7 February 1985

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

Report of the Panel
(L/5776)

I. Introduction

1.1 In a communication dated 15 June 1982 and circulated to contracting parties (L/5337), the United States stated that the preferences granted on citrus products[1] from certain Mediterranean countries[2] by the European Economic Community were inconsistent with the obligations of the EEC under Article I of the General Agreement and that these preferences continued to have an adverse effect on United States citrus exports, which did not receive preferences. Earlier consultations between the United States and the European Community under Article XXII on 30 October 1980 (L/5012 and L/5037) and under Article XXIII:1 on 20 April 1982, had not led to a satisfactory adjustment of the matter. Therefore the United States requested the CONTRACTING PARTIES to establish a panel to review the matter pursuant to Article XXIII:2.

1.2 The European Community responded in a communication dated 26 June 1982 (L/5339), that the preferential tariff arrangements on citrus products were one element of agreements between the Community and certain Mediterranean countries which had been examined under the procedures under Article XXIV. The Community considered the tariff arrangements to be consistent with Article XXIV and the United States' complaint to be thus inadmissible.

1.3 The United States' request for a panel was discussed by the GATT Council at its meetings of 29 June 1982 (C/M/159) and 21 July 1982 (C/M/16O). At that latter meeting, it was suggested that the Director-General use his good offices with a view to the conciliation of the outstanding differences between the parties. At the Council meeting of 1 October 1982, the Director-General reported that he had met with the parties in August and September on the possibility of working out a practical solution to the matter. He had made a proposal on the basis of which the parties might open negotiations. Given the response to his proposal, the Director-General had concluded that no purpose would be served to continue the process of good offices as it did not appear to be possible to conciliate the outstanding differences between the parties. Under these circumstances, the United States renewed its request at the Council meeting for the establishment of a panel (C/M/161).

1.4 At its meeting of 2 November 1982, the Council agreed to establish a panel. The Chairman of the Council was authorized to decide on appropriate terms of reference in consultation with the two

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[1]The United States' complaint related to the following products: fresh sweet oranges, fresh lemons, fresh grapefruit, fresh tangerines, orange juice, lemon juice, grapefruit juice, grapefruit segments and dry pectin.

[2]The EC grants tariff preferences on imports of the above citrus products to the following countries in the Mediterranean region: Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Spain, Tunisia and Turkey.

parties concerned and with other contracting parties who had indicated an interest in the matter, and in consultation with the two parties concerned, to designate the Chairman and the members of the panel (C/M/162).

1.5 At the Council meeting of 26 May 1983, the Chairman informed the Council that on the basis of consultations with delegations, agreement had been reached on the following terms of reference:

"To examine in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States, relating to the tariff treatment accorded by the European Community to imports of citrus products from certain countries in the Mediterranean region (L/5337), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2."

The Chairman also stated that:

"Agreement on the above-mentioned terms of reference has been reached on the basis of the following understandings. As regards product coverage, it is understood that the reference to document L/5337 means a reference to the products indicated therein. Given the special nature of this matter, in that the tariff treatment which is to be examined by the Panel is an element of Agreements entered into by the European Community with certain Mediterranean countries, it is expected that the Panel will take due account, *inter alia*, of the reports of the working parties relating to these agreements and of the minutes of the Council sessions where these reports were discussed and adopted, and, in setting up its own working procedures, will provide adequate opportunities for these countries to participate in the work of the Panel as necessary and appropriate."

The Council took note of the terms of reference and of the Chairman's statement (C/M/168).

1.6 At its meeting of 12 July 1983, the Council was informed and took note of, that following consultation with the two parties concerned, the composition of the Panel was as follows (C/M/170):

Chairman:	Mr. P. Wurth
Members:	Mr. B. Eberhard
	Mr. J. Goodman
	Mr. A. Kuosmanen
	Mr. H. Puri

1.7 Given the special nature of the matter, the Panel decided to invite those Mediterranean countries who benefit from tariff preferences on their exports of citrus into the Community and who are contracting parties[3], to be present at the Panel's meetings with the United States and the European Community to hear the arguments of these two parties to the dispute. The Panel also invited Morocco to be present, on the basis of a request by Morocco and of its considerable commercial interest in the matter. These Mediterranean countries were invited individually to provide the Panel with written memoranda on the United States' complaint and were afforded the opportunity to make oral presentations at the Panel's meetings with the parties. Spain submitted written memoranda to the Panel. Egypt, Israel, Morocco and Spain made oral presentations.

1.8 The representatives of Australia, Brazil, Chile and Pakistan notified to the Council that they respectively had a substantial interest in the matter before the Panel (C/M/167, C/M/170, and C/M/159 respectively). The Panel invited these interested parties to provide it with written memoranda on the

[3]Cyprus, Egypt, Israel, Malta, Spain, Tunisia (applies GATT provisionally) and Turkey.

United States' complaint. The Panel also afforded these parties the opportunity to present oral testimony. Australia and Chile each submitted a written memorandum to the Panel. Chile availed itself of the opportunity to present oral testimony to the Panel.

1.9 The Panel met with the parties to the dispute and certain Mediterranean countries (ref. para. 1.7) on 31 October 1983, 29 November 1983 (with Chile), 13 February 1984, and 12 March 1984. The Panel met internally on 7 July 1983, 21 September 1983, 28 October 1983, 4 November 1983, 16 November 1983, 29 November 1983, 2 December 1983, 7 December 1983, 26 January 1984, 14 February 1984, 21 February 1984, 12 March 1984, 13 March 1984, 6 April 1984, 7 April 1984, 9 April 1984, 14 May 1984, ? May 1984, 29 June 1984, 6 July 1984, 9 July 1984, 14 September 1984, 9 November 1984, and 3-7 December 1984.

1.10 Information and arguments submitted by the two parties to the dispute, their replies to questions and requests put by the Panel, information and arguments submitted by certain Mediterranean countries and by other interested parties, as well as relevant GATT and other documentation served as the basis for the Panel's examination of the matter.

II. Factual aspects

2.1 The following is a description of the factual aspects relating to the tariff treatment accorded by the European Community to imports of citrus products from certain countries in the Mediterranean region, which was the object of the complaint by the United States.

2.2 Table 2.1 gives the preferential tariff rates applied by the European Community on imports of certain citrus products originating from certain Mediterranean countries as well as the rates applied to imports from non-preference receiving countries including the United States.[4]

[4]For certain of the citrus products covered under the complaint the Community accords preferences on imports originating in developing countries under the EC Scheme of Generalized Tariff Preferences (grapefruit segments, grapefruit juice and dry pectin), imports originating in the least-developed developing countries (fresh grapefruit), and imports originating in the African, Caribbean and Pacific States under the Lomé Convention (fresh oranges, fresh tangerines, fresh grapefruit, grapefruit segments, orange juice, grapefruit juice, lemon juice, and dry pectin). As these preferences were not covered under the United States complaint, these preferential rates have not been indicated in Table 2.1.

Table 2.1: EC Tariff Treatment on Imports of Certain Citrus Products Originating from Certain Mediterranean Countries and from the United States as of 1 January 1983[1]
(Tariff rates expressed in %)

EC Common Customs Tariff Heading Nos.	CCT (US)	Algeria, Morocco, Tunisia	Egypt, Jordan, Lebanon	Cyprus	Israel	Malta	Spain	Turkey
08.02 Citrus fruit, fresh or dried								
ex A. Oranges								
I. Sweet oranges, fresh								
(a) from 1 April to 30 April	13 B	2.6	5.2	5.2	5.2	5.2	7.8	0
(b) from 1 May to 15 May	6 B	1.2	2.4	2.4	2.4	2.4	3.6	0
(c) from 16 May to 15 October	4 B	0.8	1.6	1.6	1.6	1.6	2.4	0
(d) from 16 October to 31 March	20	4.0	8.0	8.0	8.0	8.0	12.0	3.2
ex. B. Tangerines, fresh	20.0	4.0	8.0	8.0	8.0	20.0	12.0	3.2
ex. C. Lemons, fresh	8.0	1.6	4.8	4.8	4.8	8.0	4.8	0
ex. D. Grapefruit, fresh	3.5[2] B	0.7	0.7	0.7	0.7	3.5	3.5	0
13.03								
ex B. Pectic substances, pectinates and pectates								
I. Dry								
- pectic substances and pectinates	24	18	24	24	18	24	18	9.6
- pectates	24	0	0	0	0	0	18	0
20.06 Fruit otherwise prepared or preserved								
ex B.II not containing added spirit								
ex (a) containing added sugar, in immediate packing or a net capacity of more than 1 kg.	18.5[3] B	3.7 +	18.5 +	3.7 +	3.7 +	18.5 +	18.5 +	0 +
2. Grapefruit segments	+ 2% ads[4] B	2% ads	2% ads	2% ads	2% ads	2% ads	2% ads	2% ads
ex (b) containing added sugar in immediate packing of a net capacity of 1 kg. of less								
2. Grapefruit segments	18.5[3] B + + 2% ads B	3.7 + 2% ads	18.5 + 2% ads	3.7 + 2% ads	3.7 + 2% ads	18.5 + 2% ads	18.5 + 2% ads	0 + 2% ads

EC Common Customs Tariff Heading Nos.	CCT (US)	Algeria, Morocco, Tunisia	Egypt, Jordan, Lebanon	Cyprus	Israel	Malta	Spain	Turkey
ex (c) not containing added sugar, in immediate packing of a net capacity: ex 1. of 4.5 kg. or more ex (dd) Grapefruit segments	23 B	4.6	23	4.6	4.6	23	23	0
ex 2. of less than 4.5 kg. ex (bb) Grapefruit segments	23 B	4.6	23	4.6	4.6	23	23	0
20.07 Fruit juices and vegetable juices, whether or not containing added sugar but unfermented and not containing spirit.								
ex A. Of a specific gravity exceeding 1.33 at 15 C								
ex III ex (a) of a value exceeding 30 ECU per 100 kg., net weight								
- Orange juice	42	12.6	42	12.6	12.6	42	42	16.8
- Grapefruit juice	42	12.6	42	12.6	12.6	42	42	5.0
- Lemon juice	42	16.8	42	42.0	16.8	42	42	16.8
ex (b) Of a value not exceeding 30 ECU per 100 kg. net weight ex.1 With an added sugar content exceeding 30% by weight								
- Orange juice	42 + L	12.6 + L	42 + L	12.6 + L	12.6 + L	42 + L	42 + L	16.8 + L
- Grapefruit juice	42 + L	12.6 + L	42 + L	12.6 + L	12.6 + L	42 + L	42 + L	5 + L
- Lemon juice	42 + L	16.8 + L	42 + L	42.0 + L	16.8 + L	42 + L	42 + L	16.8 + L
ex 2. Other								
- Orange juice	42	12.6	42	12.6	12.6	42	42	16.8
- Grapefruit juice	42	12.6	42	12.6	12.6	42	42	5.0
- Lemon juice	42	16.8	42	42.0	16.8	42	42	16.8
Ex B. Of a specific gravity of 1.33 or less at 15 C								
Ex II ex (a) Of a value exceeding 30 ECU per 100 kg. net weight								
1. Orange juice	19 B + ads[5]	5.7 + ads	19 + ads	5.7 + ads	5.7 ads	19 + ads	19 + ads	7.6 + ads

EC Common Customs Tariff Heading Nos.	CCT (US)	Algeria, Morocco, Tunisia	Egypt, Jordan, Lebanon	Cyprus	Israel	Malta	Spain	Turkey
2. Grapefruit juice	15 B + ads	4.5 + ads	15 + ads	4.5 + ads	4.5 + ads	8 + ads	15 + ads	0 + ads
ex 3. Lemon juice (aa) containing added sugar	18 B + ads	18 + ads	18 + ads	18 + ads	18 + ads	18 + ads	18 + ads	7.2 + ads
(bb) Other ex (b)Of a value of 30 ECU or less per 100 kg. net weight	19 B	19	19	19	19	19	19	7.6
1. Orange juice (aa) with an added sugar content exceeding 30% by weight	19 B + ads	5.7 + ads	19 + ads	5.7 + ads	5.7 ads	19 + ads	19 + ads	7.6 + ads
(bb) Other	19 B + ads	5.7 + ads	19 + ads	5.7 + ads	5.7 ads	19 + ads	19 + ads	7.6 + ads
2. Grapefruit juice (aa) with an added sugar content exceeding 30% by weight exceeding 30% by weight	15 B + ads	4.5 + ads	15 + ads	4.5 + ads	4.5 + ads	8 + ads	15 + ads	0 + ads
(bb) Other	15 B + ads	4.5 + ads	15 + ads	4.5 + ads	4.5 + ads	8 + ads	15 + ads	0 + ads
3. Lemon juice (aa) with an added sugar content exceeding 30% by weight	18 B + ads	18 + ads	18 + ads	18 + ads	18 + ads	18 + ads	18 + ads	7.2 + ads
(bb) with an added sugar content of 30% or less by weight	18 B + ads	18 + ads	18 + ads	18 + ads	18 + ads	18 + ads	18 + ads	7.2 + ads
(cc) not containing added sugar	19 B	19	19	19	19	19	19	7.6

B = Tariff binging

[1]EC tariff rates applicable during 1983 are shown as this corresponds to the year in which the Panel was constituted and began its work. EC tariff rates in 1983 do not differ from those applicable in 1982 and 1984 with a few exceptions. As the CCT rates are being progressively reduced on fresh grapefruit (ex 08.02 D) from 4 per cent to 3 per cent and on grapefruit segments with added sugar (ex 20.06 BII(a) and (b)) from 20 per cent + ads to 17 per cent to + 2 per cent ads, the applicable rates in 1982, 1983 and 1984 are respectively 3.6 per cent, 3.5 per cent, 3.4 per cent for fresh grapefruit and 18.9 per cent + 2 per cent ads, 18.5 per cent + 2 per cent ads, 18.1 per cent + 2 per cent ads for grapefruit segments. In addition, the Community took the first step in eliminating progressively customs duties on imports of agricultural products originating in Turkey on 1 January 1981. The second phase started on 1 January 1983. As regards citrus products therefore, the EC tariff rates for imports from Turkey are the same in 1984 as in 1983, but in some cases rates applicable in 1982 were less favourable.

[2]Tariff rate is being reduced progressively to 3 per cent. Preferential tariff rates are also being reduced where they are a function of the CCT rate.

[3]Tariff rate is being reduced progressively to 17 per cent to + 2 per cent ads. Preferential tariff rates are also being reduced where they are a function of the CCT rate.

[4]2 per cent ads = The applicable rate of the additional duty on sugar is fixed at a standard rate of 2 per cent ad valorem of the customs value of the goods.

