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Joint Action by the Contracting Parties

1. Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the contracting parties acting jointly they are designated as the CONTRACTING PARTIES.

2. The Secretary-General of the United Nations is requested to convene the first meeting of the CONTRACTING PARTIES, which shall take place not later than March 1, 1948.

3. Each contracting party shall be entitled to have one vote at all meetings of the CONTRACTING PARTIES.

4. Except as otherwise provided for in this Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast.

5. In exceptional circumstances not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this Agreement; *Provided* that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The CONTRACTING PARTIES may also by such a vote

(i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations, and

(ii) prescribe such criteria as may be necessary for the application of this paragraph¹.

1.2 General

1. In *Japan – Alcoholic Beverages II*, the Appellate Body observed that "[h]istorically, the decisions to adopt panel reports under Article XXIII of the GATT 1947 were different from joint action by the CONTRACTING PARTIES under Article XXV of the GATT 1947".²

2. In *US – FSC*, the Panel offered the following observations on Article XXV of the GATT 1994:

"The parties have argued extensively about whether the 1981 understanding was adopted pursuant to Article XXIII:2 or Article XXV of GATT 1947. In our view, this is not the precise question that should be posed. Article XXV was an umbrella provision regarding decision-making by the CONTRACTING PARTIES. That Article XXV joint action involved 'decision-making' is confirmed by Article XXV:4 of GATT 1947, which provided that, '[e]xcept as otherwise provided for in this Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast'. One form of joint action by the CONTRACTING PARTIES involved making appropriate recommendations or giving rulings under Article XXIII, and the 1981 understanding involves, at least in part, joint action

¹ The authentic text erroneously reads "sub-paragraph".
² Appellate Body Report, *Japan – Alcoholic Beverages II*, p. 13.

under that provision. There are however numerous other provisions 'which involve joint action' in GATT 1947 (See John H. Jackson, *World Trade and the Law of GATT* (Bobs-Merrill, 1969), section 5.4) and Article XXV further provided for joint action 'with a view to facilitating the operation and furthering the objectives of GATT 1947'. Thus, even if one takes the view that the 1981 understanding goes beyond making a recommendation or ruling under Article XXIII:2, such action would still have been authorized under Article XXV:1, which allowed the CONTRACTING PARTIES broad power for decision-making in order to facilitate the operation and furthering of the objectives of GATT 1947. This does not of course mean that the 1981 understanding necessarily represents a decision within the meaning of paragraph 1(b)(iv) of the language of Annex 1A incorporating the GATT 1994 into the WTO Agreement to adopt an 'interpretation' of GATT 1947. One can imagine numerous forms of joint action under Article XXV:1, other than interpretations, to facilitate the operation and further the objectives of GATT 1947."³

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³ Panel Report, *US – FSC*, fn 620.