.

13. 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
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.

14. 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

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.

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. 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.

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.

1In 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.
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.

15. 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.
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.
II. INTERNAL WORKING PROCEDURES CUSTOMARILY 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. Since then, GATT panels established under Article XXIII:2 have regularly adopted these standard procedures as a basis for their work.

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 decision on dispute settlement procedures adopted by the CONTRACTING PARTIES in November 1984 (BISD 31S/9). 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

Panels set up their own working procedures. They have in general adopted them at their first internal meeting and have communicated them to the parties at an initial organizational meeting with them. A set of suggested working procedures, which is based on the procedures most frequently used, is set out in Annex B.
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; and those marked "****" from the 1984 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.***

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

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.*
Setting up of working procedures and organization of work

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.**

Where possible, panels should provide the parties to the dispute at the outset with a proposed calendar for the panel's work. Where written submissions are requested from the Parties, panels should set precise deadlines, and the parties to a dispute should respect those deadlines.****

Interested third contracting parties

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. *

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 and its submission to the Parties

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.**

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.*

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.*

Avoidance of delays

Panels should aim to deliver their findings without undue delay, taking into account the obligation of the CONTRACTING PARTIES to ensure prompt settlement.*

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.**

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.*

Report to the Council on delays

If a complete report cannot be made within the period foreseen (i.e. three to nine months) panels would be expected to so advise the Council and the report should be submitted as soon as possible thereafter.***
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 decision on dispute settlement procedures adopted by the CONTRACTING PARTIES in November 1984 (L/5718). 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 Understanding (BISD 29S/213) are encouraged to make available to the Panel a written version of their oral statements.
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 calendar for its work:

(a) Receipt of first written submissions of the Parties:
   [(1) complaining Party: ____________________________]
   [(2) Party complained against: _________________________]

(b) Date, time and place of first substantive meeting with the Parties:

(c) Receipt of written rebuttals of the Parties:

(d) Date, time and place of second substantive meeting with the Parties:

(e) Submission of descriptive part of the report to the Parties:

(f) Receipt of comments by the Parties on the descriptive part of the report:

(g) Submission of the final report, including the findings and conclusions, to the Parties:

(h) Circulation of the report to the CONTRACTING PARTIES:

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the Parties will be scheduled if required.
III. TABULAR LISTS OF GATT ARTICLE XXIII COMPLAINTS

1. Chronological list of Article XXIII complaints

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.