[5]ads = Additional duty on the sugar content (calculated in sucrose) in excess of 13 per cent by weight, 3 per cent as regards lemon juice. These tolerance levels are bound.

2.3 In Table 2.2, the tariff rates that are shown in Table 2.1 have been converted into percentages of reduction from the EC Common Customs Tariff (CCT); e.g. if the CCT rate is 10 per cent and the duty applied to imports from country X is 2 per cent, country X enjoys an 80 per cent preference or 80 per cent reduction in the CCT.

Table 2.2: Preferential Rates of Reduction (%) from CCT for Certain Citrus Products Originating from Certain Mediterranean Countries

	Algeria, Morocco, Tunisia	Egypt, Jordan, Lebanon	Cyprus	Israel	Malta	Spain	Turkey
ex 08.02							
Fresh oranges	80	60	60	60	60	40	84[1]
Fresh tangerines	80	60	60	60	0	40	100[2]
Fresh lemons	80	40	40	40	0	40	84
Fresh grapefruit	80	80	80	80	0	0	100
ex 13.03							
Dry pectic substances and pectinates	25	0	0	25	0	25	60
Dry pectates	100	100	100	100	100	25	100
ex 20.06							
Grapefruit segments	80	0	80	80	0	0	100
ex 20.07							
Orange juice	70	0	70	70	0	0	60
Grapefruit juice	70	0	70	70	0[3], 47[4]	0	88[3], 100[4]
Lemon juice	0[4], 60[3]	0	0	0[4], 60[3]	0	0	60

[1]From 16 October to 31 March
[2]From 1 April to 15 October
[3]Of a specific gravity exceeding 1.33 at 15 C
[4]Of a specific gravity of 1.33 or less at 15 C

2.4 The EC has accorded tariff bindings over the years on the citrus products covered under the complaint, with the exception of fresh "winter" sweet oranges (i.e. sweet oranges imported during the period 16 October to 31 March), fresh tangerines, fresh lemons, dry pectin, and the more concentrated orange, grapefruit, and lemon juices (ex 20.07 A III). Table 2.3 sets out the chronology of the EC tariff concessions.

Table 2.3: Chronology of EC Tariff Concessions on Certain Citrus Products
(Countries indicated within parentheses are those which have initial negotiating rights[1, 2])

EC Common Customs Tariff Heading Nos.	1962 (EC-6 Article XXIV:6) Schedule XL	1967 Kennedy Round Schedule XL	1973 (EC-9 Article XXIV:6) Schedule LXXII	1979 Tokyo Round Schedule LXXII
08.02				
ex A. Oranges				
I. Sweet oranges, fresh				
(a) from 1 April to 30 April	15% (IL[3], US, ZA)		13% (BR[4], US[4], ZA)	
(b) from 1 May to 15 May	15% (IL[3], US, ZA)		6% (BR[4], US[4], ZA)	
(c) from 16 May to 15 October	15% (IL[3], US, ZA)		4% (BR[4], US[5], ZA)	
ex D. Grapefruit, fresh	12% (UK, US, ZA)	6%	4% (ZA)	3%
20.06				
ex B.II not containing added spirit				
ex (a) containing added sugar, in immediate packing of a net capacity of more than 1 kg.				
2. Grapefruit segments	23% + ads[6] (ZA)	20% + ads[6]	20% + ads[6] (US, ZA)	17% + 2% ads[7]
ex (b) containing added sugar in immediate packing of a net capacity of 1 kg. or less				
2. Grapefruit segments	25% + ads[6] (US[8], ZA)	20% + ads[6]	20% + ads[6] (US[8], ZA)	17% + 2% ads
ex (c) not containing added sugar in immediate packing of a net capacity:				
ex.1 of 4.5 kg. or more				
ex (dd) Grapefruit segments	23%[9] (US, ZA)		23%[9] (US, ZA)	
ex 2. of less than 4.5 kg.				
ex (bb) Grapefruit segments	23% (US, ZA)		23% (US, ZA)	
20.07				
ex B. Of a specific gravity of 1.33 or less at 15 C				
ex II ex (a) Of a value exceeding 30 ECU per 100 kg., net weight				
1. Orange juice	20% + ads[10] (US)	19% + ads[10]	19% + ads[10] (US)	
2. Grapefruit juice	19% + ads[10] (US)	15% + ads[10]	15% + ads[10] (US)	
ex 3. Lemon juice				
(aa) containing added sugar	19% + ads[10] (US)	18% + ads[10]	18% + ads[10]	
(bb) other	19% (US)		19% (US)	
ex (b) of a value of 30 ECU or less per 100 kg., net weight				

EC Common Customs Tariff Heading Nos.	1962 (EC-6 Article XXIV:6) Schedule XL	1967 Kennedy Round Schedule XL	1973 (EC-9 Article XXIV:6) Schedule LXXII	1979 Tokyo Round Schedule LXXII
1. Orange juice				
(aa) With an added sugar content exceeding 30% by weight	20% + ads[10] (US)	19% + ads[10]	19% + ads[10] (US)	
(bb) Other	20% + ads[10] (US)	19% + ads[10]	19% + ads[10] (US)	
2. Grapefruit juice				
(aa) with added sugar content exceeding 30% by weight	20% + ads[10] (US)	15% + ads[10]	15% + ads[10] (US)	
(bb) Other	20% + ads[10] (US)	15% + ads[10]	15% + ads[10] (US)	
3. Lemon juice				
(aa) with an added sugar content exceeding 30% by weight	19% + ads[10] (US)	18% + ads[10]	18% + ads[10]	
(bb) with an added sugar content of 30% or less by weight	19% + ads[10] (US)	18% + ads[10]	18% + ads[10]	
(cc) not containing added sugar	19% (US)		19% (US)	

[1]Country abbreviations used are: BR (Brazil), IL (Israel), UK (United Kingdom), US (United States) and ZA (South Africa).

[2]The Commission of the European Communities has notified the Secretariat that with effect from 1 August 1974 the concessions previously granted by the European Economic Community (Schedule XL), the Member States of the European Community for Coal and Steel (Schedule XL bis), the United Kingdom - Metropolitan Territory (Schedule XIX, Section A, Parts I and II), Denmark (Schedule XXII) and Ireland (Schedule LXI, Parts I and II) have been withdrawn and are replaced by the concessions in the Common Tariff of the European Communities contained in Schedules LXXII - European Economic Community and LXXII bis - Member States of the European Community of Coal and Steel (L/4067 and L/4537).

[3]Pursuant to the accession of Israel to the GATT, for the period 1 April-30 September.

[4]15 per cent

[5]15 per cent for the period 16 May-31 May and 4 per cent for the period 1 June-30 September.

[6]The Community reserved the right to charge over and above the bound duty an additional duty on the sugar content (calculated in sucrose) in excess of 9 per cent by weight. The tolerance level of 9 per cent was bound.

[7]Additional duty on sugar content was bound and fixed at a standard rate of 2 per cent ad valorem of the customs value of the goods.

[8]Dillon Round.

[9]Of less than 5 kg.

[10]The Community reserved the right to charge over and above the bound duty, an additional duty on the sugar content (calculated in sucrose) in excess of 13 per cent by weight, 3 per cent as regards lemon juice. The tolerance levels of 13 per cent and 3 per cent respectively were bound.

2.5 At the time of the entry into force of the General Agreement in 1948, Algeria[5] was a part of the French Customs Territory, there having been freedom of trade between France and Algeria since 1939. In addition, Morocco and Tunisia had free access for their exports to France. These two countries were included in Annex B: "List of territories of the French Union referred to in Article I:2(b)". When the original six EEC members States signed the Treaty of Rome in 1957, they also signed the Declaration of Intent on the Association of the Independent Countries of the Franc Area with the EEC, that was annexed thereto. Under this Declaration, the member States declared their readiness to open negotiations "with the view to concluding conventions for economic association with the Community".

2.6 The first country in the Mediterranean region to be granted EEC-wide preferences on citrus was Greece. The EC signed an Association Agreement in 1962 with Greece, which in now a member State of the Community. Also in 1962 the first EEC regulations concerning fresh fruits and vegetables came into force, including provisions for the establishment of common quality standards, progressive reduction of duties on intra-Community trade, harmonization of duties on imports from third countries, and the fixing of references prices with compensatory taxes on imports priced below the reference prices. In 1968, the Community started granting a 20 per cent preference on fresh citrus (except grapefruit) from Turkey. The following year this preference was improved to 40 per cent. Also in 1969, Morocco and Tunisia received an 80 per cent preference on these products. The EC granted a 40 per cent preference on fresh citrus to Israel (including grapefruit and grapefruit segments) and Spain (except grapefruit) in 1970. Malta received a 40 per cent preference on fresh oranges in 1971. With effect from 1973, preferences for Turkey were improved from 40 to 50 per cent on fresh citrus hybrids and lemons. Cyprus, Egypt and Lebanon began receiving a 40 per cent preference that year on fresh citrus (except grapefruit).

2.7 Also in 1973, the United Kingdom, Ireland and Denmark acceded to the EEC. The national tariffs of these three were aligned to the Community tariff rates in five equal stages from 1973 to 1978. These national tariffs on citrus were generally lower (in some cases duty-free) than the Community rates. In the Article XXIV:6 negotiations in 1973-74 the enlarged Community made further bound tariff reductions on grapefruit and on "summer" oranges but no new concessions on other citrus fruits. As of 1974 the three new members also began aligning to the EEC preferences granted to the Mediterranean countries (prior to the EEC accession the UK maintained preferential duties for Cyprus and Malta). Thus by January 1978 the three new member States were applying the EEC preferential tariff rates to Mediterranean countries as well the full EEC Common Customs Tariff on citrus products to non-preference receiving countries.

2.8 In 1975 the EEC introduced a comprehensive régime of import protection to replace national quantitative restrictions on processed fruits and vegetables. During the period 1975 to 1978 the Community deepened the preferences on fresh citrus for certain Mediterranean countries, extended preferences on fresh grapefruit and grapefruit segments to certain countries, introduced preferences on citrus juices, and added Algeria and Jordan to the list of Mediterranean preference recipients. The EC preferences on citrus products have remained at the same levels since 1978 except for Turkey. Beginning in 1981 the EEC took steps to eliminate customs duties on agricultural products from Turkey. Therefore, Turkey enjoys preferences from 60 to 100 per cent on citrus products as of 1983.

[5]Algeria acquired independence on 3 July 1962. Since then it has been considered as a country applying the General Agreement on a *de facto* basis. During the information of the Community of Six. some EEC countries continued to consider Algeria as if it were a French dependent, and applied tariff cuts to it. However, other EEC members did not.

2.9 The citrus preferences described above were granted to Mediterranean countries under agreements which were notified and examined under the GATT. In some cases there have been more than one instrument concluded between the Community and an individual Mediterranean country (for example Egypt, Israel, Lebanon, Morocco, Tunisia and Turkey). The first EC Agreement (after Greece) with a Mediterranean country covering imports of citrus fruit into the EC, was an Association Agreement signed with Turkey in 1963. This was presented in the GATT as an interim agreement leading to the formation of a customs union. In 1969, the EC signed agreements with Morocco and Tunisia respectively, which were presented in the GATT as interim agreements leading to the formation of a free-trade area. The same year the EC requested a waiver from its obligations under Article I in order to reduce customs duties on citrus fruits originating from Israel and Spain. The request for a waiver was not granted. The next year, the EC signed separate agreements with these two countries and presented them as interim agreements leading to the formation of a free-trade area (in the case of Spain it was noted that the creation of a free-trade area was the minimum objective, likely at a later stage to be developed into a customs union). Also in 1970, the EC signed an agreement with Malta presented as an Additional Protocol with Turkey presented as further defining the modalities during a transitional stage for realizing a customs union. In 1972, the EC signed an agreement with Cyprus which was presented as an interim agreement leading to the formation of a customs union. Moreover, the EC signed agreements with Egypt and Lebanon respectively, and presented them as interim agreements leading to the formation of a free-trade area. A supplementary Protocol was signed with Turkey in 1973 and presented as a further step in the progressive formation of a customs union. The EC signed new Cooperation Agreements with Algeria, Morocco and Tunisia in 1976 and with Egypt, Jordan, and Lebanon in 1977. These Agreements did not comprise any reciprocal free-trade obligation on the part of the Maghreb or Mashraq countries as regards imports originating from the EC.

2.10 Accordingly, the agreements currently in force between the Community and the Mediterranean countries concerned, under which EC preferences on citrus are granted at this time, have been presented to the GATT by the parties as interim agreements leading to the formation of a customs union under Article XXIV (Cyprus, Malta and Turkey), as interim agreements leading to the formation of a free-trade area under Article XXIV (Israel and Spain), or as agreements comprising a free-trade area obligation on the part of the EC under Article XXIV but no reciprocal commitments by the other parties consonant with Part IV (Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia).

2.11 The section included in the Annex provides by individual Mediterranean country, the dates on which the agreements governing the citrus preferences were concluded and entered into force, when they were notified and examined in the GATT, extracts from the reports of the working parties, and from the minutes of the Council which discussed the agreements, and information regarding the application of the agreements on the basis of the last biennial reports submitted by the parties.

2.12 The tables which follow were submitted by the parties and relate to trade in the products covered by the complaint. Tables 2.4 through 2.13 were prepared by the United States, and Tables 2.14 through 2.24 by the EEC. Table 2.4 shows imports into EC-6 and EC-9 of oranges, lemons, and grapefruit from the United States and elsewhere during 1966-1982. Tables 2.5-2.13 show United States exports to the EC and other destinations from 1966-1983 (in some cases 1978-1983) arranged by products as follows: oranges (Table 2.5), tangerines (Table 2.6), lemons (Table 2.7), grapefruit (Table 2.8), pectin (Table 2.9), grapefruit segments (Table 2.10), orange juice (Table 2.11), grapefruit juice (Table 2.12) and lemon juice (Table 2.13). Tables 2.14-2.24 show EC imports from the United States, Mediterranean countries and other suppliers from 1974 (in some cases earlier) to 1982 arranged by products as follows: oranges (Tables 2.14 and 2.15), tangerines (Table 2.16), lemons (Tables 2.17 and 2.18), grapefruit

(Table 2.19), pectin (Table 2.20), grapefruit segments (Table 2.21), orange juice (Table 2.22), grapefruit juice (Table 2.23) lemon juice (Table 2.24).

