

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

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EUROPEAN COMMUNITY - TARIFF TREATMENT ON IMPORTS OF CITRUS PRODUCTS
FROM CERTAIN COUNTRIES IN THE MEDITERRANEAN REGION

Statement by the representative of Austria

The following statement made at the Council meeting of 30 April-1 May 1985 by the representative of Austria, on behalf of the EFTA member countries, is being circulated at the request of those delegations.

1. At the last Council meeting on 12 March the EFTA countries stressed the need to revert to this matter of importance to all Contracting Parties. As the current chairman of the EFTA-Council I would like on behalf of EFTA countries to offer today some comments on the panel's report and indicate some aspects of relevance in order to provide for constructive follow-up to the work of the panel.

2. This dispute arises from the imports of citrus fruits, under different import regimes, into the EC from Mediterranean countries and from the US and therefore relates to the dispute settlement procedures of GATT. The EFTA countries are of the view that this system has to be based on clear rules and precedents set by the CONTRACTING PARTIES. While they have no direct commercial interest in this specific issue, the EFTA countries are nevertheless very much interested in the settlement of trade disputes, as well as in the questions of a legal nature related to the general application of GATT provisions. Therefore, several aspects of a legal nature contained in the panel's report, which have not yet found a common interpretation by the CONTRACTING PARTIES are of paramount importance to us.

3. Article XXIV under which the Mediterranean trade agreements have been considered by the CONTRACTING PARTIES, stipulates the objectives and definitions of a customs union and a free trade area or an interim agreement leading to one of the two alternatives. While not requiring explicit approval of agreements notified and examined, the article contains precise procedures to be followed, both by countries concluding such agreements and by the CONTRACTING

PARTIES themselves to secure the proper balance of rights and obligations as between parties to such agreements and third parties. It is essential in this context to recall that an agreement under scrutiny is regarded as a whole and not on the basis of individual products included in it.

4. We are of the opinion that the panel has been correct in saying that it would not be proper to pass judgment on compatibility with GATT of the trade agreements concluded with countries in the Mediterranean area. This judgment is within the sole competence of the CONTRACTING PARTIES themselves under the procedures set out in Article XXIV. Care is therefore required from us that in any follow-up of the report we do not endorse legal reasonings which would create an unacceptable precedent on the legal status of agreements under Article XXIV.

5. Having refrained from applying Article XXIV in addressing this specific trade matter, the panel turns to Article XXIII for guidance. The provision in Article XXIII:1(a) is left aside on the grounds that there was no prima facie evidence of nullification or impairment. We find this approach a logical one given that special procedures are provided elsewhere for an assessment of the status of the arrangements in question.

6. The panel then resorts to Article XXIII 1(b), the non-violation clause. The essential characteristic of this article is that its use has been contingent upon certain criteria agreed by the CONTRACTING PARTIES. Such criteria have hitherto been agreed to only with regard to issues under Article II, when the balance of rights and obligations as between Contracting Parties have been upset. In considering Article XXIII 1(b) in this case which relates to Article I, the panel itself selected as

criteria certain elements which deal with the characteristics of the Mediterranean agreements under Article XXIV. The discussion so far shows that these criteria do not meet with the agreement of all Contracting Parties.

7. Both Article XXIII and Article XXIV aim at maintaining balance of rights and obligations as between CONTRACTING PARTIES and both contain procedural provisions. The question whether an Article XXIV agreement which has been duly notified as such under this Article is in conformity with the GATT or not is to be decided according to the procedure laid down in that Article. The question whether a party's benefits are nullified or impaired is to be settled according to the procedure under Article XXIII regardless of whether this is due to any other party's failure to carry out its obligations under the GATT or not. The procedure under Article XXIII aims at reaching directly satisfactory adjustments with respect to an injured party, whilst Article XXIV deals with agreements in their entirety. The approach is different in the two articles and the danger of collision obviously exists if there is no line of demarcation which has to be drawn by the CONTRACTING PARTIES in the context of the on-going efforts aiming at improvement of GATT dispute settlement procedures.

8. The mandate of the panel and its subsequent work reveal that it is difficult to merge the legitimate interests of the Mediterranean countries covered by the Mediterranean agreements, with the precise requirements of Article XXIV. The panel report also demonstrates the complex interlinkages between different GATT provisions.

9. Some of the legal questions raised in the report should, in our view, be considered further by the CONTRACTING PARTIES themselves.

10. This leads us to the question how to proceed further: The EFTA countries would suggest that the Council:

- takes note of the panel report;

- examines, in the context of the ongoing efforts to improve the GATT dispute settlement procedure, the related aspects which have been pointed out in the report of the panel, inter alia, the relationship between Articles XXIII and XXIV. EFTA countries are ready to present at a later stage specific proposals in this respect;

- examines the possible modalities for preferential arrangements between developed and developing countries having in mind in particular Articles XXIV, XXV, Part IV and other GATT provisions. Also in this respect, EFTA countries are ready to put forward proposals;

- ask the parties to the dispute to continue discussions in order to arrive at a mutually satisfactory solution.