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.
<table>
<thead>
<tr>
<th>No.</th>
<th>Description of case</th>
<th>Date of complaint</th>
<th>Complainant versus</th>
<th>Referred to</th>
<th>Action taken</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Import restrictions</td>
<td>September 1948</td>
<td>USA/Cuba</td>
<td>Working Party September 1948</td>
<td>Working Party report announced settlement reached among the parties and abstained from legal ruling. Import regulations were terminated in 1948.</td>
<td>CP.2/SR.22 CP.2/43 CP.2/SR.25</td>
</tr>
<tr>
<td>2.</td>
<td>Internal taxes</td>
<td>1949, 1950</td>
<td>France/Brazil</td>
<td>Working Party November 1950</td>
<td>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.</td>
<td>II/181 2S/25 4S/21 5S/36 7S/68</td>
</tr>
<tr>
<td>3.</td>
<td>Export restrictions</td>
<td>May 1949</td>
<td>Czechoslovakia/USA</td>
<td>CONTRACTING PARTIES May 1949</td>
<td>The CONTRACTING PARTIES rejected the complaint.</td>
<td>II/28 CP.3/SR.2</td>
</tr>
<tr>
<td>4.</td>
<td>Subsidy on ammonium sulphate</td>
<td>July 1949</td>
<td>Chile/Australia</td>
<td>Working Party March 1950</td>
<td>The CONTRACTING PARTIES found that there was a prima facie 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.</td>
<td>II/188 CP.5/SR 7S/68 CP.5/SR.6</td>
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<tr>
<td>No.</td>
<td>Description of case</td>
<td>Date of complaint</td>
<td>Complaint by/ versus</td>
<td>Referred to</td>
<td>Action taken</td>
<td>Reference</td>
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<tr>
<td>5.</td>
<td>United Kingdom Purchase Tax</td>
<td>October 1959</td>
<td>Netherlands/</td>
<td>CONTRACTING PARTIES</td>
<td>United Kingdom abolished discrimination</td>
<td>CP.5/12</td>
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<td></td>
<td></td>
<td></td>
<td>United Kingdom</td>
<td>December 1950</td>
<td></td>
<td>CP.5/SR.20</td>
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<tr>
<td></td>
<td>Article XIX action</td>
<td></td>
<td>USA</td>
<td>December 1950</td>
<td>The report found the US withdrawal of a tariff concession was not in violation of Article XIX.</td>
<td>CP/106</td>
</tr>
<tr>
<td>7.</td>
<td>Family allowances</td>
<td>March 1951</td>
<td>Norway and Denmark/</td>
<td>Panel</td>
<td>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.</td>
<td>1S/59</td>
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<td></td>
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<td></td>
<td>Belgium</td>
<td>October 1952</td>
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<td>2S/18</td>
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<tr>
<td>No.</td>
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<td>8.</td>
<td>Import restrictions on dairy products</td>
<td>September 1951</td>
<td>Netherlands and Denmark/USA</td>
<td>CONTRACTING PARTIES</td>
<td>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 &quot;determination&quot; by the CONTRACTING PARTIES.</td>
<td>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</td>
</tr>
<tr>
<td>9.</td>
<td>Belgian restrictions on imports from the dollar</td>
<td>February 1952</td>
<td>US/Belgium</td>
<td>Working Party</td>
<td>The Working Party never convened since it was agreed to defer to IMF's arrangement for general liberalization. The restrictions were eventually terminated.</td>
<td>GATT/IC/7 CP.6/50 CF.6/50 SR.7/11 SR.9/2</td>
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<td>No.</td>
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<td>10.</td>
<td>Treatment of sardine imports</td>
<td>September 1952</td>
<td>Norway/Germany</td>
<td>Panel October 1952</td>
<td>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.</td>
<td>L/16 1S/30,53 SR.8/18</td>
</tr>
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<td>11.</td>
<td>Increase of import duties (coefficient for currency conversion)</td>
<td>September 1952</td>
<td>UK/Greece</td>
<td>Panel October 1952</td>
<td>Recommendation of 3 November 1952 notes inconsistency of measure with Article II, para.1. Measure was rescinded 20 July 1953.</td>
<td>L/15 1S/23,51 SR.8/7</td>
</tr>
<tr>
<td>12.</td>
<td>Special import taxes (&quot;contribution&quot; levied on certain imports)</td>
<td>October 1952</td>
<td>France/Greece</td>
<td>Panel October 1952</td>
<td>Decision was deferred and matter referred to CONTRACTING PARTIES for decision on principles. Measure was terminated April 1953.</td>
<td>1S/48 SR.8/7</td>
</tr>
<tr>
<td>13.</td>
<td>Statistical tax on imports and exports</td>
<td>November 1952</td>
<td>USA/France</td>
<td>CONTRACTING PARTIES September 1953</td>
<td>Claimed violation of Article II not contested. Measure suspended 1 October 1954 and abolished as of 1 January 1955.</td>
<td>SR.8/7 SR.9/28</td>
</tr>
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<td>No.</td>
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<td>Date of complaint</td>
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<td>14</td>
<td>Special temporary compensation tax on imports</td>
<td>July 1954</td>
<td>Italy/France</td>
<td>CONTRACTING PARTIES, Working Party January 1955</td>
<td>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.</td>
<td>L/213,366, 406,412,585, 622,643,657, 671 3S/26, 4S/20 5S/27, SR.12/5</td>
</tr>
<tr>
<td>16</td>
<td>Import duties on starch and potato flour</td>
<td>October 1954</td>
<td>Benelux countries/Germany</td>
<td>Panel January 1955</td>
<td>Following the Panel report, Germany proposed tariff concessions which were found acceptable.</td>
<td>L/260 3S/77 SR.9/34</td>
</tr>
<tr>
<td>17</td>
<td>Luxury import tax</td>
<td>October 1954</td>
<td>Italy/Greece</td>
<td>CONTRACTING PARTIES September 1955</td>
<td>Matter settled in consultations.</td>
<td>L/234 SR.9/7,30</td>
</tr>
<tr>
<td>18</td>
<td>Stamp tax, increase to 2 per cent</td>
<td>October 1954</td>
<td>USA/France</td>
<td>CONTRACTING PARTIES January 1955</td>
<td>Complaint was withdrawn.</td>
<td>L/245 SR.9/28</td>
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<td>19.</td>
<td>Stamp tax, further increase to 3 per cent</td>
<td>September 1955</td>
<td>USA/France</td>
<td>CONTRACTING PARTIES November 1955</td>
<td>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.</td>
<td>L/410</td>
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<td>L/569,720</td>
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<td>L/1412</td>
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<td>SR.10/5</td>
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<td>C/M/4</td>
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<td>20.</td>
<td>US (Hawaiian) Regulations affecting imported eggs</td>
<td>September 1955</td>
<td>Australia/USA</td>
<td>CONTRACTING PARTIES November 1955</td>
<td>Discussion was deferred pending State court legal action. The court invalidated the regulation requiring &quot;We sell Foreign eggs&quot; sign as violating Article III.</td>
<td>L/411</td>
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<td>SR.10/13</td>
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<td>21.</td>
<td>Increase in bound duties (long-playing records)</td>
<td>November 1956</td>
<td>Germany/Greece</td>
<td>Group of Experts November 1956</td>
<td>Following the report of customs experts, the parties agreed on a compromise duty rate in November 1957. Germany then withdrew the complaint.</td>
<td>L/575</td>
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<td>L/580</td>
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<td>L/765</td>
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<td>SR.12/21</td>
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<td>22.</td>
<td>Exports of subsidized eggs</td>
<td>April 1957</td>
<td>Denmark/UK</td>
<td>Intersessional Committee and Panel April 1957</td>
<td>Panel appointed, but never met due to settlement of complaints over violation of Article XVI.</td>
<td>L/627</td>
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<td>IC/SR.31</td>
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<td>IC/SR.34</td>
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<td>23.</td>
<td>Discrimination against imported agricultural machinery</td>
<td>July 1957</td>
<td>UK/ Italy</td>
<td>Panel</td>
<td>May 1958</td>
<td>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.</td>
</tr>
<tr>
<td>24.</td>
<td>Discrimination against imported agricultural machinery</td>
<td>October 1957</td>
<td>UK/ France</td>
<td>CONTRACTING PARTIES</td>
<td>October 1957</td>
<td>Discrimination removed with retroactive effect.</td>
</tr>
<tr>
<td>25.</td>
<td>Assistance to exports of wheat</td>
<td>April/May 1958</td>
<td>Australia/ France</td>
<td>Panel</td>
<td>April 1958</td>
<td>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.</td>
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<td>No.</td>
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<td>27</td>
<td>UK preference on ornamental pottery</td>
<td>March 1959</td>
<td>Germany/ United Kingdom</td>
<td>Panel March 1959</td>
<td>The Panel could not establish that the proposed increase of margin of preference would divert trade contrary to the terms of earlier waiver.</td>
<td>IC/SR/44 SECRET 105</td>
</tr>
<tr>
<td>28</td>
<td>Recourse to Article XXIII (Primary products)</td>
<td>November 1961</td>
<td>Uruguay/ 15 developed countries</td>
<td>Panel February 1962</td>
<td>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.</td>
<td>L/1647 L/1662 11S/95,56 13S/35,45</td>
</tr>
<tr>
<td>29</td>
<td>Increase in margin of preferences on bananas</td>
<td>December 1961</td>
<td>Brazil/ UK</td>
<td>Panel February 1962</td>
<td>Council took note of Panel report of 11 April 1962. Following the Panel ruling, the proposed tariff increase was abandoned in October 1962.</td>
<td>L/1749 C/M/10 SR.19/12 SR.20/2</td>
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<tr>
<td>30</td>
<td>Imports of potatoes (Value for duties)</td>
<td>November 1962</td>
<td>USA/ Canada</td>
<td>Panel November 1962</td>
<td>CONTRACTING PARTIES recommended that Canada withdraw the additional charge or effect satisfactory adjustment of the impaired benefit. Measure abolished 2 January 1963.</td>
<td>SR.20/8 11S/55,88 L/1968</td>
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<td>No.</td>
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<td>31.</td>
<td>Import restrictions</td>
<td>November 1962</td>
<td>USA/France</td>
<td>Panel</td>
<td>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.</td>
<td>11S/55,94, L/3744, C/M/80,81,83</td>
</tr>
<tr>
<td>33.</td>
<td>Administrative and statistical fees</td>