TABLE 2.4

EUROPEAN COMMUNITY: IMPORTS OF ORANGES, LEMONS AND GRAPEFRUIT, 1966-82

Commodity and Year	EC-6: Excluding Intra-EC Trade					EC-9: Excluding Intra-EC Trade					EC-9: Including Intra-EC Trade				
	US	Other	Total	US	Other	US	Other	Total	US	Other	US	Other	Total	US	Other
	1,000 metric tonnes			Per cent		1,000 metric tonnes			Per cent		1,000 metric tonnes			Per cent	
Oranges															
1966	49	1,637	1,686	2.9	97.1	52	2,059	2,111	2.5	97.5	52	2,113	2,165	2.4	97.6
1967	65	1,492	1,557	4.2	95.8	74	1,899	1,973	3.8	96.2	74	1,962	2,036	3.6	96.4
1968	10	1,494	1,504	0.7	99.3	10	1,910	1,920	0.5	99.5	10	1,982	1,992	0.5	99.5
1969	70	1,575	1,645	4.3	95.7	72	1,989	2,061	3.5	96.5	72	2,059	2,131	3.4	96.6
1970	41	1,679	1,720	2.4	97.6	48	2,122	2,170	2.2	97.8	48	2,204	2,252	2.1	97.2
1971	33	1,527	1,560	2.1	97.9	38	1,977	2,015	1.9	98.1	38	2,055	2,093	1.8	98.2
1972	36	1,671	1,707	2.1	97.9	41	2,115	2,156	1.9	98.1	41	2,202	2,243	1.8	98.2
1973	31	1,798	1,829	1.7	98.3	35	2,259	2,294	1.5	98.5	35	2,345	2,380	1.5	98.5
1974	35	1,576	1,611	2.2	97.8	46	1,982	2,028	2.3	97.7	46	2,061	2,107	2.2	97.8
1975	100	1,515	1,615	6.2	93.8	125	1,908	2,033	6.1	93.9	125	2,005	2,130	5.9	94.1
1976	69	1,456	1,525	4.5	95.5	96	1,822	1,918	5.0	95.0	96	1,954	2,050	4.7	95.3
1977	53	1,434	1,487	3.6	96.4	70	1,782	1,852	3.8	96.2	70	2,005	2,075	3.4	96.6
1978	30	1,446	1,476	2.0	98.0	34	1,797	1,831	1.9	98.1	34	1,983	2,017	1.7	98.3
1979	19	1,436	1,455	1.3	98.7	20	1,775	1,795	1.1	98.9	20	2,023	2,043	1.0	99.0
1980	63	1,390	1,453	4.3	95.7	80	1,758	1,838	4.4	95.6	80	1,909	1,989	4.0	96.0
1981[1]	20	1,241	1,261	1.6	98.4	25	1,591	1,616	1.5	98.5	25	1,750	1,775	1.4	98.6
1982[1]	3	1,329	1,332	0.2	99.8	3	1,641	1,644	0.2	99.8	3	1,877	1,880	0.2	99.8
Lemons															
1966	39	66	105	37.1	62.9	43	78	121	35.5	64.5	43	253	296	14.5	85.5
1967	42	72	114	36.8	63.2	47	86	133	35.3	64.7	47	247	294	16.0	84.0
1968	41	61	102	40.2	59.8	45	74	119	37.8	62.2	45	259	304	14.8	85.2
1969	25	63	88	28.4	71.6	29	74	103	28.2	71.8	29	275	304	9.5	90.5
1970	32	110	142	22.5	77.5	36	129	165	21.8	78.2	36	264	300	12.0	88.0
1971	32	87	119	26.9	73.1	35	108	143	24.5	75.5	35	274	309	11.3	88.7
1972	34	103	137	24.8	75.2	37	129	166	22.3	77.7	37	252	289	12.8	87.2
1973	37	158	195	19.0	81.0	42	194	236	17.8	82.2	42	262	304	13.8	86.2
1974	38	143	181	21.0	79.0	43	166	209	0.6	79.4	43	254	297	14.5	85.5
1975	35	124	159	22.0	78.0	41	148	189	21.7	78.3	41	264	305	13.4	86.6

Commodity and Year	EC-6: Excluding Intra-EC Trade					EC-9: Excluding Intra-EC Trade					EC-9: Including Intra-EC Trade				
	US	Other	Total	US	Other	US	Other	Total	US	Other	US	Other	Total	US	Other
	1,000 metric tonnes			Per cent		1,000 metric tonnes			Per cent		1,000 metric tonnes			Per cent	
1976	36	157	193	18.7	81.3	43	183	226	19.0	81.0	43	289	332	13.0	87.0
1977	37	153	190	19.5	80.5	43	180	223	19.3	80.7	43	274	317	13.6	86.4
1978	23	187	210	11.0	89.0	28	219	247	11.3	88.7	28	305	333	8.4	91.6
1979	19	184	203	9.4	90.6	22	213	235	9.4	90.6	22	309	331	6.6	93.4
1980	26	178	204	12.7	87.3	31	213	244	12.7	87.3	31	300	331	9.4	90.6
1981[1]	22	182	204	10.8	89.2	25	218	243	10.3	89.7	25	299	324	7.7	92.3
1982[1]	8	234	242	3.3	96.7	8	285	293	2.7	97.3	8	348	356	2.2	97.8
Grapefruit															
1966	19	107	126	15.1	84.9	21	185	206	10.2	89.8	21	186	207	10.1	89.9
1967	20	120	140	14.3	85.7	22	202	224	9.8	90.2	22	205	227	9.7	90.3
1968	10	155	165	6.1	93.9	10	251	261	3.8	96.2	10	254	264	3.8	96.2
1969	15	157	172	8.7	91.3	15	243	258	5.8	94.2	15	247	262	5.7	94.3
1970	13	188	201	6.5	93.5	13	285	298	4.4	95.6	13	292	305	4.3	95.7
1971	10	217	227	4.4	95.6	10	364	374	2.7	97.3	10	369	379	2.6	97.4
1972	22	226	248	8.9	91.1	24	332	356	6.7	93.3	24	338	362	6.6	93.4
1973	30	237	267	11.2	88.8	32	359	391	8.2	91.8	32	366	398	8.0	92.0
1974	30	221	251	12.0	88.0	32	325	357	9.0	91.0	32	330	362	8.8	91.2
1975	48	235	283	17.0	83.0	54	340	394	13.7	86.3	54	348	402	13.4	86.6
1976	82	239	321	25.5	74.5	87	348	435	20.0	80.0	87	357	444	19.6	80.4
1977	53	236	289	18.3	81.7	54	340	394	13.7	86.3	54	376	430	12.6	87.4
1978	76	238	314	24.2	75.8	80	352	432	18.5	81.5	80	393	473	16.9	83.1
1979	70	242	312	22.4	77.6	72	343	415	17.3	82.7	72	337	409	17.6	82.4
1980	86	236	322	26.7	73.3	93	345	438	21.2	78.8	93	388	481	19.3	80.7
1981[1]	78	233	311	25.1	74.9	81	346	427	19.0	81.0	81	389	470	17.2	82.8
1982[1]	72	237	309	23.3	76.7	75	335	410	18.3	81.7	75	385	460	16.3	83.7

[1]Columns marked EC-9 refer to EC-10.

Source: Calculated from statistical office of the European Communities, Analytical Tables of Foreign Trade-NIMEXE.

January 1984 Horticultural and Tropical Products Division, FAS/USDA

TABLE 2.5

UNITED STATES: EXPORTS OF ORANGES, CALENDAR YEARS 1966-1983[1]

Year	EC-9	Other	Total	EC-9	Other	Total	EC-9	Other
	1,000 metric tonnes			Index 1966-69 = 100[2]			Per cent	
1966	56	195	251	83	95	92	22.3	77.7
1967	77	218	295	114	107	108	26.1	73.9
1968	10	132	142	15	64	52	7.0	93.0
1969	70	201	271	103	98	100	25.8	74.2
1970	47	209	256	69	102	94	18.4	81.6
1971	39	205	244	58	100	90	16.0	84.0
1972	42	249	291	62	122	107	14.4	85.6
1973	42	240	282	62	117	104	14.9	85.1
1974	47	270	317	69	132	116	14.8	85.2
1975[3]	122	346	468	180	169	172	26.1	73.9
1976[5]	100	345	445	148	169	163	22.5	77.5
1977	72	322	394	106	157	145	18.3	81.7
1978	35	305	340	52	149	125	10.3	89.7
1979	23	274	297	34	133	109	7.7	92.3
1980[3]	69	393	462	102	192	170	14.9	85.1
1981	28	400	428	41	195	157	6.5	93.5
1982	4	336	340	6	164	125	1.2	98.8
1983[4]	28	423	451	41	207	166	6.2	93.8

[1]Includes Temples.
[2]Base equals only 1966, 1967 and 1969. 1968 not used because of unusually low exports following freeze in California.
[3]High export level in 1975, 1976 and 1980 associated with large crops, low prices and favourable exchange rates.
[4]January-November.

Source: Calculated from United States Department of Commerce, Bureau of the Census data.

January 1984 Horticultural and Tropical Products Division, FAS/USDA

TABLE 2.6

UNITED STATES: EXPORTS OF TANGERINES, CALENDAR YEARS
1967-1983

Year	EC	Other	Total	EC	Other
	Metric tonnes			Per cent	
1967	85	8,238	8,323	1.0	99.0
1968	37	10,391	10,428	0.4	99.6
1969	85	8,836	8,921	1.0	99.0
1970	10	9,682	9,692	0.1	99.9
1971	220	12,570	12,790	1.7	98.3
1972	17	10,967	10,984	0.2	99.8
1973	115	9,429	9,544	1.2	98.8
1974	0	10,049	10,049	-	100.0
1975	183	13,155	13,338	1.4	98.6
1976	2,016	13,958	15,974	12.6	87.4
1977	1,560	14,700	16,260	9.6	90.4
1978	582	14,803	15,385	3.8	96.2
1979	2,828	17,823	20,651	13.7	86.3
1980	1,487	18,216	19,703	7.5	92.5
1981	1,628	13,548	15,176	10.7	89.3
1982	1,395	11,142	12,537	11.1	88.9
1983	1,683	14,550	16,233	10.4	89.6

Source: Calculated from United States Department of Commerce, Bureau of the Census data.

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TABLE 2.7

UNITED STATES: EXPORTS OF LEMONS, CALENDAR YEARS 1966-1983

Year	EC-9	Other	Total	EC-9	Other	Total	EC-9	Other
	1,000 Metric tonnes			Index 1966-69 = 100			Per cent	
1966	56	57	113	114	88	100	49.6	50.4
1667	52	63	115	106	98	101	45.2	54.8
1968	54	65	119	110	101	105	45.4	54.6
1969	34	73	107	69	113	94	31.8	68.2
1970	46	82	128	94	127	113	35.9	64.1
1971	43	93	136	88	144	120	31.6	68.4
1972	45	110	155	92	171	137	29.0	71.0
1973	60	138	198	122	214	174	30.3	69.7
1974	59	141	200	120	219	176	29.5	70.5
1975	55	125	180	112	194	159	30.6	69.4
1976	55	168	223	112	260	196	24.7	75.3
1977	55	179	234	112	278	206	23.5	76.5
1978	36	197	233	73	305	205	15.5	84.5
1979	21	149	170	43	231	156	12.4	87.6
1980	31	137	168	63	212	148	18.5	81.5
1981	32	141	173	65	219	152	18.5	81.5
1982	6	126	132	12	195	116	4.5	95.5
1983[1]	12	134	146	24	208	129	8.2	91.8

[1]January-November.

Source: Calculated from United States Department of Commerce, Bureau of the Census.

January 1984 Horticultural and Tropical Products Division, FAS/USDA.

TABLE 2.8

UNITED STATES: EXPORTS OF GRAPEFRUIT, CALENDAR YEARS 1966-1983

Year	EC-9	Other	Total	EC-9	Other	Total	EC-9	Other
	1,000 Metric tonnes			Index 1966-69 = 100[1]			Per cent	
1966	23	74	97	106	83	87	23.7	76.3
1667	26	91	117	120	101	105	22.2	77.8
1968	11	69	80	51	77	72	13.7	86.3
1969	16	104	120	74	116	108	13.3	86.7
1970	15	88	103	69	98	93	14.6	85.4
1971	12	87	99	55	97	89	12.1	87.9
1972	22	166	188	101	185	169	11.7	88.3
1973	24	170	194	111	190	174	12.4	87.6
1974	26	199	225	120	222	202	11.6	88.4
1975	50	201	251	230	224	225	19.9	80.1
1976	79	212	291	364	236	261	27.1	72.9
1977	56	211	267	258	235	240	21.0	79.0
1978	78	193	271	359	215	243	28.8	71.2
1979	77	195	272	355	217	244	28.3	71.7
1980	97	191	288	447	213	259	33.7	66.3
1981	78	213	291	359	238	261	26.8	73.2
1982	71	190	261	327	212	235	27.2	72.8
1983	80	209	289	369	233	260	27.7	72.3

[1]Base equals only 1966, 1967 and 1969. 1968 not used because of unusually low exports following freeze in Florida.
[2]January-November.

Source: Calculated from United States Department of Commerce, Bureau of the Census.

January 1984 Horticultural and Tropical Products Division, FAS/USDA.

TABLE 2.9

UNITED STATES: EXPORTS OF PECTIN, CALENDAR YEARS 1967-1983[1]

Year	EC	Other	Total	EC	Other
	Metric tonnes			Per cent	
1967	123	472	595	20.7	79.3
1968	62	477	539	11.5	88.5
1969	74	507	581	12.7	87.3
1970	84	542	626	13.4	86.6
1971	92	499	591	15.6	84.4
1972	112	439	551	20.3	79.7
1973	181	533	714	25.4	74.6
1974	85	352	437	19.5	80.5
1975	66	330	396	16.7	83.3
1976	105	466	571	18.4	81.6
1977	112	500	612	18.3	81.7
1978	134	540	674	19.9	80.1
1979	124	382	506	24.5	75.5
1980	45	230	275	16.4	83.6
1981	37	187	224	16.5	83.5
1982	7	187	194	3.6	96.4
1983	4	271	275	1.5	98.5

[1]Includes small amounts of edible gelatin in years pica to 1978.

Source: Calculated from United States Department of Commerce, Bureau of the Census.

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TABLE 2.10

UNITED STATES: EXPORTS OF PREPARED AND PRESERVED GRAPEFRUIT, CALENDAR YEARS 1967-1983[1]

Year	EC	Other	Total	EC	Other
	Metric tonnes			Per cent	
1967	495	651	1,146	43.2	56.8
1968	138	1,142	1,280	10.8	89.2
1969	68	1,024	1,092	6.2	93.8
1970	139	732	871	16.0	84.0
1971	56	1,000	1,056	5.3	94.7
1972	38	748	786	4.8	95.2
1973	51	854	905	5.6	94.4
1974	71	1,197	1,268	5.6	94.4
1975	225	1,094	1,319	17.1	82.9
1976	8	734	742	1.1	98.9
1977	12	793	805	1.5	98.5
1978	5	1,008	1,013	0.5	99.5
1979	39	859	898	4.3	95.7
1980	105	1,452	1,557	6.7	93.3
1981	41	923	964	4.3	95.7
1982	7	1,019	1,026	0.7	99.3
1983	3	963	966	0.3	99.7

[1]Mostly grapefruit segments.

Source: Calculated from United States Department of Commerce, Bureau of the Census data.

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TABLE 2.11
UNITED STATES: EXPORTS OF ORANGE JUICE,
CALENDAR YEARS 1967-1983

Year	EC-9	Other	Total	EC-9	Other
	$'000			Per cent	
1970	9,379	25,025	34,404	27.3	72.7
1971	9,145	30,609	39,754	23.0	77.0
1972	9,407	33,070	42,477	22.1	77.9
1973	11,602	39,622	51,224	22.6	77.4
1974	12,528	44,132	56,660	22.1	77.9
1975	12,528	54,875	67,403	18.6	81.4
1976	18,221	59,266	77,487	23.5	76.5
1977	15,546	78,221	93,767	16.6	83.4
1978	16,488	74,101	90,589	18.2	81.8
1979	21,668	90,408	112,076	19.3	80.7
1980	25,711	105,485	131,196	19.6	80.4
1981	32,724	107,827	140,551	23.3	76.7
1982	22,206	105,012	127,218	17.5	82.5
1983[1]	20,736	96,345	117,081	17.7	82.3

[1]January-November.
Source: Calculated from United States Department of Commerce, Bureau of the Census.
January 1984 Horticultural and Tropical Products Division, FAS/USDA.

TABLE 2.12
UNITED STATES: EXPORTS OF GRAPEFRUIT JUICE,
1966-1983

Year	EC-9	Other	Total	EC-9	Other
	$'000			Per cent	
1970	2,520	8,212	10,732	23.5	76.5
1971	2,930	7,087	10,017	29.3	70.7
1972	2,655	7,596	10,251	25.9	74.1
1973	3,733	7,668	11,401	32.7	67.3
1974	2,041	8,305	10,346	19.7	80.3
1975	2,192	9,003	11,195	19.6	80.4
1976	3,061	9,474	12,535	24.4	75.6
1977	4,104	12,590	16,694	24.6	75.4
1978	4,108	14, 483	18,591	22.1	77.9
1979	7,027	16,979	24,006	29.3	70.7
1980	10,189	21,279	31,468	32.4	67.6
1981	6,794	24,808	31,602	21.5	78.5
1982	7,598	18,304	25,902	29.3	70.7
1983[1]	3,870	15,016	18,886	20.5	79.5

[1]January-November.
Source: Calculated from United States Department of Commerce, Bureau of the Census.
January 1984 Horticultural and Tropical Products Division, FAS/USDA.

TABLE 2.13

UNITED STATES: EXPORTS OF ALL CITRUS JUICES EXCLUDING ORANGE AND GRAPEFRUIT, 1978-1983[1]

Years	EC	Other	Total	EC	Other
	$'000			Per cent	
1978	1,507	9,893	11,400	13.2	86.8
1979	2,108	10,706	12,814	16.5	83.5
1980	1,744	11,795	13,539	12.9	87.1
1981	1,832	17,714	19,546	9.4	90.6
1982	2,721	18,778	21,499	12.7	87.3
1983	1,967	17,777	19,744	10.0	90.0

[1]Official export trade data of the United States during years 1978-1983 separately classified only orange juice and grapefruit juice. All other citrus juices, including lemon, lime and tangerine juice are aggregated together in a basket category. Lemon juice is, however, the most important type found in this category. Years prior to 1978 are not shown in the table because the category in which lemon juice was classified included not only "other citrus juices" but also "other non-citrus" juices.

Source: Calculated from United States Department of Commerce, Bureau of the Census data.

March 1984 Horticultural and Tropical Products Division, FAS/USDA.

TABLE 2.14

IMPORTS EEC 9*

Fresh Oranges

Imported from	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
Non-EEC	2,028	2,034	1,918	1.852	1,838	1,799	1,838	1,616	1,652	1,598
United States	43	125	96	70	34	20	80	25	3	27
Brazil	23	44	23	27	31	55	43	24	37	34
South Africa	228	224	195	176	216	192	185	177	171	151
Med. Basin	1,658	1,565	1,551	1,490	1,479	1,488	1,494	1,344	1,380	1,323
	82%	77%	81%	80%	80%	83%	81%	83%	84%	83%
Portugal	-	-	-	-	-	-	-	-	-	-
Spain[1]	902	928	900	843	776	833	761	696	745	708
Gibraltar	-	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-	-	-
Yugoslavia	-	-	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	-	-	1	2	3
Albania	-	-	-	-	-	-	-	-	-	-
Morocco	256	170	153	177	248	198	313	204	251	255
Algeria	43	30	22	19	11	1.5	-	-	-	-
Tunisia	27	20	23	24	43	24	26	24	18	15
Libya	-	-	-	-	-	-	-	-	-	-
Egypt	20	9	22	6	8	3	16	5	11	8
Cyprus	37	33	50	52	43	46	63	62	69	69
Lebanon	-	-	-	-	-	-	-	-	-	-
Israel	372	378	381	369	349	383	317	355	296	266
Jordan	-	-	-	-	-	-	-	-	-	-

*1981/1983 EEC of 10

[1]Spain + Canary Islands + Ceuta and Melilla

Figures for total EEC imports may not add up due to other minor suppliers.

Source: EC NIMEXE.

TABLE 2.15

EEC IMPORTS OF FRESH SWEET ORANGES (in '000 tons)

Season	Importer	Imported free	STATISTICS FOR EEC (6)								STATISTICS FOR EEC (9)							STATISTICS FOR EEC (10)		
			1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
	EEC	US	50	58	10	70	42	33	36	31	46	125	96	71	35	20	80	24	3	28
	UK, DK, Irl	US									11	24	27	17	4	1	17	5	0	3
	EEC (6)	US	50	58	10	70	42	33	36	31	35	101	69	54	31	19	63	19	3	25
	EEC	ESP	888	729	653	709	880	665	814	1,025	902	928	899	842	775	833	760	696	744	708
	UK. DK, Irl	ESP									82	83	80	56	53	54	63	59	49	52
	EEC (6)	ESP	888	729	653	709	880	665	814	1,025	820	845	819	786	722	779	697	637	695	656
WHOLE	EEC	SAF	112	102	122	116	115	108	117	110	228	224	194	176	216	192	186	177	171	152
YEAR	UK, DK, Irl	SAF									90	93	80	69	82	74	77	77	73	69
	EEC (6)	SAF	112	102	122	116	115	108	117	110	138	131	114	107	134	118	109	100	98	89
	EEC	MAROC	272	198	233	271	285	264	265	301	257	170	153	177	248	197	314	205	250	256
	UK, DK, Irl	MAROC									14	6	2	8	14	7	25	17	25	34
	EEC (6)	MAROC	272	198	233	271	285	264	265	301	243	165	151	169	234	190	289	188	225	222
	EEC	ISRAEL	159	191	261	238	257	299	301	183	372	378	381	369	349	383	318	355	295	266
	UK, DK, Irl	ISRAEL									139	174	155	142	164	154	137	157	122	104
	EEC (6)	ISRAEL	159	191	261	238	257	299	301	183	213	204	226	207	184	324	181	193	173	162
	EEC	EXTRA	1,687	1,456	1,434	1,613	1,719	1,360	1,707	1,828	2,028	2,036	1,918	1,851	1,838	1,800	1,838	1,616	1,651	1,599
	UK	EXTRA									365	367	340	326	323	313	355	322	287	276
	DK	EXTRA									31	32	33	29	29	24	23	22	23	22
	IRL	EXTRA									20	20	20	9	9	7	6	10	10	7
	EEC (6)	EXTRA	1,687	1,454	1,434	1,618	1,719	1,560	1,707	1,828	1,612	1,615	1,526	1,489	1,474	1,456	1,456	1,262	1,332	1,293

Season	Importer	Imported free	STATISTICS FOR EEC (6)								STATISTICS FOR EEC (9)							STATISTICS FOR EEC (10)		
			1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
	EEC	US	4	2	1	3	2	1	5	2	3	1	1	2	2	-	-	-	-	-
	UK, DK, Irl	US									-	-	-	-	-	-	-	-	-	-
	EEC (6)	US	4	2	1	3	2	1	5	2	3	1	1	2	2	-	-	-	-	-
	EEC	ESP	349	300	301	321	329	348	685	867	738	762	755	684	633	681	656	626	628	670
	UK. DK, Irl	ESP									73	77	74	52	51	52	61	55	46	51
	EEC (6)	ESP	349	300	301	321	329	348	685	867	665	685	681	632	582	629	595	571	582	619
WINTER	EEC	SAF	2	6	11	3	11	3	44	36	61	12	12	10	10	5	6	4	7	5
PERIOD	UK, DK, Irl	SAF									5	4	5	1	-	1	-	1	-	1
(16.10-31.3)	EEC (6)	SAF	2	6	11	3	11	3	44	36	56	8	7	9	10	4	6	3	7	4
	EEC	MAROC	118	70	81	107	94	78	173	197	176	86	28	92	114	123	153	109	119	122
	UK, DK, Irl	MAROC									8	2	1	3	4	3	12	8	13	19
	EEC (6)	MAROC	118	70	81	107	94	78	173	197	168	83	87	89	110	120	141	97	106	103
	EEC	ISRAEL	35	38	51	52	46	44	246	139	274	242	259	244	220	243	208	225	176	145
	UK, DK, Irl	ISRAEL									112	123	115	121	115	108	91	113	78	62
	EEC (6)	ISRAEL	35	38	51	52	46	44	246	139	162	119	144	123	105	135	117	112	98	83
	EEC	EXTRA	602	484	503	571	536	550	1,253	1,341	1,366	1,198	1,213	1,147	1,088	1,109	1,082	1,011	982	994
	UK	EXTRA									191	188	183	171	166	157	165	170	135	131
	DK	EXTRA									23	21	23	22	19	17	16	17	17	16
	IRL	EXTRA									10	9	10	7	6	5	6	6	7	6
	EEC (6)	EXTRA	602	484	503	571	536	550	1,253	1,341	1,142	980	996	947	897	930	897	818	824	841

Season	Importer	Imported free	STATISTICS FOR EEC (6)								STATISTICS FOR EEC (9)							STATISTICS FOR EEC (10)		
			1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
	EEC	US	46	56	9	67	40	32	31	29	43	124	95	69	33	20	80	24	3	28
	UK, DK, Irl	US									11	24	27	17	4	1	17	5	0	3
	EEC (6)	US	46	56	9	67	40	32	31	29	32	100	68	52	29	19	63	19	3	25
	EEC	ESP	539	429	352	388	551	317	129	158	164	166	144	158	162	152	104	70	116	38
	UK. DK, Irl	ESP									9	6	6	4	2	2	2	4	3	1
	EEC (6)	ESP	539	429	352	388	551	317	129	158	153	160	138	154	140	150	102	66	113	37
	EEC	SAF	110	96	111	113	104	105	73	74	167	212	182	166	206	187	180	173	164	147
SUMMER	UK, DK, Irl	SAF									85	89	75	68	82	73	77	76	73	62
PERIOD	EEC (6)	SAF	110	96	111	113	104	105	73	74	82	123	107	98	124	114	103	97	91	85
(1.4-																				
15.10)	EEC	MAROC	154	128	152	164	191	186	92	104	81	85	65	85	134	74	161	100	131	134
	UK, DK, Irl	MAROC									6	3	1	5	10	4	13	9	12	15
	EEC (6)	MAROC	154	128	152	164	191	186	92	104	75	82	64	80	124	70	148	91	119	119
	EEC	ISRAEL	124	153	210	186	211	255	55	44	98	136	122	125	129	140	110	130	119	121
	UK, DK, Irl	ISRAEL									47	51	40	41	49	51	46	44	44	42
	EEC (6)	ISRAEL	124	153	210	186	211	255	55	44	51	85	82	84	79	89	64	86	75	79
	EEC	EXTRA	1,005	970	931	1,047	1,183	1,010	454	487	662	836	705	704	750	691	756	605	649	605
	UK	EXTRA									174	179	157	155	137	157	190	152	152	145
	DK	EXTRA									8	10	10	7	10	7	7	5	6	6
	IRL	EXTRA									10	12	10	2	3	1	2	4	3	1
	EEC (6)	EXTRA	1,005	970	931	1,047	1,183	1,010	454	487	470	635	530	542	577	526	557	444	908	452

Season	Importer	Imported free	STATISTICS FOR EEC (6)								STATISTICS FOR EEC (9)							STATISTICS FOR EEC (10)		
			1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
SUMMER PERIOD (1.4-30.4)		US										4	3	1	1	-	1	3	-	1
		ESP										125	83	94	79	91	71	38	75	29
		SAF										-	-	-	-	-	-	-	-	-
		MAROC										41	30	44	59	40	67	41	56	66
		ISRAEL										81	56	57	73	72	61	66	60	62
	EEC	EXTRA										274	203	221	239	226	223	180	224	189
	UK	EXTRA										43	29	31	38	38	39	45	43	43
	DK	EXTRA										5	4	2	4	4	3	2	2	2
	IRL	EXTRA										3	2	1	3	-	1	1	2	1
	EEC (6)	EXTRA										223	168	187	194	184	180	132	177	143
SUMMER SUB-PERIOD (1.5-15.5)		US										11	6	4	3	-	5	3	-	2
		ESP										26	24	29	28	32	28	15	20	6
		SAF										-	1	1	2	1	2	2	1	-
		MAROC										19	14	19	28	24	37	25	35	29
		ISRAEL										29	24	26	25	34	26	33	27	23
	EEC	EXTRA										97	84	88	95	102	105	93	93	74
	UK	EXTRA										17	19	17	18	13	28	14	15	21
	DK	EXTRA										1	1	1	3	1	1	-	1	1
	IRL	EXTRA										2	1	-	-	-	-	2	-	-
	EEC (6)	EXTRA										77	63	70	74	88	70	77	77	52
SUMMER SUB-PERIOD (16.5-15.10)		US										109	86	64	29	20	74	18	3	25
		ESP										15	37	35	35	29	13	17	21	3
		SAF										210	181	166	204	186	178	171	163	147
		MAROC										25	21	22	47	10	57	34	40	38
		ISRAEL										26	42	42	29	34	23	31	32	36

Season	Importer	Imported free	STATISTICS FOR EEC (6)								STATISTICS FOR EEC (9)							STATISTICS FOR EEC (10)		
			1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
SUMMER	EEC	EXTRA										465	418	395	413	363	428	332	352	342
SUB-	UK	EXTRA										119	109	107	101	106	123	93	94	81
PERIOD	DK	EXTRA										6	5	4	3	2	3	3	3	3
(16.5-	IRL	EXTRA										7	7	1	-	1	1	1	1	-
15.10)	EEC (6)	EXTRA										335	297	283	309	254	301	235	254	258

Notes: 1. The notation "-" means that from 1974 on, imports were either nil or less than 500 tons.
2. As from 1981, the figures for "EEC (6)" also include imports into Greece which were negligible, however.