<td>December 1969</td>
<td>USA/Italy</td>
<td>Council</td>
<td>During the Council discussion, the USA reserved its right to revert to the matter again.</td>
<td>L/3279, C/M/59</td>
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<td>35</td>
<td>Import restrictions on grains</td>
<td>September 1970</td>
<td>USA/Denmark</td>
<td></td>
<td>Notification received by the Council. Parties reached an agreement in October 1970.</td>
<td>L/3436</td>
</tr>
<tr>
<td>36</td>
<td>Margins of preference</td>
<td>September 1970</td>
<td>USA/Jamaica</td>
<td>Panel September 1970</td>
<td>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.</td>
<td>18S/33 18S/183 L/3485</td>
</tr>
<tr>
<td>37</td>
<td>Compensatory taxes on imports</td>
<td>June 1972</td>
<td>USA/EEC</td>
<td>Council July 1972</td>
<td>Compensatory taxes on large number of items abolished. US agreed to defer further action.</td>
<td>L/3715 and Add.1 C/M/80</td>
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<tr>
<td>No.</td>
<td>Description of case</td>
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<td>December 1972</td>
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<td>L/3843</td>
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<td>July 1973</td>
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<td>235/98</td>
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<td>285/114</td>
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<td>C/M/87,89,110,112,117,119,120,122,123,124,149,151-154,159,161,165,166,168,170,171,180</td>
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<td>C/M/183</td>
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<td>41.</td>
<td>Income tax practices</td>
<td>May 1973</td>
<td>USA/France</td>
<td>Panel</td>
<td>Reports presented to the Council on 12 November 1976. Council adopted the reports on 7-8 December 1981 and agreed to an &quot;understanding&quot; (C/M/154).</td>
<td>L/3860</td>
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<td>July 1973</td>
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<td>235/114</td>
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<td>235/127</td>
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<td>42.</td>
<td>Income tax practices</td>
<td>May 1973</td>
<td>USA/Belgium</td>
<td>Panel</td>
<td>Reports presented to the Council on 12 November 1976. Council adopted the reports on 7-8 December 1981 and agreed to an &quot;understanding&quot; (C/M/154).</td>
<td>235/137</td>
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<td>July 1973</td>
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<td>285/114</td>
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<td>C/M/87,89,110,112,117,119,120,122-124,145,146,148,149,151-154</td>
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<td>43.</td>
<td>Income tax practices</td>
<td>May 1972</td>
<td>&quot;USA/</td>
<td>Panel</td>
<td>Reports presented to the Council on 12 November 1976. Council adopted the reports on 7-8 December 1981 and agreed to an &quot;understanding&quot; (C/M/154).</td>
<td>235/114</td>
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<td>Netherlands</td>
<td>July 1973</td>
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<td>C/M/87,89,110,112,117,119,120,122-124,145,146,148,149,151-154</td>
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<td>44.</td>
<td>Article XXIV:6 negotiations with the EEC</td>
<td>November 1974</td>
<td>Canada/EEC</td>
<td>Panel November 1974</td>
<td>Panel never met due to agreement reached between the parties in March 1975.</td>
<td>L/4107</td>
</tr>
<tr>
<td>46.</td>
<td>Minimum import prices, licences and surety deposits for certain processed fruits and vegetables</td>
<td>April 1976</td>
<td>US/EEC</td>
<td>Panel July 1976</td>
<td>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.</td>
<td>C/M/113, 114,115,117, 124,128</td>
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<td>No.</td>
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<td>48.</td>
<td>Withdrawal of tariff concessions under Article XXVIII:3</td>
<td>October 1976</td>
<td>EEC/Canada</td>
<td>Panel November 1976</td>
<td>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.</td>
<td>L/4432 C/M/117,119, 125-128 258/42</td>
</tr>
<tr>
<td>50.</td>
<td>Export refunds on malted barley</td>
<td>November 1977</td>
<td>Chile/EEC</td>
<td>Council and good offices of the Director-General (matter not pursued by Chile) November 1977</td>
<td>C/M/116,123, 125</td>
<td></td>
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<tr>
<td>51.</td>
<td>Restrictions on imports of textiles from Hong Kong</td>
<td>May 1978</td>
<td>UK on behalf of Hong Kong/Norway Panel July 1979</td>
<td>The Panel report, which found Norway's Article XIX action not consistent with Article XIII, was adopted by the Council on 18 June 1980.</td>
<td>L/4959 C/M/125-128, 134,135,139, 141,143,144</td>
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<td>53.</td>
<td>Refunds on exports of sugar</td>
<td>September 1978</td>
<td>Australia/EEC</td>
<td>Panel November 1978</td>
<td>The Panel report which found, inter alia, 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.</td>
<td>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</td>
</tr>
<tr>
<td>54.</td>
<td>Refunds on exports of sugar</td>
<td>November 1978</td>
<td>Brazil/EEC</td>
<td>Panel November 1978</td>
<td>The Panel report which found, inter alia, 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.</td>
<td>L/4722 27S/69 28S/80, 29S/82, C/M/130,132 135,138,139, 143,144,146, 148-150</td>
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<td>55.</td>
<td>Import restrictions on apples from Chile</td>
<td>June 1979</td>
<td>Chile/EEC</td>
<td>Panel November 1979</td>
<td>The Panel report, which found the EEC measures not in conformity with Article XIII, was adopted on 10 November 1980.</td>
<td>L/4805,4807,4816,27S/98 C/M/134,135,138,144</td>
</tr>
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<td>58.</td>
<td>Restraints on imports of manufactured tobacco</td>
<td>November 1979</td>
<td>US/Japan</td>
<td>Panel November 1979</td>
<td>The Panel report, which notes that the US and Japan agreed on a solution to the matter, was adopted on 11 June 1981.</td>
<td>L/4871,28S/100 C/M/136,139,148</td>
</tr>
<tr>
<td>No.</td>
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<td>59.</td>
<td>Prohibition of imports of tuna and tuna products</td>
<td>January 1980</td>
<td>Canada/US</td>
<td>Panel</td>
<td>The Panel report, which found the import restrictions not in conformity with Article XI, was adopted on 22 February 1982.</td>
<td>L/4931, 295/91, C/M/138,139,141,144,154-157,159</td>
</tr>
<tr>
<td>60.</td>
<td>Tariff treatment of unroasted coffee</td>
<td>6 May 1980</td>
<td>Brazil/Spain</td>
<td>Panel</td>
<td>The Panel report, which found the tariff régime not in conformity with Article I, was adopted on 11 June 1981.</td>
<td>L/4974, 285/102, C/M/135,136,138,139,141,143,148,151</td>
</tr>
<tr>
<td>61.</td>
<td>Imports of beef from Canada</td>
<td>6 June 1980</td>
<td>Canada/EEC</td>
<td>Panel</td>
<td>The Panel report, which found the EEC measures inconsistent with Articles I and II, was adopted on 10 March 1981.</td>
<td>L/4987, 285/92, C/M/139,141,143,146</td>
</tr>
<tr>
<td>No.</td>
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<td>64.</td>
<td>Import duty on vitamin B12, feed-grade quality</td>
<td>1 June 1981</td>
<td>EEC/US</td>
<td>Panel June 1981</td>
<td>The Panel report, which concluded that the US had not infringed any GATT provision, was adopted on 1 October 1982.</td>
<td>L/5129,5157 29S/110 C/M/148-150, 159-161,166</td>
</tr>
<tr>
<td>No.</td>
<td>Description of case</td>
<td>Date of complaint</td>
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<tr>
<td>65.</td>
<td>Production subsidies on canned fruit</td>
<td>11 June 1981</td>
<td>Australia/EEC</td>
<td>(Australia intervened in the subsequent panel proceeding infra note 68)</td>
<td></td>
<td>L/5167,5224 C/M/148,149</td>
</tr>
<tr>
<td>66.</td>
<td>Imports of automotive spring assemblies</td>
<td>September 1981</td>
<td>Canada/US</td>
<td>Panel December 1981</td>
<td>Panel report found no violation of GATT provisions. The Panel report was adopted on 26 May 1983 subject to an understanding (C/M/168)</td>
<td>L/5195+Add.1 L/5333 C/M/151,152, 154,155, 159-162,165, 167,168</td>
</tr>
<tr>
<td>67.</td>
<td>Quantitative restrictions against imports from Hong Kong</td>
<td>December 1981 (recourse to Art. XXIII:1) September 1982 (recourse to Art. XXIII:2)</td>
<td>United Kingdom on behalf of Hong Kong/ EEC</td>
<td>Panel October 1982</td>
<td>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.</td>
<td>L/5362 C/M/154,161 165,170,171 173 308/129 C/M/173,174, 178 SR.40/2, p.7</td>
</tr>
<tr>
<td>No.</td>
<td>Description of case</td>
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<tr>
<td>68.</td>
<td>EEC-Production aids on canned peaches, canned pears, canned fruit cocktail and dried grapes</td>
<td>March 1982</td>
<td>US/EEC</td>
<td>Panel March 1982</td>
<td>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.</td>
<td>L/5306 C/M/156,159,186-188,190-192,194,195 L/5778</td>
</tr>
<tr>
<td>69.</td>
<td>Canada - Administration of the Foreign Investment Review Act (FIRA)</td>
<td>March 1982</td>
<td>US/Canada</td>
<td>Panel March 1982</td>
<td>The Panel report which found, inter alia, that certain purchase undertakings were inconsistent with Article III, was adopted on 7 February 1984.</td>
<td>L/5308 C/M/156,160,162,171,173,174 305/140</td>
</tr>
<tr>
<td>No.</td>
<td>Description of case</td>
<td>Date of complaint</td>
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<td>Referred to</td>
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<tr>
<td>70.</td>
<td>EEC - sugar régime</td>
<td>April 1982</td>
<td>Argentina, Australia, Brazil, Colombia, Cuba, Dominican Republic, India, Nicaragua, Peru, Philippines/ EEC States</td>
<td>Consultations pursuant to Art. XXIII:1</td>
<td>Council took note of the statement that complainants reserve their rights under GATT.</td>
<td>L/5309+Add. C/M/161</td>
</tr>
<tr>
<td>No.</td>
<td>Description of case</td>
<td>Date of complaint</td>
<td>Complaint by/versus</td>
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<td>71.</td>
<td>EEC Tariff treatment on imports of citrus products from certain Mediterranean countries</td>
<td>June 1982</td>
<td>US/EEC</td>
<td>Panel November 1982</td>
<td>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.</td>
<td>L/5337 L/5339 C/M/159-162, 167,168,170, 186,190 L/5776</td>
</tr>
</tbody>
</table>