Source: EC NIMEXE.

TABLE 2.16

IMPORTS OF TANGERINES

(in '000 tons)

Imported from	EEC (6)		EEC (9)							EEC (10)		
	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
US	-	-	-	-	1.58	1.63	0.74	2.48	1.91	2.42	1.01	1.78
ESP	0.08	-	-	-	-	-	-	0.38	0.53	0.47	2.68	1.96
ISR	-	-	-	-	0.45	1.10	1.37	4.00	3.06	2.04	6.20	8.03
BRES	0.40	0.19	0.42	1.02	1.19	-	2.70	1.86	1.68	0.99	0.71	0.73
Other	0.42	0.27	0.34	0.37	0.42	0.45	0.61	0.86	0.38	0.72	0.44	0.24
TOTAL (non-EEC)	0.90	0.46	0.76	1.39	3.64	3.18	5.42	9.58	7.56	6.64	11.04	12.74

Source: EC NIMEXE.

TABLE 2.17

IMPORTS EEC 9*

Lemons

(In '000 tons)

Imported from	1974	1975	1976	1977	1978	1979	1980	1981	1982
Non-EEC	209	189	226	222	245	235	244	243	293
USA	43	41	43	43	28	22	31	25	8
Australia	-	-	-	-	-	2	-	-	-
Brazil	-	-	-	-	-	1	-	-	-
Chile	-	3	5	1	3	4	5	4	2
South Africa	10	11	10	10	11	8	9	11	9
Med. Basin	139	113	157	160	194	188	193	196	264
Portugal	-	-	-	-	-	-	-	-	-
Spain[1]	113	83	132	138	172	159	162	162	235
Gibraltar	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-	-
Yugoslavia	-	-	-	-	-	-	-	-	-
Turkey	16	13	9	4	6	10	8	11	10
Albania	-	-	-	-	-	-	-	-	-
Morocco	1	-	-	-	-	-	-	-	-
Algeria	-	-	-	-	-	-	-	-	-
Tunisia	1	-	-	-	-	-	-	-	-
Libya	-	-	-	-	-	-	-	-	-
Egypt	-	-	-	-	-	-	-	-	-
Cyprus	6	10	12	14	13	15	17	16	12
Lebanon	-	-	-	-	-	-	-	-	-
Israel	2	7	4	4	3	4	6	7	7
Jordan	-	-	-	-	-	-	-	-	-

*1981/1982 EEC of 10

[1]Spain + Canary Islands + Ceuta and Melilla

Source: EC NIMEXE.

TABLE 2.18

EEC IMPORTS OF LEMONS

(In '000 tons)

Importer	Imported from	STATISTICS FOR EEC (6)								STATISTICS FOR EEC (9)							STATISTICS FOR EEC (10)		
		1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
EEC	US	39	42	41	25	32	32	34	37	43	41	43	43	28	22	31	25	8	12
UK, DK, IRL.	US									5	5	7	5	5	4	5	3	-	1
EEC (6)	US	39	42	41	25	32	32	34	37	38	36	36	38	23	18	26	22	8	11
EEC	ESP	39	43	29	30	73	37	55	114	113	83	132	138	172	159	162	162	236	182
UK, DK, IRL.	ESP									7	2	5	7	13	10	12	14	28	17
EEC (6)	ESP	39	43	29	30	73	37	55	114	106	81	127	131	159	149	150	148	208	165
EEC	SAF	3	1	1	2	1	2	3	2	10	11	10	10	11	8	9	11	9	5
UK, DK, IRL.	SAF									7	6	8	6	6	5	6	7	6	4
EEC (6)	SAF	3	1	1	2	1	2	3	2	3	5	2	4	5	3	3	4	3	1
EEC	Extra	105	114	102	88	142	119	137	195	209	189	226	223	247	235	244	243	293	263
UK	Extra									23	25	27	26	30	28	35	35	46	39
DK	Extra									5	5	6	6	5	4	5	4	5	4
IRL.	Extra									1	1	1	-	-	-	-	-	1	-
EEC (6)	Extra	105	114	102	88	142	119	137	195	180	158	192	191	212	203	204	204	241	220

Notes: 1. The notation "-" means that from 1974 on, imports were either nil or less than 500 tons.
2. As from 1981, the figures for "EEC (6)" also include imports into Greece which were negligible, however.

Source: EC NIMEXE.

TABLE 2.19

IMPORTS EEC 9*

Grapefruit and Pomelos

(In '000 tons)

Imported from	1974	1975	1976	1977	1978	1979	1980	1981	1982
Non-EEC	357	394	435	394	430	415	438	427	410
USA	32	54	87	54	80	72	93	81	75
Australia	-	-	-	-	-	-	-	-	-
Brazil	1	-	-	-	-	-	-	-	-
Chile	-	-	-	-	-	-	-	-	-
Med. Basin	229	253	257	263	259	263	253	256	241
Portugal	-	-	-	-	-	-	-	-	-
Spain[1]	1	2	3	4	5	6	5	6	7
Gibraltar	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-	-
Yugoslavia	-	-	-	-	-	-	-	-	-
Turkey	-	1	1	1	1	1	2	3	5
Albania	-	-	-	-	-	-	-	-	-
Morocco	-	-	-	-	-	-	-	-	1
Algeria	-	-	-	-	-	-	-	-	-
Tunisia	-	-	-	-	-	-	-	-	-
Libya	-	-	-	-	-	-	-	-	-
Egypt	-	-	-	-	-	-	1	1	1
Cyprus	39	38	42	45	45	51	57	62	66
Lebanon	-	-	-	-	-	-	-	-	-
Israel	189	212	211	213	208	205	188	184	161
Jordan	-	-	-	-	-	-	-	-	-
South Africa	37	40	39	32	10	40	48	42	42

*1981/1982 EEC of 10

[1]Spain + Canary Islands + Ceuta and Melilla

Source: EC NIMEXE.

TABLE 2.20

IMPORTS BY THE COMMUNITY

Pectic Substances, Pectinates and Pectates

(Tons)

	1979	1980	1981	1982	1983
13 03 B I Dry					
Non-EEC	301	203	194	227	157
Switzerland	98	105	103	96	91
Austria	43	31	33	46	1
USA	138	46	23	20	15
Mexico	-	-	6	24	-
Israel	-	21	31	40	36
Japan	-	-	2	-	1
Brazil	-	-	-	1	14
13 03 B II Other					
Non-EEC	1,131	665	789	476	20
Austria	1,125	659	788	475	19
Switzerland	-	-	-	1	-
USA	-	-	1	-	-

Source: EC NIMEXE.

TABLE 2.21

IMPORTS EEC 9*

Grapefruit and Pomelo Segments

(In '000 tons)

Imported from	1974	1975	1976	1977	1978	1979	1980	1981	1982
Non-EEC	ND	ND	22	23	22	21	21	20	19
USA			-	-	-	-	-	-	-
Australia			-	-	-	-	-	-	-
Brazil			-	-	-	-	-	-	-
Chile			-	-	-	-	-	-	-
Med. Basin			16	17	16	15	15	16	14
Portugal			-	-	-	-	-	-	-
Spain[1]			-	-	-	-	-	-	-
Gibraltar			-	-	-	-	-	-	-
Malta			-	-	-	-	-	-	-
Yugoslavia			-	-	-	-	-	-	-
Turkey			-	-	-	-	-	-	-
Albania			-	-	-	-	-	-	-
Morocco			-	-	-	-	-	-	-
Algeria			-	-	-	-	-	-	-
Tunisia			-	-	-	-	-	-	-
Libya			-	-	-	-	-	-	-
Egypt			-	-	-	-	-	-	-
Cyprus			2	2	2	-	1	1	1
Lebanon			-	-	-	-	-	-	-
Israel			14	15	14	14	15	14	13
Jordan			-	-	-	-	-	-	-
South Africa									

*1981/1982 EEC of 10

[1]Spain + Canary Islands + Ceuta and Melilla

Source: EC NIMEXE.

TABLE 2.22

IMPORTS EEC 9*

Orange Juice

(In '000 tons)

Imported from	1974	1975	1976	1977	1978	1979	1980	1981	1982
Non-EEC	194	213	244	240	214	264	264	318	295
USA	23	26	38	37	25	26	15	24	17
Australia	-	-	-	-	-	-	-	-	-
Brazil	49	80	94	100	85	123	160	204	173
Chile	-	-	-	-	-	-	-	-	-
Med. Basin	114	93	99	94	98	106	82	86	100
Portugal	-	-	-	-	-	-	-	-	-
Spain[1]	12	11	13	10	9	10	7	6	9
Gibraltar	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-	-
Yugoslavia	-	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	-	-	-	-
Albania	-	-	-	-	-	-	-	-	-
Morocco	13	10	12	10	13	12	7	6	11
Algeria	-	-	-	-	-	-	-	-	-
Tunisia	-	-	-	-	-	-	-	-	-
Libya	-	-	-	-	-	-	-	-	-
Egypt	-	-	-	-	-	-	-	-	-
Cyprus	2	-	-	1	-	1	1	1	1
Lebanon	-	-	-	-	-	-	-	-	-
Israel	83	72	73	70	74	82	67	70	78
Jordan	-	-	-	-	-	-	-	-	-
South Africa	4	5	5	4	2	2	1	-	1

*1981/1982 EEC of 10

[1]Spain + Canary Islands + Cueta and Melilla

Source: EC NIMEXE.

TABLE 2.23

IMPORTS EEC 9*

Grapefruit Juice

(In '000 tons)

Imported from	1974	1975	1976	1977	1978	1979	1980	1981	1982
Non-EEC	58	46	50	46	43	52	49	43	39
USA	5	6	8	6	7	8	9	7	7
Australia	-	-	-	-	-	-	-	-	-
Brazil	-	3	-	-	-	1	1	1	2
Chile	-	-	-	-	-	-	-	-	-
Med. Basin	41	31	35	31	31	37	33	31	27
Portugal	-	-	-	-	-	-	-	-	-
Spain[1]	-	-	-	-	2	-	-	-	-
Gibraltar	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-	-
Yugoslavia	-	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	-	-	-	-
Albania	-	-	-	-	-	-	-	-	-
Morocco	4	2	3	2	2	2	1	1	1
Algeria	-	-	-	-	-	-	-	-	-
Tunisia	-	-	-	-	-	-	-	-	-
Libya	-	-	-	-	-	-	-	-	-
Egypt	-	-	-	-	-	-	-	-	-
Cyprus	1	-	-	-	-	-	-	-	-
Lebanon	-	-	-	-	-	-	-	-	-
Israel	36	29	32	29	27	35	32	30	26
Jordan	-	-	-	-	-	-	-	-	-
South Africa	-	-	-	-	-	1	-	-	-

*1981/1982 EEC of 10

[1]Spain + Canary Islands + Ceuta and Melilla

Source: EC NIMEXE.

TABLE 2.24

IMPORTS EEC 9*

Lemon Juice

(In '000 tons)

Imported from	1974	1975	1976	1977	1978	1979	1980	1981	1982
Non-EEC	12	13	14	14	16	18	18	15	16
USA	2	1	1	4	3	3	1	1	2
Australia	-	-	-	-	-	-	-	-	-
Brazil	1	3	4	3	5	5	7	5	6
Chile	-	-	-	-	-	-	-	-	-
Med. Basin	1	1	1	1	1	1	1	1	1
Portugal	-	-	-	-	-	-	-	-	-
Spain[1]	-	-	-	-	-	-	-	-	-
Gibraltar	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-	-
Yugoslavia	-	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	-	-	-	-
Albania	-	-	-	-	-	-	-	-	-
Morocco	-	-	-	-	-	-	-	-	-
Algeria	-	-	-	-	-	-	-	-	-
Tunisia	-	-	-	-	-	-	-	-	-
Libya	-	-	-	-	-	-	-	-	-
Egypt	-	-	-	-	-	-	-	-	-
Cyprus	-	-	-	-	-	-	-	-	-
Lebanon	-	-	-	-	-	-	-	-	-
Israel	1	1	1	1	1	1	1	1	1
Jordan	-	-	-	-	-	-	-	-	-
South Africa	-	-	-	-	-	-	-	-	-

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[1]Spain + Canary Islands + Ceuta and Melilla

Source: EC NIMEXE.

III. Main arguments

A. Parties to the dispute

1. Abstract

3.1 The complaint of the United States was essentially that the tariff preferences granted by the European Economic Community on its imports of certain citrus products originating from certain Mediterranean countries were inconsistent with the obligations of the EEC under Article I, and that furthermore these preferences continued to have an adverse effect on US citrus exports which did not receive EEC preferences.

3.2 The EEC argued essentially that the tariff preferences it accorded to imports of certain citrus products originating from certain Mediterranean countries were an integral part of agreements that it had concluded with these countries. The EEC stated that these agreements had been duly notified and examined under Article XXIV:7(a) and (b) respectively. The absence of recommendations by CONTRACTING PARTIES as provided under Article XXIV:7(b) had meant, according to the EEC, that the entry into force of the agreements had been approved by CONTRACTING PARTIES as well as by individual contracting parties. The matter of the consistency of the agreements with the provisions of Article XXIV was clearly outside the scope of the work of the Panel. Furthermore, the EC contended that its imports of citrus products were determined by factors other than the preferences, and that the United States had failed to furnish proof that it had suffered trade damage as a result of the preferences.