<p>| 72. | 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 |</p>
<table>
<thead>
<tr>
<th>No.</th>
<th>Description of case</th>
<th>Date of complaint</th>
<th>Complaint by/versus</th>
<th>Referred to</th>
<th>Action taken</th>
<th>Reference</th>
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</thead>
<tbody>
<tr>
<td>73.</td>
<td>Imports of table grapes</td>
<td>October 1982</td>
<td>EEC/Switzerland</td>
<td>Article XXIII:1 consultations (Matter not pursued)</td>
<td>L/5371</td>
<td></td>
</tr>
<tr>
<td>74.</td>
<td>Import restrictive measures on video tape recorders</td>
<td>December 1982</td>
<td>Japan/EEC</td>
<td>Article XXIII:1 consultations (Matter not pursued following a bilateral agreement)</td>
<td>L/5427 C/M/162</td>
<td></td>
</tr>
<tr>
<td>77.</td>
<td>Nullification or impairment of benefits and impediment to the attainment of GATT objectives</td>
<td>April 1983</td>
<td>EEC/Japan</td>
<td>Article XXIII:1 consultations. Request for a GATT Working Party not pursued.</td>
<td>L/5479 C/M/167</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Description of case</td>
<td>Date of complaint</td>
<td>Complaint by/versus</td>
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<td>Action taken</td>
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<tr>
<td>78.</td>
<td>Imports of sugar</td>
<td>May 1983</td>
<td>Nicaragua/USA</td>
<td>Panel</td>
<td>The Panel report, which found the sugar quota allocated to Nicaragua inconsistent with Article XIII was adopted on 13 March 1984.</td>
<td>L/5492, C/M/168,170, 171,176,178, 183, 315/67</td>
</tr>
<tr>
<td>80.</td>
<td>Imports of newspaper print from Canada</td>
<td>January 1984</td>
<td>Canada/EEC</td>
<td>Panel</td>
<td>The Panel report, which found the EEC import quota inconsistent with Article II, was adopted on 20 November 1984.</td>
<td>L/5589,5628, C/M/176,183, 315/114</td>
</tr>
<tr>
<td>81.</td>
<td>Import measures on certain dairy products</td>
<td>May 1984</td>
<td>EEC/Chile</td>
<td>Article XXIII:1 consultations (Matter not pursued)</td>
<td></td>
<td>L/5653</td>
</tr>
<tr>
<td>No.</td>
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<td>Date of complaint</td>
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<tr>
<td>82.</td>
<td>Discriminatory application of Retail Sales Tax on Gold Coins</td>
<td>July 1984</td>
<td>South Africa/ Canada</td>
<td>Panel</td>
<td>November 1984</td>
<td>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.</td>
</tr>
<tr>
<td>No.</td>
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<tr>
<td>84.</td>
<td>EEC-Operation of its beef and veal régime</td>
<td>October 1984</td>
<td>Australia/ EEC</td>
<td>Article XXIII:1 consultations (Matter not pursued)</td>
<td></td>
<td>L/5715/C/M/183</td>
</tr>
<tr>
<td>85.</td>
<td>US-Ban on imports of steel pipes and tubes from the EEC</td>
<td>December 1984</td>
<td>EEC/USA</td>
<td>Council</td>
<td>Council took note of the conclusion of a bilateral arrangement in January 1985.</td>
<td>L/5747/Add.2/C/M/184,185/L/5773</td>
</tr>
<tr>
<td>86.</td>
<td>Canada-Import distribution and sale of alcoholic drinks by provincial marketing agencies</td>
<td>February 1985</td>
<td>EEC/ Canada</td>
<td>Panel</td>
<td>(Composition of Panel announced in December 1986)</td>
<td>L/5777/C/M/186,195</td>
</tr>
<tr>
<td>87.</td>
<td>US-Restrictions on imports of certain sugar-containing products</td>
<td>March 1985</td>
<td>Canada/ USA</td>
<td>Panel</td>
<td>(Matter not pursued)</td>
<td>L/5783/C/M/186</td>
</tr>
<tr>
<td>No.</td>
<td>Description of case</td>
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<td>89.</td>
<td>Trade measures affecting Nicaragua</td>
<td>July 1985</td>
<td>Nicaragua/USA</td>
<td>Panel</td>
<td>October 1985</td>
<td>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/191,192,196,204,206 L/6053</td>
</tr>
<tr>
<td>90.</td>
<td>US-Restrictions on imports of cotton pillowcases and bed sheets</td>
<td>September 1985</td>
<td>Portugal/USA</td>
<td>Article XXIII:1 consultations</td>
<td>(Matter not pursued)</td>
<td>L/5859</td>
</tr>
<tr>
<td>91.</td>
<td>EC-Ban on importation of skins of certain seal pups and related products</td>
<td>December 1985</td>
<td>Canada/EEC</td>
<td>Article XXIII:1 consultations</td>
<td>(Matter not pursued)</td>
<td>L/5940</td>
</tr>
<tr>
<td>No.</td>
<td>Description of case</td>
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<td>92.</td>
<td>Brazilian exports of non-beverage ethyl alcohol into the United States</td>
<td>May 1986</td>
<td>Brazil/US</td>
<td>Article XXIII:1 consultations (Matter not pursued)</td>
<td></td>
<td>L/5993</td>
</tr>
<tr>
<td>94.</td>
<td>Customs duties, taxes and labelling practices on imported wines and alcoholic beverages</td>
<td>October 1986</td>
<td>EEC/Japan</td>
<td>Panel February 1987</td>
<td></td>
<td>L/6078 C/M/204, 205, 206</td>
</tr>
<tr>
<td>No.</td>
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<td>96.</td>
<td>Restrictions on exports of unprocessed uranium</td>
<td>December 1986</td>
<td>US/Canada</td>
<td>Article XXIII:1 consultations</td>
<td></td>
<td>L/6104</td>
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<tr>
<td>No.</td>
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<td>100</td>
<td>Restrictions on exports of unprocessed salmon and herring</td>
<td>February 1987</td>
<td>US/Japan</td>
<td>Panel March 1987</td>
<td></td>
<td>L/6132 C/M/208</td>
</tr>
<tr>
<td>101</td>
<td>Tax reform legislation for small passenger aircraft</td>
<td>April 1987</td>
<td>EEC/US</td>
<td>Article XXIII:1 consultations (Request for a GATT Panel not pursued)</td>
<td></td>
<td>L/6153 C/M/208, 209</td>
</tr>
<tr>
<td>103</td>
<td>United States restrictions on certain Japanese products</td>
<td>April 1987</td>
<td>Japan/US</td>
<td>Article XXIII:1 consultations</td>
<td></td>
<td>L/6159</td>
</tr>
</tbody>
</table>
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