2. Article I

3.3 The United States contended that the EEC tariff preferences on imports of certain citrus products were inconsistent with the most-favoured-nation principle of Article I of the Genera] Agreement. The EEC had conferred an "advantage" to the Mediterranean countries "with respect to customs duties" which had not been "accorded immediately and unconditionally" to like US products. This failure to accord the United States most-favoured-nation treatment constituted in the US view *prima facie* nullification or impairment of benefits accruing to the United States under the General Agreement. The importance of the m.f.n. principle was evident from its negotiating history, and was illustrated by the fact that it was fully binding on a contracting party upon its accession; i.e. not subject to the "existing legislation" exception of the Protocol of Provisional Application. As the single most important obligation of the General Agreement, the most-favoured-nation provision should be strictly construed and exceptions to it narrowly interpreted.

3.4 The EEC responded that the tariff preferences it accorded to imports of certain citrus products originating from certain Mediterranean countries were an integral part of agreements that it had concluded with these countries. These agreements were interim agreements leading to the formation of a customs union or free-trade area in accordance with the provisions of Article XXIV, therefore permitted by the General Agreement itself and not to be considered as inconsistent with Article I. In the EEC's view, Articles I and XXIV incorporated into GATT principles of equal validity. Arrangements conforming to Article XXIV should therefore not be considered as being covered by a derogation from Article I, and the question of strict construction of that Article and narrowly drawn exceptions to it did not arise in the present case. Moreover, the view advanced by the United States failed to take account of the developments that had taken place since the drafting of the General Agreement, which could not in all cases have been envisaged by the drafters. The many decisions by the CONTRACTING PARTIES that permitted arrangements establishing tariff preferences for or among developing countries, the resort to regional arrangements in virtually all continents, the Lomé Convention, the United States-Canada automobile agreement and the so-called Enabling Clause were cited by the EEC as examples of a general trend towards a more flexible application of the m.f.n. principle. Article XXIV

could not in any event be viewed as an exception to this principle which must be subject to strict conditions. Indeed the procedures applicable to Article XXIV cases were less onerous than those applied to formal derogations from other Articles of the General Agreement provided under Article XXV.

3.5 The United States explained that it had sought to negotiate a solution to this problem for many years both in the context of bilateral discussions with the EC on this dispute and in the context of broader tariff discussions in the Tokyo Round of Multilateral Trade Negotiations. These efforts had been unsuccessful. Indeed no small part of the problem caused by the EEC's preferential arrangements was the impediment it created to the reduction or elimination of tariffs and other restrictions on a most-favoured-nation basis.

3.6 The European Community responded that at no time had it claimed that the existence of the preferences would prevent making tariff cuts. It had pointed out that those cuts would erode the preferences, but it had never stated that that in itself would prevent such a course, any more than the existence of the Generalized System Preferences (GSP) had prevented the Tokyo Round. Any contracting party could seek tariff negotiations at any time if it found a willing partner. The United States had come to the EC, but the EC had not wished to negotiate. The tariffs that the Community applied had been substantially lowered over the last twenty years. Their present levels were required for the protection of the EC's own producers and were important to the political stability of the Mediterranean suppliers.

3. Article XXIV

(a) Article XXIV:5

3.7 The United States considered that the agreements did not meet the requirements of Article XXIV, and therefore could not be justified as a permissible exception to Article I. Because Article XXIV constituted an exception to the fundamental principle of most-favoured-nation treatment, the language of this Article should be strictly construed, as clearly indicated in its negotiating history. Article XXIV:5 required that interim agreements:

- contain a binding commitment to form a customs union or free-trade area;

- contain a plan or schedule for the formation of a customs union or free-trade area within a reasonable period of time; and

- provide for the elimination of duties and other restrictions of commerce with respect to substantially all the trade between the parties.

3.8 In the United States' view, none of the agreements complied with all the above requirements of Article XXIV:5. The agreements with Algeria, Morocco, Tunisia, Jordan, Lebanon and Egypt did not contain a plan or schedule to form a customs union or free-trade area within a reasonable period of time. They also failed to provide for the elimination of duties and other restrictions on commerce with respect to substantially all the trade between the parties. Algeria, Morocco, Tunisia, Jordan, Lebanon and Egypt were not required to provide reciprocal preferences to the EEC. Furthermore, the agreements with these countries omitted entirely a binding commitment to form a customs union or free-trade area. The agreements with Malta, Cyprus and Spain did not require the parties to make a binding commitment toward their stated goal of the establishment of a free-trade area (Spain) or customs union (Cyprus and Malta). These agreements set forth a plan for a first-stage reduction of restrictions on certain products. A second stage providing for the establishment of a customs union or free-trade area was merely anticipated. The plan and schedule for accomplishing that goal were left for future negotiations. The first stage was to end in 1976, for Malta and Spain, and in 1977 for Cyprus.

However, in all cases, the first stage was still in effect. The agreement with Israel contained a schedule to eliminate duties on some products and to reduce duties on others, but omitted a plan and schedule for almost the entire sector of agricultural products. Similarly, the agricultural sector was largely excluded from the agreements with Cyprus, Malta and Spain. None of the EEC agreements with the Mediterranean countries provided for the elimination of tariffs and other restrictions, even with respect to a significant portion of EEC imports from the preference recipients, especially as regards trade in agricultural products. The United States also contended that while the EEC's agreement with Turkey differed in some respects with the other agreements, it still failed to meet all the requirements of Article XXIV.

3.9 The EEC responded that it was well-established that there was no consensus view among contracting parties as to whether the agreements were consistent with Article XXIV:5. However, this matter was clearly outside the scope of the Panel's work. CONTRACTING PARTIES had already discharged their responsibilities under Article XXIV, by examining under Article XXIV:7(b) the consistency of the agreements with Article XXIV:5, and it was not for the Panel to re-open discussion on the issue. In the absence of any agreed findings by CONTRACTING PARTIES to the contrary, the agreements must be considered as having been accepted. (See paras. 3.30, 3.31, and 3.32 for further arguments by the EC and US.)

(b) Article XXIV:7

(i) Position of CONTRACTING PARTIES

3.10 The EEC contended that all of the agreements had been notified to the CONTRACTING PARTIES in accordance with Article XXIV:7(a) and had been examined by them in accordance with Article XXIV:7(b). Article XXIV:7(b) gave the CONTRACTING PARTIES the possibility to make recommendations to the parties of an interim agreement and, if the CONTRACTING PARTIES did so, the parties to the interim agreement had to modify it in accordance with these recommendations, or refrain from maintaining it or putting it into force. The clear implication of this rule was that if the CONTRACTING PARTIES did not recommend any modification, the parties to the interim agreement were entitled to implement it. On none of the agreements had the CONTRACTING PARTIES made any recommendations, and the parties therefore had the right to implement them. The EEC stressed that Article XXIV:7(b) did not require a positive approval by the CONTRACTING PARTIES. For an interim agreement notified under Article XXIV:7(a) to be consistent with the General Agreement, it was sufficient that the CONTRACTING PARTIES had examined it under Article XXIV:7(b) and had refrained from recommending modifications.

3.11 The EEC recalled that the CONTRACTING PARTIES had never formally approved any customs union or free trade agreement since the first such case was presented and examined in the 1950's, nor had they addressed recommendations to the parties to modify an agreement before putting it into force. In their conclusions with respect to the Treaty of Rome, the CONTRACTING PARTIES had taken the pragmatic view that "it would be more fruitful if attention could be directed to specific and practical problems, leaving aside… the questions of law and debates about compatibility with Article XXIV of the GATT" (BISD 7S/70 para. 3). They had used similar wording in their conclusions on the Stockholm Convention (BISD 9S/20). In the view of the EEC, these and other conclusions[6] clearly indicated that the CONTRACTING PARTIES had expected the Treaty of Rome and the Stockholm Convention to be implemented, notwithstanding the fact that a consensus on their compatibility with Article XXIV had not been reached, and that they had raised no objections against the implementation of these treaties. The approach applied in the case of the Treaty of Rome and the Stockholm Convention

[6]The EEC further cited points (c), (d), (e), and (f) of the conclusions on the Rome Treaty (BISD 7S/71) which refer to the "application" of the Treaty and of its provisions and to "the evolution of the Community". See too BISD 9S/21 for conclusions on EFTA.

had become the leitmotif in all subsequent examinations of customs unions and free-trade areas. In almost every case it had been agreed that the parties to the agreement examined would supply further information and notify changes to the agreement and that the agreement would not affect the rights of the contracting parties not parties to them. The only meaning that could be attached to these understandings was that the entry into force of the agreements was expected and accepted by the CONTRACTING PARTIES. To examine the consistency of the agreements with Article XXIV in the context of a violation complaint under Article XXIII would run counter to the highly pragmatic attitude the CONTRACTING PARTIES had taken towards interim agreements.

3.12 The United States stated that in light of the history of continued controversy concerning the compatibility of the agreements with the General Agreement, it could not be maintained that the failure of the EEC to meet its obligations under Article I had been sanctioned by the CONTRACTING PARTIES. In no case did a working party unanimously agree that any agreement in question was compatible with the General Agreement. It was clear that the Council had been aware of the strong divergence of views within the working parties, and its adoption of the reports should be viewed from this perspective. The failure of the CONTRACTING PARTIES to reject the agreements did not imply acceptance nor did it constitute a legal finding of GATT consistency with Article XXIV. The fact that the CONTRACTING PARTIES were aware that the EEC was going to implement the agreements could not be equated with approval. Similarly, the fact that these agreements had been in place for a number of years did not confer legitimacy. The pragmatic attitude the CONTRACTING PARTIES had adopted in their treatment of free-trade areas and customs unions did not envisage a loss of the right to subsequently challenge the legal validity of such agreements. The implication of the decision of the CONTRACTING PARTIES with respect to the Treaty of Rome was that, while the legal issues could not be fruitfully discussed at that stage, such legal issues could be raised at a later point in time. Moreover, as the EEC had pointed out itself, the decisions on customs unions and free-trade areas had been adopted on the explicit understanding that the legal rights of contracting parties under the General Agreement would not be affected. This clearly implied that the CONTRACTING PARTIES meant the right of individual contracting parties to challenge the consistency of the agreement with the requirements of Article XXIV to remain intact. The United States also noted that the CONTRACTING PARTIES had given formal approval to a free-trade area pursuant to Article XXIV:10 (BISD Volume II/30). Moreover, the United States pointed out that the CONTRACTING PARTIES had acted under Article XXV:5 to approve an agreement for the formation of a customs union between France and Italy (GATT/CP/l, of 20 March 1948).

3.13 The EEC replied that this argument, that the right to challenge on the legal issues remained intact, was clearly absurd in the case of the Treaty of Rome where a full customs union had long been completed. Even in other cases such an argument, if taken to extreme limits, would lead to total insecurity for the parties to the agreements in question as regards their implementation. The CONTRACTING PARTIES could scarcely have intended this result.

3.14 The United States argued that the procedures of Article XXIV:7(b) applied only to interim agreements among contracting parties and hence not to the agreements concluded with Algeria, Morocco, Tunisia, Jordan and Lebanon, which were not contracting parties. These agreements were rather subject to the procedures of Article XXIV:10 which required a two-thirds majority approval. Thus, the EEC could not claim that the failure of the CONTRACTING PARTIES to exercise their authority under Article XXIV:7(b) constituted approval with respect to these agreements.

3.15 The EEC replied that the CONTRACTING PARTIES had, from the 1960s onwards, applied the procedures of Article XXIV:7(b) also to interim agreements involving non-contracting parties. Thus, they had based their examinations of the Stockholm Convention, the Arab Common Market and the United Kingdom-Ireland Free-Trade Area Agreement on Article XXIV:7(b), even though these regional arrangements had involved non-contracting parties (BISD 9S/20, 14S/20, 14S/23). This practice

of the CONTRACTING PARTIES had created precedents. Furthermore the EEC noted that Article XXIV:10 did not require a formal vote.

3.16 The United States pointed out that Article XXIV:7(b) stated in part:

> "If, after having studied the plan or schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to the agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a)…"

A decision under Article XXIV:7(b) could thus be taken only if the interim agreement contained a plan or schedule for the formation of a customs union or free-trade area. The agreement with Egypt contained no plan or schedule of any kind. The schedules contained in the agreements with Spain, Israel, Malta and Cyprus were merely schedules for a reduction in duties and other restrictions on specified products; they were not schedules for the formation of customs unions or free-trade areas as required by paragraph 7(b). The CONTRACTING PARTIES had thus been unable to render the judgement called for under paragraph 7(b) because the information described in sub-paragraph (a) which was necessary to make that judgement had not been supplied by the parties to the agreements. The failure of the CONTRACTING PARTIES to make recommendations on the agreements with the Mediterranean countries that were contracting parties could for this reason not be construed as a legal finding that the agreements met the requirements of Article XXIV.

3.17 The EEC stated in reply that these questions had been examined by the working parties in each case but that none of them had recommended that the plan or schedule submitted should be modified. Furthermore, none of the working parties which had examined the agreements had come to the conclusion that there had not been enough information to form a judgement under Article XXIV:7(b). Individual members of a working party might have felt that there was insufficient information but not the working party as a whole.

3.18 The United States responded that the specific question of the sufficiency of the information submitted had not been thoroughly discussed nor had it been resolved in favour of the parties to the agreements (see also paragraph 3.94 for further arguments by the US on this question).

(ii) Position of individual contracting parties

3.19 The EEC contended that not only the CONTRACTING PARTIES acting as a whole but also the individual contracting parties had tacitly accepted the entry into force of the agreements and that the United States had therefore lost the right to challenge the consistency of the agreements with the General Agreement under Article XXIII:1(a).

3.20 The United States replied that when each of the agreements had been examined, individual contracting parties, including the United States, had explicitly reserved their rights under the General Agreement, which included the right to challenge under Article XXIII the consistency of the agreement with Article XXIV.

3.21 The EEC said that such a reservation did not give the contracting party the right to subject the parties to the agreement to permanent legal uncertainty. If a reservation was made as to the consistency of an interim agreement, a formal challenge under Article XXIII could reasonably be expected at the time when the agreement was implemented. A decision not to pursue the matter at that time had to be taken as a tacit acceptance of the agreement as far as its legal status under the General Agreement was concerned. If specific trade issues arose subsequently in the implementation of the agreement, contracting parties could seek a reassessment under Article XXIV:7 or bring a case under Article XXIII:1(b), but they could not re-open the question of consistency in a violation complaint

under Article XXIII:1(a). Moreover, the EEC referred to the existence of an informal bilateral Agreement, a "modus vivendi" between the Community and the United States regarding tariff preferences which had operated between 1973 and the tabling of the present complaint. In the light of this text, it was understood that the EEC would continue with its arrangements in the Mediterranean region, that the United States had no reasonable expectation that the preferences would be altered or eliminated, and that the legality of the preferences would not be challenged by the United States.