**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

- **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

- **Income tax practices**

  Complaint by United States in 1973  
  (See list 1, No. 42)  
  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

**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  
  CP.3  
  II/181  
  II/186
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.

Canada

- **Imports of potatoes**

  Complaint by United States in 1962 (See list 1, No. 30)
  Panel report adopted on 16 November 1962
  GATT Articles examined: II, VI, VII
  Recommendation of 16 November 1962 that Canada withdraw the additional charge
  Value for duty cancelled in January 1963 and again established in 1966

- **Import quotas on eggs**

  Complaint by United States in 1975 (See list 1, No. 45)
  Working Party report adopted on 17 January 1976
  GATT Article examined: XI
  In March 1976, Canada notified certain increases in the quotas in accordance with suggestions made by the Working Party

- **Withdrawal of tariff concessions under Article XXVIII:3**

  Complaint by EEC in 1976 (See list 1, No. 48)
  Panel report adopted on 17 May 1978
  GATT Article examined: XXVIII

- **Administration of the Foreign Investment Review Act**

  Complaint by United States in 1982 (See list 1, No. 69)
  Panel report adopted on 7 February 1984
  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. 82)  
  Panel report (not yet adopted)  
  GATT Articles examined: III, XXIII, XXIV

- **Import distribution and sale of alcoholic drinks by provincial marketing agencies**

  Complaint by EEC in 1985  
  (See list 1, No. 86)  
  L/5777

- **Restrictions on exports of unprocessed uranium**

  Complaint by United States  
  (See list 1, No. 96)  
  L/6104

**Chile**

- **Import measures on certain dairy products**

  Complaint by EEC in 1984  
  (See list 1, No. 81)  
  L/5653

**Cuba**

- **Import restrictions**

  Complaint by United States in 1948  
  (See list 1, No. 1)  
  Working Party report adopted on 14 September 1948, noted bilateral settlement  
  Import regulations were terminated in 1948

**Denmark**

- **Import restrictions on grains**

  Complaint by United States in 1970  
  (See list 1, No. 35)  
  Complaint was withdrawn subsequent to settlement reached in consultations

  L/3436

**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  
  The Parties complied with the Panel's conclusions

  L/2088

  12S/65
- **Compensatory taxes on imports**
  
  Complaint by United States in 1972  
  (See list 1, No. 37)  
  Compensatory taxes on large number of items abolished  
  US agreed to defer further action

- **Article XXIV:6 negotiations with the EEC**
  
  Complaint by Canada in 1974  
  (See list 1, No. 44)  
  Reservation by EEC against procedure  
  Panel established  
  Agreement reached between the parties in 1975

- **Import deposits for animal feed proteins**
  
  Complaint by United States in 1976  
  (See list 1, No. 47)  
  Panel report adopted on 14 March 1978  
  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  
  (See list 1, No. 46)  
  Panel report adopted on 18 October 1978  
  GATT Articles examined: I, II, VIII, XI, XXIII

- **Export refunds on malted barley**
  
  Complaint by Chile in 1977  
  (See list 1, No. 50)  
  Conciliation and good offices of Director-General

- **Refunds on exports of sugar**
  
  Complaint by Australia in 1978  
  (See list 1, No. 53)  
  Panel report adopted on 6 November 1979  
  GATT Article examined: XVI  
  Working Party report on Article XVI:1 discussions adopted on 10 March 1981  
  Working Party report adopted on 31 March 1982
- Refunds on exports of sugar

Complaint by Brazil in 1978
(See list 1, No. 54)
Panel report adopted on 10 November 1980
GATT Articles examined: XVI, XXIII, XXXVI, XXXVIII
Working Party report on Article XVI:1 discussions adopted on 10 March 1981
Working Party report adopted on 31 March 1982
L/4722 27S/69 28S/80 29S/82

- Import restrictions on apples

Complaint by Chile in 1979
(See list 1, No. 55)
Panel report adopted on 10 November 1980
GATT Articles examined: I, II, XI, XIII, XXIII, Part IV
L/4805 27S/98

- Imports of beef

Complaint by Canada in 1980
(See list 1, No. 61)
Panel report adopted on 10 March 1981
GATT Articles examined: I, II, XXIII
L/4987 28S/92

- Imports of poultry

Complaint by United States in 1980
(See list 1, No. 62)
Panel report adopted on 11 June 1981
Complaint withdrawn
L/5033 28S/90 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. 67)
Panel report adopted on 12 July 1983
GATT Articles examined: XI, XIII, XXIII
L/5362 30S/129

- Production subsidies on canned fruit

Complaint by Australia in 1981
(See list 1, No. 65)
L/5167 C/M/148, 149
- Production aids on canned peaches, canned pears, canned fruit cocktail and dried grapes

Complaint by United States in 1982
(See list 1, No. 68)
Panel report (not adopted)
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
(See list 1, No. 70)
Council took note of the statement that complainants reserve their rights under GATT

- Imports of citrus fruits and products

Complaint by United States in 1982
(See list 1, No. 71)
Panel report (not adopted)
GATT Articles examined: I, XXIII, XXIV

- Import restrictive measures on video tape recorders

Complaint by Japan in 1982
(See list 1, No. 74)

- Imports of Newsprint

Complaint by Canada in 1984
(See list 1, No. 80)
Panel report adopted on 6-8 and 20 November 1984
GATT Articles examined: II, XIII, XXIII, XXVIII

- Operation of its beef and veal régime

Complaint by Australia in 1984
(See list 1, No. 84)

- Ban on importation of skins of certain seal pups and related products

Complaint by Canada in 1985
(See list 1, No. 91)

Finland

- Internal regulations having an effect on imports of certain parts of footwear

Complaint by the EEC in 1982
(See list 1, No. 72)
France

- **Statistical tax on imports and exports**

  Complaint by United States in 1952
  (See list 1, No. 13)
  Tax abolished as of 1 January 1955

  [SR.8/7]

  - **Special temporary compensation tax on imports**

    Complaint by Italy in 1954
    (See list 1, No. 14)
    Decisions of CONTRACTING PARTIES of
    17 January 1955, of 30 November 1955 and of
    16 November 1956 urging removal of tax
    Interim report of the Working Party of 8 August 1957
    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.
    [SR.12/5]

  - **Stamp tax, increase to 2 per cent**

    Complaint by United States in 1954
    (See list 1, No. 18)
    Complaint withdrawn
    [SR.9/28]

  - **Stamp tax, further increase to 3 per cent**

    Complaint by United States in 1955
    (See list 1, No. 19)
    French undertaking to cancel increase as soon
    as possible
    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)
    Discrimination removed with retroactive effect
    [SR.13/7]

  - **Assistance to exports of wheat flour**

    Complaint by Australia in 1958
    (See list 1, No. 25)
    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

- Import restrictions

Complaint by United States in 1962 SR.20/8
(See list 1, No. 31)
GATT Articles examined: XI, XII 11S/55
Recommendation of 14 November 1962 C/M/80
Certain restrictions were removed by France. C/M/81, 83
Matter was eventually not pursued

- Income tax practices

Complaint by United States in 1973 L/3860
(See list 1, No. 41)
Panel report adopted on 7-8 December 1981 23S/114; 28S/114
GATT Articles examined: XVI, XXIII C/97
Reservation by France C/M/154
Understanding and statements on the adoption 28S/114
of the Panel report

Germany

- Treatment of sardines imports

Complaint by Norway in 1952 L/16
(See list 1, No. 10)
Panel report adopted on 31 October 1952 1S/53
GATT Articles examined: I, XIII, XXIII 1S/30
Recommendation of 31 October 1952 SR.8/18
Agreement reached between governments in 1953

- Import duties on starch and potato flour

Complaint by Benelux countries in 1954 L/260
(See list 1, No. 16)
Panel report noted on 16 February 1955 3S/77
GATT Article examined: II SR.9/34
Greece

- Increase of import duties

Complaint by United Kingdom in 1952
(See list I, No. 11)
Panel report adopted on 3 November 1952
GATT Article examined: II
Recommendation of 3 November 1952
Previously existing coefficient for currency conversion was restored

- Special import taxes

Complaint by France in 1952
(See list I, No. 12)
Panel report adopted on 3 November 1952
GATT Articles examined: II, III
Measure terminated in April 1953

- Luxury tax

Complaint by Italy in 1954
(See list I, No. 17)
Matter settled in consultations

- Increase in bound duties

Complaint by Germany in 1956
(See list I, No. 21)
Report of Group of Experts
Settlement reached and complaint withdrawn in November 1957

- Preferential tariff quotas to the USSR

Complaint by United States in 1970
(See list I, No. 34)
Working Party report adopted on 2 December 1970
(The Working Party did not recommend that the requested waiver be granted)
Greece will seek appropriate solution

Italy

- Discrimination against imported agricultural machinery

Complaint by United Kingdom in 1957
(See list I, No. 23)
Panel report adopted on 23 October 1958
GATT Articles examined: III, XXIII
Recommendation of 23 October 1958
Agreement reached
Matter raised again by the United Kingdom in 1960
Retained on agenda