3.22 The United States replied that the consequence of the EC position was that a failure to assert legal rights immediately constituted a permanent bar to future legal challenge. It would penalize those contracting parties that waited to assert their legal rights until a specific trade problem occurred. If the EEC view was accepted, the result would be an immediate termination of the pragmatic approach which had been characteristic of the GATT. The GATT would not be well-served by the approach suggested by the EEC. The United States added that the parties to interim agreements on which no recommendation had been made did not enjoy legal certainty in any case because the CONTRACTING PARTIES could at any time request a modification of the agreements under Article XXIV:7(b). Furthermore, the agreement between the EEC and the United States referred to was not a formal agreement and its detailed provisions had been the subject of subsequent divergences. The United States had had expectations also that specific trade problems would be dealt with. In this connection the only commercial issue it had raised concerned citrus.

3.23 The EEC suggested that Article XXIV:7 could serve as a framework for re-examining the consistency of free-trade agreements with the provisions of this Article. Sub-paragraph (c) of Article XXIV:7 envisaged the possibility for further GATT consultations in certain situations. It ought to be acceptable for a contracting party to put forward a request to use this procedure, as long as this was accompanied by an explanation of the new circumstances relating to the agreement which would require a further examination by CONTRACTING PARTIES of a matter that they had already examined. But to safeguard the rights and interests of the parties to an agreement, use of the Article XXIV:7(c) procedure ought to be an exceptional matter, not to be undertaken without good reason. CONTRACTING PARTIES should logically have the same possibilities for action available to them in such a case as would have been available during the original examination of the agreement under Article XXIV:7(b). However, it would be necessary to consider carefully what modifications could reasonably be required to an agreement which had already been applied and enforced for a number of years.

4. Part IV

3.24 The United States further contended that the EEC's breach of the most-favoured-nation principle as well as the omission of reciprocal concessions in some of the agreements with the Mediterranean countries could not be defended as permissible under Part IV of the General Agreement. Nothing in Part IV nor the interpretative notes thereto indicated that the provisions of Part IV were intended to supersede the obligations of Article I and the Article XXIV requirement of reciprocity. Moreover Part IV was never intended to discriminate among developing countries as the EC was doing in its selective application of citrus tariff preferences. Part IV was expected to be applied on an MFN basis to all developing countries (see also paragraph 3.109).

3.25 The EEC responded that it had invoked Part IV to justify the lack of reciprocal obligations on the part of certain Mediterranean countries towards the EC. As concerned the tariff treatment the EC accorded to these countries, this was in keeping with the requirements of Article XXIV. It repeated its position that all of the agreements in question had not been disapproved and therefore accepted by the CONTRACTING PARTIES under Article XXIV:7(b) (see also paragraph 3.III).

5. Article XXIII

(a) Relationship between Articles XXIV and XXIII

3.26 The United States argued that, whatever the scope of the Article XXIV:7 procedures for the examination of interim agreements, the existence of these procedures in no way curtailed the general right of contracting parties to challenge the GATT-consistency of any measure under the procedures of Article XXIII. Neither the wording of Article XXIII nor the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted by the CONTRACTING PARTIES in 1979 (BISD 26S/210) limited in any way the right of contracting parties to bring complaints under Article XXIII, nor suggested that the applicability of Article XXIV was meant to be excluded.

3.27 The EEC replied that the Article XXIV: procedures for the determination of the consistency of interim agreement with the General Agreement would become meaningless if the consistency could also be determined under Article XXIII. A contracting party that wished to contest the consistency had to do so within the framework of the procedures specifically established for that purpose, namely Article XXIV:7. If the CONTRACTING PARTIES had made a recommendation in accordance with that provision and the parties to the interim agreement had failed to observe that recommendation, then adversely affected contracting parties could challenge the legality of the interim agreement under Article XXIII. If the CONTRACTING PARTIES were to rule on the consistency of interim agreements under Article XXIII without first having made a recommendation under Article XXIV:7(b), they would omit a procedural step specifically provided for in the General Agreement. If an interim agreement gave rise to trade problems and thereby impaired benefits accruing to a contracting party under the General Agreement, that contracting party could bring a complaint in accordance with Article XXIII:1(b). However, it could not sidestep Article XXIV:7 by bringing a complaint in accordance with Article XXIII:1(a).

3.28 The EEC also argued that the tacit acceptance of the agreements by contracting parties had created for the parties the right to be relieved of uncertainties as to their legal position and the legitimate expectation that they would not be challenged under Article XXIII for violation of the General Agreement. The possibility of subsequent legal challenge was effectively limited, particularly when the matter arose several years after the agreements had been put into force. The fact that certain contracting parties had unilaterally reserved their GATT rights did not mean a right to use Article XXIII procedures.

3.29 The United States stated that the proposition that contracting parties, in the absence of a recommendation under Article XXIV:7(b), had no right to challenge the consistency of interim agreements with the requirements under Article XXIV:5 would be unacceptable to all those contracting parties which viewed the GATT dispute settlement procedure as one of the cornerstones of the GATT legal system. The United States repeated that the drafters of Article XXIV had been deeply concerned that the exception for preferential trading arrangements might undermine the most-favoured-nation principle and that they had therefore imposed strict conditions to ensure a careful control of the use of this exception. For this reason Article XXIV could not be construed as widely as the EEC suggested. The United States noted that the approach taken by the CONTRACTING PARTIES and relied upon by the EEC, with respect to the Rome Treaty specifically provided "… that the other normal procedures of the General Agreement would also be available to contracting parties to call in question any measures taken by any of the six countries in the application of the provisions of the Treaty of Rome…" (BISD 7S/71, II.(f)).

3.30 The EEC contended that the question of the consistency of the agreements with Article XXIV fell outside the Panel's terms of reference. The history of the examination of customs unions and free-trade areas in the GATT had been marked by substantial divergences of views. Each of the EEC's

agreements with the Mediterranean countries had been examined by the CONTRACTING PARTIES and none of these examinations had led to a consensus on the question of whether the agreements were consistent with Article XXIV or not. Any recommendation by the Panel on this issue would face the same lack of consensus. The consistency of the agreements with the General Agreement was essentially a political issue which did not lend itself to resolution through legal proceedings. The Panel had been asked by the Council to consider the tariff treatment accorded by the EEC to imports of citrus products; its terms of reference did not specifically mention the consistency of the agreements with Article XXIV. The Panel therefore had no reason to engage in a fundamental and wide-ranging examination of the agreements. That was a task which had been carried out by the CONTRACTING PARTIES and it was their responsibility to make any further reviews that might be required.

3.31 The United States emphasized that its purpose in bringing its complaint was not to seek a ruling on the legal validity of the agreements as a whole. It sought redress for the nullification or impairment of the benefits accruing to the United States under Article I which arose from the EEC's practice of granting preferential tariff treatment to imports of certain citrus products. Since the EEC had chosen to justify its failure to meet its obligations under Article I by invoking Article XXIV, the United States had no option but to challenge the consistency of the EEC's preferential arrangements with the requirements of Article XXIV, in order to demonstrate that the granting of tariff preferences on citrus products was a breach of the EEC's obligations under the General Agreement.

3.32 The United States added that an examination of the consistency of the agreements with Article XXIV was clearly within the mandate of the Panel since the EEC had invoked this Article to justify the preferences on citrus products. The EEC could not rely on Article XXIV as a defense for its breach of Article I and at the same time deny the Panel jurisdiction to examine the validity of that defense. The terms of reference required the Panel to examine the tariff treatment accorded to imports of citrus products "in the light of the relevant GATT provisions". Since the EEC had invoked Article XXIV to justify the tariff treatment, Article XXIV automatically became a "relevant GATT provision". Moreover, the understanding on the basis of which the terms of reference had been accepted specifically permitted the Panel to take account of the working party reports on the agreements and the Council discussion of these reports. There could therefore be no doubt that the Council expected the Panel to review the Article XXIV argument if raised.

(b) Article XXIII:1(b)

3.33 The United States reiterated its view that the EEC's preferences were in fact a violation of Article I and that the matter would fall therefore under Article XXIII:1(a). In response to a question by the Panel, the United States stated, however, that even if the case before the Panel involved the granting of tariff preferences in a manner consistent with the General Agreement, Article XXIII:1(b) would justify the United States' complaint that GATT benefits were being nullified or impaired. The United States stated that it would be within the Panel's terms of reference as well as the customary GATT practice of panels, for the Panel to consider the matter under Article XXIII:1(b) if it deemed this relevant, and to make findings thereon if the Panel so chose.

3.34 The EEC said that neither in the consultations under Article XXIII:1 nor in its request for an examination under Article XXIII:2, had the United States claimed that a nullification or impairment had taken place in the absence of a violation of the General Agreement. Furthermore, it noted that even at this stage the United States had not requested the Panel to consider a case under Article XXIII:1(b). Accordingly, such a case could not be considered as a matter" referred to the Panel under its terms of reference, as established by the Council. The EEC considered that it would be an undesirable precedent for the legal basis of a complaint to be changed during the course of a panel proceeding, since this could result in effects on the interests and rights of other contracting parties which had not been expected when the Panel was established. For a complaint under Article XXIII:1(b)

to be valid, it had to be presented as such both during the bilateral consultations and in the submission of the request for a panel to the CONTRACTING PARTIES. If contracting parties could change the legal basis of their complaint during the course of a panel proceeding, the CONTRACTING PARTIES would lose the possibility to consider all relevant aspects of the case before deciding to establish a panel.

3.35 The United States stated that the EEC's tariff treatment nullified or impaired a benefit accruing to the United States under Article I; namely, to enjoy the same tariff treatment as that accorded to the most-favoured Mediterranean country. The tariff treatment of the EEC distorted the competitive relationship between citrus products exported by the United States and those exported by the Mediterranean countries. This distortion had had an adverse impact on the United States' exports of citrus products to the EEC, as supported by statistics (see next section relating to trade aspects).

3.36 The EEC said that it would be illogical if benefits accruing to the United States under Article I were considered to be impaired by agreements specifically provided for under Article XXIV. Customs unions or free-trade areas established under Article XXIV were by definition, explicitly permitted to introduce tariff preferences and the effects of this were set out in paragraph 4 of that Article. It would effectively become impossible for contracting parties to implement agreements under this Article, if the mere existence of a tariff preference granted within the framework of an agreement covered by Article XXIV were considered to be a nullification or impairment of GATT benefits, on the grounds that it upset the competitive relationship between products originating in the beneficiary country and those originating in other contracting parties. Therefore the use of Article XXIII:1(b) should be rejected as a form of indirect legal challenge to agreements which had not been declared inconsistent with Article XXIV.

3.37 The EEC further claimed that no benefits accruing to the United States under Article II as a result of tariff negotiations had been nullified or impaired. When the tariff bindings on citrus products were negotiated, the United States had been aware of the preferences for the Mediterranean countries. The United States therefore could not have reasonably expected that the commercial value of the tariff concessions would not be impaired through the preferences. Moreover, not all of the EEC tariffs on citrus products were bound.

3.38 The United States replied that the agreements pursuant to which the Mediterranean countries received tariff preferences on citrus products had not taken effect until 1969 or later. The United States had begun planting trees bearing winter oranges (navels) prior to the effective date of these agreements. Most of the increase in lemon production had come also from trees planted during the 1960s. At that time the united States could not reasonably have foreseen that 5-7 years later when the trees had borne fruit, the EEC would have taken steps to restrict ITS access to the EEC market. (Further arguments by the US and EC relating to expectations by producers and production are contained in paragraphs 3.63, 3.64, 3.65, 3.66, 3.75 and 3.76).

3.39 The EEC stated that since no tariff bindings had been granted on oranges in the winter season or on lemons, it was clear that the United States had not established any right to reasonable expectations in relation to Article II. More generally the EEC recalled that preferential arrangements in the Mediterranean area had begun in 1962 and had been expanded in 1968 and in 1969, as well as later (ref. Para. 2.6). The increase in acreage for winter oranges and for lemons in the period 1965 to 1972 (ref. Table 3.8) must be considered as the result of investment undertaken in full knowledge of these developments.

3.40 The EEC said that, according to paragraph 5 of the Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement (BISD 26S/216), contracting parties bringing a case that did not involve an inconsistency with the General Agreement were "to provide a detailed justification". The United States thus had the burden of proving that it had suffered trade damage as

a result of the preferences. The United States had failed to furnish this proof. In the view of the EEC its imports of citrus products were determined by factors other than the preferences.

6. Trade aspects

3.41 The United States explained that citrus was the most important horticultural crop in the United States with production in 1982-83 valued at $1.7 billion. Citrus production was centred largely in four states - California, Arizona, Texas and Florida - where it provided a major source of employment and income. While most production was consumed domestically exports accounted for a substantial part of total production and were an important source of revenue to the industry. The value of exports of the citrus products covered by the US complaint generally exceeded one-half billion dollars annually.

3.42 The United States added that the EEC was a very important market for citrus products. In 1982, the EEC imported $1.2 billion of fresh citrus products alone, accounting for 55 per cent of all EEC consumption. However, the competitive position of US citrus exporters in the EEC market was being distorted by reason of the EEC's preferential tariff treatment of imports from certain Mediterranean countries. Because of these unjustified preferences granted to countries which already enjoyed a geographical advantage, US citrus growers and shippers had generally experienced a reduction in sales to the EEC or lost sales opportunities. The removal of the preferential duties would improve the United States' competitive position in relation to the Mediterranean countries, would allow US citrus to be priced more favourably than at present in the EC market, and result in a larger US export volume to the EC - except when lower than normal production in the US would restrict export availabilities.

3.43 The EEC argued that factors other than tariff preferences had been much more important in determining the market shares of the various suppliers into the Community. In this connection, the EEC referred to investments by exporting countries to develop the citrus sector as well as to promote exports (particularly Spain and Israel), and proximity to the Community. The latter provided an advantage in relation to transportation costs, packaging, freshness of products and the capacity to supply important volumes at reasonable prices within a short period. The Community also noted that currency devaluations had favoured exports from Spain and Israel. As regards factors influencing US competition, the EC referred to federal and California reclamation and irrigation projects which had permitted an expansion in citrus production, government export aids especially to the Asian market (as opposed to Mediterranean promotional funds directed towards Europe), domestic production levies through which the American consumer financed indirectly export promotion, the system of dual-pricing and marketing orders, weather conditions, the Mediterranean fruit fly and currency fluctuations.