- Assistance to exports of flour

Complaint by Australia in 1958
(See list 1, No. 26)
Matter referred to panel but agreement reached in bilateral discussions

- Administrative and statistical fees

Complaint by the United States in 1969
(See list 1, No. 33)
During the Council discussion, the United States reserved the right to revert to the matter

Jamaica

- Increase in margins of preference

Complaint by United States in 1970
(See list 1, No. 36)
Panel report adopted on 2 February 1971
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 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
(See list 1, No. 49)
Panel report adopted on 17 May 1978 indicating that parties have arrived at a bilateral solution
- Restraints on imports of leather

Complaint by United States in 1978
(See list 1, No. 52)
Panel report adopted on 6 November 1979
notes that United States was withdrawing the complaint
subsequent to bilateral settlement reached

Panel report adopted on 6 November 1979
26S/320

- Restrictions on imports of leather

Complaint by Canada in 1979
(See list 1, No. 56)
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
(See list 1, No. 58)
Panel report, adopted 11 June 1981, notes
bilateral settlement and withdrawal of complaint
28S/100

- Measures on imports of leather

Complaint by United States in 1983
(See list 1, No. 75)
Panel report adopted on 15/16 May 1984
GATT Articles examined: II, X, XI, XIII
31S/94

- Nullification or impairment of benefits

Complaint by EEC in 1983
(See list 1, No. 77)
L/5479

- Quantitative Restrictions on Imports of Leather Footwear

Complaint by United States in July 1985
(See list 1, No. 88)
L/5826

- Restrictions on imports of certain agricultural products

Complaint by United States in August 1986
(See list 1, No. 93)
L/6037

- Customs duties, taxes and labelling practices on imported wines and alcoholic beverages

Complaint by EEC in October 1986
(See list 1, No. 94)
L/6078
- Restrictions on imports of herring, pollock and surimi

Complaint by United States in October 1986
(See list 1, No. 95)
L/6070

- Bilateral agreement regarding trade in semi-conductors

Complaint by EEC in February 1987
(See list 1, No. 99)
L/6129

- Restrictions on exports of unprocessed salmon and herring

Complaint by United States in February 1987
(See list 1, No. 100)
L/6132

Netherlands

- Income tax practices

Complaint by United States in 1973
(See list 1, No. 43)
Panel report adopted on 7-8 December 1981
GATT Articles examined: XVI, XXIII
Reservation by the Netherlands
Understanding and Statements on the adoption of the Panel report
L/3860
23S/137; 28S/114
C/99
C/M/154
28S/114

New Zealand

- Imports of electrical transformers

Complaint by Finland in 1984
(See list 1, No. 83)
Panel report adopted on 18 July 1985
GATT Article examined: VI
L/5682
32S/55

Norway

- Restrictions on imports of certain textile products

Complaint by United Kingdom on behalf of Hong Kong in 1978
(See list 1, No. 51)
Panel report adopted "in principle" on 18 June 1980
GATT Articles examined: XI, XIII, XIX
L/4959
27S/119
Spain

- **Restrictions on domestic sale of soyabean oil**

  Complaint by United States in 1979  
  (See list 1, No. 57)  
  Panel report of 17 June 1981  
  GATT Articles examined: III, XVII, XXIII  
  Council took note of the report and of the statements made on 3 November 1981  
  L/4859  
  L/5142  
  C/M/152

- **Tariff treatment of unroasted coffee**

  Complaint by Brazil in 1980  
  (See list 1, No. 60)  
  Panel report adopted on 11 June 1981  
  GATT Articles examined: I, II  
  L/4974  
  28S/102

Sweden

- **Anti-dumping duties**

  Complaint by Italy in 1954  
  (See list 1, No. 15)  
  Panel report adopted on 26 February 1955  
  GATT Article examined: VI  
  Anti-dumping regulations in question were abrogated on 10 July 1955  
  L/215  
  3S/81  
  7S/69  
  L/386

Switzerland

- **Imports of table grapes**

  Complaint by the EEC in 1982  
  (See list 1, No. 73)  
  L/5371

United Kingdom

- **United Kingdom Purchase Tax**

  Complaint by Netherlands in 1950  
  (See list 1, No. 5)  
  United Kingdom abolished discrimination  
  CP.5/12  
  CP.5/SR.20  
  G 18

- **Preference on ornamental pottery**

  Complaint by Germany in 1959  
  (See list 1, No. 27)  
  Panel report  
  IC/SR/44  
  SECRET 105
- Increase in margins of preferences on bananas

Complaint by Brazil in 1961
(See list 1, No. 29)
Panel report of 11 April 1962
Council took note of Panel report
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

- Exports of subsidized eggs

Complaint by Denmark in 1957
(See list 1, No. 22)
Discussion by Intersessional Committee and establishment of Panel which never met due to settlement reached in September 1957

- Import restrictions of cotton textiles

Complaint by Israel in 1972
(See list 1, No. 38)
Panel report adopted on 5 February 1973 notes that bilateral settlement had been reached

- Dollar area import quotas

Complaint by United States in 1972
(See list 1, No. 39)
Interim panel report adopted on 30 July 1973
Panel report, adopted on 30 July 1973, notes withdrawal of complaint following bilateral settlement reached

United States

- Export restrictions

Complaint by Czechoslovakia in 1949
(See list 1, No. 3)
The CONTRACTING PARTIES rejected the complaint
Suspension of obligations between Czechoslovakia and the United States

- "Serious injury" in case of Article XIX action

Complaint by Czechoslovakia
(See list 1, No. 6)
The report found the withdrawal by the United States of a tariff concession not in violation of Article XIX.

- Import restrictions on dairy products

Complaints by the Netherlands and Denmark in 1951 (See list 1, No. 8)
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) 4S/31, 96
of 1 December 1955
Determination (suspension of certain obligations) 5S/28, 136
of 16 November 1956
Determination (suspension of certain obligations) 6S/14, 152
of 28 November 1957
Determination (suspension of certain obligations) 7S/23, 124
of 20 November 1958
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)
Regulation invalidated SR.10/13

- Tax legislation (DISC)

Complaint by EEC in 1973 (See list 1, No. 40)
GATT Articles examined: XVI, XXIII
Understanding and statements on the adoption of the Panel report 28S/114
Follow-up of DISC C/M/154
L/5716

- Prohibition of imports of tuna and tuna products

Complaint by Canada in 1980 (See list 1, No. 59)
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
(See list 1, No. 63)
Panel report adopted on 3 November 1980 notes bilateral settlement

L/5028, 5062
28S/113

- Import duty on vitamin B-12

Complaint by EEC in 1981
(See list 1, No. 64)
Panel report adopted on 1 October 1982
GATT Articles examined: II, XXVIII

L/5129
29S/110

- Imports of automotive spring assemblies

Complaint by Canada in 1981
(See list 1, No. 66)
Panel report adopted on 26 May 1983 subject to an understanding
GATT Articles examined: III, XI, XX, XXIII

L/5195 + Addenda
30S/107
C/M/168

- "Manufacturing clause" in US copyright legislation

Complaint by EEC in 1982
(See list 1, No. 76)
Panel report adopted on 15/16 May 1984
GATT Articles examined: XI, XIII and Protocol of Provisional Application

C/M/160
31S/74

- Imports of sugar

Complaint by Nicaragua in 1983
(See list 1, No. 78)
Panel report adopted on 13 March 1984
GATT Articles examined: XI, XIII

C/M/168
L/5492
31S/67

- Reclassification of Machine-Threshed Tobacco

Complaint by EEC in 1983
(See list 1, No. 79)

L/5541

- Ban on imports of steel pipes and tubes from the EC

Complaint by EEC in 1984
(See list 1, No. 85)

L/5747/Add.2
- Restrictions on imports of certain sugar-containing products
  Complaint by Canada in 1985
  (See list 1, No. 87)

- Trade Measures Affecting Nicaragua
  Complaint by Nicaragua in 1985
  (See list 1, No. 89)
  Panel report
  GATT Articles examined: XXI, XXIII, XXV:5

- Restrictions on imports of cotton pillowcases and bed sheets
  Complaint by Portugal in 1985
  (See list 1, No. 90)

- Imports of non-beverage ethyl alcohol
  Complaint by Brazil in 1986
  (See list 1, No. 92)

- Tax on imported petroleum and petroleum products
  Complaints by Canada, by the EEC and by Mexico in 1987
  (See list 1, No. 97)

- Customs user fee
  Complaints by Canada and the EEC in 1987
  (See list 1, No. 98)

- Tax reform legislation for small passenger aircraft
  Complaint by the EEC in 1987
  (See list 1, No. 101)

- Section 337 of the United States Tariff Act of 1930
  Complaint by the EEC in 1987
  (See list 1, No. 102)

- Import restrictions on certain Japanese products
  Complaint by Japan in 1987
  (See list 1, No. 103)
Uruguay

- Uruguayan recourse in 1961 affecting fifteen contracting parties maintaining different types of measures
  (See list 1, No. 28)
  Report of Panel adopted on 16 November 1962
  GATT Articles examined: I, II, III, XI, XII, XVII, XX, XXII, XXIII
  Recommendation of 16 November 1962, addressed to seven contracting parties
  Reports of Panel adopted on 3 March 1965

L/1647
11S/95
11S/56
13S/35, 45
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
  Discussion in Subsidies Committee on 14 December 1981
  Panel report of March 1983 (not yet adopted)
  Subsequent discussions in Subsidies Committee

- EEC subsidies on export of pasta

  Request for conciliation under Article 13:1 by the United States in 1982
  Discussions in Subsidies Committee on 3, 10, 24 March and 7 April 1982
  Panel report of May 1983 (not yet adopted)
  Subsequent discussions in Subsidies Committee

- EEC subsidies on export of sugar

  Request for conciliation under Article 13:2 by the United States in 1982
  Discussion in Subsidies Committee on 30 April 1982

- Certain domestic procedures of the United States

  Request for conciliation under Article 17 by India in 1982
  Discussion in Subsidies Committee on 29 April 1982, 15 July 1982 and 17 November 1983
  United States countervailing duties investigations against imports from Canada
  Request for conciliation under Article 17 by Canada in 1983
  Request withdrawn in March 1983

- United States subsidies on the export of wheat flour

  Request for conciliation under Article 17 by the EEC in April 1983
  Discussion in Subsidies Committee on 18 May 1983 and establishment of Panel
  (Matter not pursued)
- 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

- 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

- 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

Panel report of May 1987

- 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

- Canadian countervailing duty action concerning pasta products exported from the EEC

Request by the EEC for conciliation under Article 17:1 in October 1986

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

Discussions in Anti-Dumping Committee in November 1983 and March 1984
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

- 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

- Spanish type approval of heating radiators and electrical medical equipment

  Consultations under Article 14:1 between Spain and the United States in 1985

4. 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
  Discussion in Committee on Government Procurement in July 1982
  Panel report adopted on 16 May 1984 and statements made at the meeting of 16 May 1984
  Solution of the dispute accepted in February 1987

TBT/Spec/7
TBT/Spec/8
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
TBT/M/19
GPR/Spec/18
GPR/M/Spec/1
GPR/21
L/6128
- Japan's single tendering practices
  Request for consultations under Article VII:4 by the United States in 1984

- French "Computer Literacy Program"
  Request for establishment of a Panel pursuant to Article VII:2 by the United States in 1985
  As a result of bilateral consultations, the establishment of a Panel was not deemed necessary

- Procurement of machine tools by the United States Department of Defense
  Request by EEC for consultations under Article VII:3 in 1987

5. **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 under Article 8.7 in 1987
  Review meeting held in March 1987

6. **International Dairy Arrangement**

- United States sales to Egypt
  Request by EEC for a special meeting pursuant to Article VII:1(b)

- EEC sales of butter below minimum prices
  Special meetings pursuant to Article IV:6

7. **Arrangement Regarding Bovine Meat**

- EEC subsidies on exports of bovine meat
  Request by Argentina for a special meeting pursuant to Article IV:6
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. 51, 52, 55-64, 66-69, 71, 72, 75, 76, 78, 80, 82, 83, 86-89, 93 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
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. 89, L/6053) or to direct its attention to certain bilateral understandings (case No. 86, C/M/195) or Council discussions (case No. 93, 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. 57, 68, 71, 82 and 89). But in three of these disputes the parties agreed on a solution of the dispute (see cases Nos. 68, 71 and 82), and in another dispute (case No. 57) 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. 57, 68, 71, 82 and 89), 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.
(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 III, 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. 57, 68, 71, 82 and 89). One panel report (No. 57) 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. 68 and 82) 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. 71) 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. 89) continues to be pending before the Council and relates to the sensitive area of politically-motivated trade embargoes.
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, 68, 71 and 82). 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. 57). One recent panel report continues to be under consideration by the Council (No. 89). 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
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. 78, 89 and 97), 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. 57 and 71), and to the opposition to the adoption of a few panel reports by the defendant parties (see cases Nos. 68 and 82).

(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
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. 40-43, 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).