3.44 The United States responded that the factors listed by the EC as having had a significant effect on US trade performance were either inaccurate or irrelevant to the issue of tariff preferences on citrus. Government investment aids in the US had not led to a significant expansion in production capacity for citrus since the EC's introduction of the Mediterranean preferences, as the increase in citrus acreage had occurred for the most part in the 1960s before the establishment of the preferences. The programs that had been mentioned by the EC were general reclamation and irrigation projects that had benefitted all of California agriculture. They had not been specifically targeted to the citrus industry, and for the most part they had merely allowed a geographic shift in citrus production rather than an increase in total capacity. The US further claimed that government export aids, such as they existed, also had little effect on US citrus exports. No. P.L. 480 funds had been available for any fresh fruit exports since 1963. A significant portion of the US citrus industry did collect a levy on domestic production, the proceeds from which were used to promote US citrus sales in all markets. The levy was on all production (whether for domestic consumption or for export) and by far the largest portion of the money was used in the domestic market. In no sense were domestic consumers being used to finance indirectly export promotion. Moreover, citrus marketing orders had little or no effect on the price or the volume of citrus exports. They did not impose restrictions on production, nor do they stimulate additional

production. Since a substantial portion of total production was unregulated, the orders could not act to support a minimum producer price. The United States did not deny that factors such as weather conditions, pests, or exchange rate fluctuations could influence trade in citrus. However, the US noted that the strong US dollar was a phenomenon of the last three years, whereas the progressive loss of the US share of the EC citrus market had been occurring for over a decade.

3.45 The EEC further stated that its principal finding from the trade figures was that there was no clear or definitive evidence that the existence of tariff preferences for some suppliers, or the absence of them for others, had been responsible for any significant change in trend. Indeed, the trends were so disparate, with both preferential and non-preferential suppliers doing well and doing badly in the Community market, that one could not reject the view that non-tariff factors might well have played a role at least as important as the preference, if not more so, in contributing to the final result. An attempt at comparing pre- and post-accession trends in imports to the United Kingdom, as well as to the much smaller markets which existed in Ireland and Denmark, had revealed no clear trend to the benefit of preferential countries or to the disadvantage of non-preferential suppliers. Indeed, preferential trade had grown most strongly in lemons and grapefruits where the preference margin was clearly much less important, and where other factors traditional links, strong competencies were particularly evident.

3.46 The United States called attention to the fact that the EC had admitted that the tariff preferences had had an effect on trade patterns. The EC attempt to minimize the importance of the tariff preference by listing other factors which it claimed had affected trade in citrus, ignored the fact that the US was seeking an equal competitive opportunity to export. The US stated that it had never argued that the preferences were of such singular importance that they would always override all other factors affecting trade. There would be times when, despite non-discriminatory tariff treatment, US exports to the EC would be limited by other market factors, e.g. exchange rate fluctuations, transportation costs, etc. However, there would also be times when market factors provided the US with a competitive advantage. In those instances the continued existence of the preferences would, as they had in the past, nullify that market advantage. As regards the question of the effect of the application of the Mediterranean preferences on the trade of countries acceding to the EC, the US noted that in the case of Danish and Irish imports of lemons and grapefruit, a very definite decrease in imports from the US had occurred from 1974, when the phased application of the preferences began.

3.47 The EC also suggested that its tariff preferences were more like economic aid than direct advantages for importing into the EC. Moreover, the Community ensured that beneficiaries of preferences did not enter below reference prices on fresh citrus. This meant higher profit margins for these countries.

3.48 The United states responded that it was a supplier of high quality citrus to the EC, and entered above the reference price. Imported citrus which competed against US citrus in the EC market was also of such quality that it entered above the reference price. Clearly, the reference price was not a factor in altering the tariff advantage granted to Mediterranean preference countries. If the underlying intent of the EC citrus preference system was to provide economic aid, the EC should adopt a mechanism for accomplishing this which did not adversely affect other countries' trade interests.

(a) Fresh oranges

3.49 The United States stated that since the introduction of EEC tariff preferences for Mediterranean countries in 1969 and 1970, EC imports of fresh oranges from all sources had declined by 9 per cent. Primarily because of the preferences, the quantity imported from the United States had decreased at a much more rapid rate, falling by over 30 per cent. During this same period, US exports of oranges to non-EC destinations had increased by 70 per cent. US shipments to the EC had increased sharply in 1975 following MFN reductions on EC tariffs on oranges for the April-October period, but these

gains had been transitory. Following the MFN tariff reductions, the EEC had deepened the tariff preferences and imports from the US had resumed their downward trend. Most EC imports of US oranges generally took place in the May-October period when EC tariffs, and consequently the preferential tariff margins, were at their lowest levels.

3.50 The EEC stated that its total imports of fresh oranges had declined since 1975. While imports from most of its preferential suppliers such as Spain, Israel, Morocco, Tunisia and Egypt had been stable or declining, imports from Cyprus had doubled. The overall share in the Community market of the Mediterranean countries had remained practically stable (82 per cent in 1974 and 83 per cent in 1982). Moreover, non-preferential suppliers such as Argentina and Brazil had maintained or increased their exports, while others such as South Africa, Uruguay or USA had a declining trend but were remarkably erratic, with peaks in 1978 (South Africa), 1980 (USA), and 1981 (Uruguay) when tariff preferences were largely or fully in place. Given the stagnation in the Mediterranean share and the rise in exports from Brazil, a non-preference recipient, it was difficult to sustain that the EEC preferential system was responsible for the evolution of the EEC market. The EC also noted that the Mediterranean countries were already large exporters to the six member states before the conclusion of the preferential agreements. Indeed, the levels of their exports had been so high that after 1969/1970 they were exceeded only in exceptional years when Community consumption was still expanding. Since 1974, their exports had declined largely in keeping with the decline in Community consumption (ref. Tables 2.14 and 2.15).

3.51 The United States contended that the important fact about the EC orange market in the past decade was not the overall decline in imports, but the change in market shares. Naturally, individual Mediterranean countries would deviate from this trend. There were many factors besides the tariff preference that affected citrus production and exports in any single supplier country, several of which had been enumerated by the EC. Therefore, the United States felt that it was necessary to look at the performance of the region as a whole. Although EC imports from Mediterranean preference recipients had decreased since 1974, that decrease has been proportionately smaller than the overall reduction in imports, resulting in the progressive increase in Mediterranean market share (ref. Table 3.1).

TABLE 3.1

EC-9 Imports of Oranges, 1974-1982*

Country	1974-1976	1977-1979	1980-1982
	Per cent of import market		
Mediterranean preference recipients	78.9	81.4	82.3
United States	4.5	2.2	2.1
South Africa	10.8	10.8	10.5
Brazil	1.3	2.1	2.0
Other	4.5	3.5	3.1
Total	100.0	100.0	100.0

*Intra-EC trade and imports from Greece excluded for entire period.

Source: US.

3.52 The United States pointed out that according to data supplied by the EC, Brazil's share of the EC's total imports of oranges had grown, but only by a small amount (ref. Table 2.14). In terms of the EC's total import tonnage, this growth had not been significant. Further, Brazilian exports of oranges to the EC occurred during the summer period when the degree of duty discrimination against non-preference suppliers was minimal.

3.53 As regards the performance of South Africa, the United States noted that like itself, this country had had great difficulty in maintaining its competitive position in the declining EC market (ref. Table 2.15). Between 1974 and 1983, annual EC-9 imports from South Africa had decreased by 32 per cent, while total imports had declined by only 21 per cent. The discrepancy was even greater for EC-6 imports. In the winter period, EC-9 imports from South Africa had declined by 92 per cent between 1974 and 1983, compared to a 28 per cent drop in total imports. A comparison on the basis of three-year averages confirmed this trend; average annual EEC imports from South Africa from the 1981-1983 period were down 81 per cent from the 1974-1976 period, while average total EEC imports had fallen by 21 per cent.

3.54 The EEC referred to a relative stability in the market performance of the United States (ref. Table 2.15). Discounting the last three years hen the high level of the dollar and poor crop results had obviously affected the competencies of US products, average US exports in 1974-80 to the EC/6 (56,000 m.t.) were substantially higher than average exports in 1966-73 (41,000 m.t.). Yet the 1974-80 period was one when preferences had already been implemented, whereas in 1966-73 they had not existed or were just being introduced. Taking the average figure over the full 15-year period 1966-80, US exports were better than this figure in four of the seven years since 1974. There were, however, considerable fluctuations from year to year due to the fact that the US was a marginal exporter of oranges to the Community, and small variations in quantities were reflected in large variations in the percentage of its market share. While it might be true that US exports to other countries had increased and those to the Community had stagnated, the EC considered that the same pattern could be observed in the exports of the Mediterranean countries (ref. Table 3.2). This demonstrated that their exports had become fully competitive independent of EEC preferences.

TABLE 3.2

MEDITERRANEAN TRADE IN ORANGES*

('000 m.t.)

Years	Exports from non-EEC countries in the Mediterranean basin to:						Exports from EEC countries			
							Italy to:		Greece to:	
	EEC	Scandinavian countries	Austria Switzerland	Eastern	Outside	Total	EEC	Other	EEC	Other
1966/67	1672	180	80	322	120	2374	52	82	15	70
67/68	1568	169	72	319	137	2265	48	89	12	60
68/69	1609	180	72	321	131	2313	48	109	26	96
69/70	1897	179	69	416	126	2689	55	117	25	98
70/71	1667	175	67	410	172	2491	43	73	17	77
71/72	1735	152	73	554	175	2689	45	78	14	64
72/73	2007	165	79	587	112	3030	35	64	11	103
73/74	1697	156	64	588	224	2729	42	76	7	86
74/75	1579	155	61	581	229	2605	51	86	17	125
75/76	1504	152	61	575	110	2412	77	87	28	169
76/77	1485	146	46	561	327	2565	127	100	22	164
77/78	1551	158	53	490	243	2495	43	64	43	143
78/79	1467	159	61	464	231	2382	45	55	26	155
79/80	1497	148	68	503	237	2453	58	69	3	115
80/81	1342	136	53	401	274	2206	42	53	3	156
81/82	1445	128	58	320	271	2223	73	56	49	152
82/83	1340	128	58	329	314	2170	68	55	46	103

Source: EEC on the basis of statistics from CLAM (Comité de liaison de l'agriculture méditerranéenne)

3.55 The United States responded that its share of orange imports into the EEC had not been stable, but rather had clearly fallen over the period. Although EC imports from the US had been erratic from year to year, there had been a clearly identifiable trend towards a reduced market share. The share of EC imports of oranges from "other" countries had also fallen in order to compensate for the rise in EC imports from Mediterranean preference countries (ref. Table 3.1). Moreover, the declining US shipments to the EC were in stark contrast to steady and significant increases in shipments to other destinations (ref. Tables 3.3, 3.4 and 3.5).

3.56 The EC identified the following factors explaining the general decline in its importation of fresh oranges since 1975: partial substitution of fresh oranges by small citrus fruits (like mandarines, etc.) and substitution by orange juice especially from Brazil whose exports had doubled, as well as competition with other fresh fruit. The EC also noted that there had been a similar decline in US consumption of fresh oranges in favour of tangerines and orange juice.

3.57 The United States repeated that the relevant fact for the Panel to consider with regard to the EC orange market was not the overall decline in imports, but the competition for the remaining market. Since the beginning of the decline in EC imports in 1974, Mediterranean suppliers had steadily increased their share of the EC orange market at the expense of non-preference Suppliers (ref. Table 3.1). The US complaint was not about the loss in US exports resulting from a decline in EC fresh orange consumption, but rather concerned those exports which had been, and would continue to be, lost due to the preferences that had helped mediterranean suppliers expand their share of the contracting EC market.

(i) Winter and summer periods

3.58 The United States contended that distortion of its competitive position vis-à-vis certain Mediterranean countries was clearly illustrated in the case of winter oranges on which the Community applied the MFN duty rate of 20 per cent compared to preferential rates ranging from 4-12 per cent. This was the period when the margin of preference was greatest. US production of navel and other winter oranges had grown from 650,000 metric tons in 1965-66 to 1,400,000 metric tons in 1982-83. Total US exports of winter oranges had doubled between the late 1960s and 1982-83, reaching 205,000 metric tons. During the period 1978-83 they had averaged 190,000 metric tons (198,000 metric tons for summer oranges). Exports to non-EC destinations had averaged 182,000 metric tons during the winter season over the past six years (1:3,000 metric tons during the summer season). However, exports of winter oranges to the EC had remained insignificant and were still at only 10,000 metric tons in 1982-83 - less than five per cent of total US exports. Exports to the EC had averaged 8,000 metric tons during the period 1978-83 (25,000 metric tons for summer oranges). The US was the only major producer of winter oranges which was assessed the full EC duty of 20 per cent (ref. Tables 3.1, 3.3, 3.4 and 3.5).

TABLE 3.3

US exports of oranges to the EC and the world, 1978-83[1]
Summer season/winter season comparison[2]

	EC-9		Other		Total	
	Summer	Winter	Summer	Winter	Summer	Winter
						('000 metric tons)
1978	24	12	141	158	165	170
1979	20	3	122	155	142	158
1980	68	11	195	185	263	196
1981	15	13	197	193	212	206
1982	2	2	155	195	157	197
1983	19	9	228	205	247	214
1978/83Avg.	25	8	173	182	198	190

[1]Includes temples
[2]Summer season is May-October; winter season is November-April (ending in year indicated)

Source: Calculated from US Department of Commerce data, Bureau of the Census.

TABLE 3.4

US Exports of Oranges, 1967/68-1982/83
Marketing period November-April

G R A P H

TABLE 3.5

US Exports of Oranges, 1987-1982
Marketing period May-October

G R A P H

TABLE 3.6

Netherlands: Unit Values of Imports of Oranges during the Winter Period, 1966-1970 and 1978-1982

Year	Code Classification	Algeria	Morocco	Tunisia	Israel	Egypt	Cyprus	Spain	USA
	Dollars per metric ton								
1966	0802.18[1]	131	129	267	137	116	141	128	177
1967	0802.18[1]	112	123	133	135	88	125	127	164
1968	0802.18[1]	113	119	200	111	94	110	113	108
1969	0802.22[2]	102	117	---	111	91	121	121	128
1970	0802.22[2]	95	132	111	123	91	124	130	113
	ECU's per metric ton								
1978	0802.03[3]	---	262	---	252	---	241	251	233
	0802.17[4]	---	241	234	237	229	209	250	315
1979	No winter imports of US oranges								
1980	0802.03[3]	---	312	---	304	297	318	310	461
1981	0802.17[4]	---	314	---	302	---	341	313	322
	0802.03[3]	---	379	---	367	---	373	373	358
1982	No winter imports of US oranges								

[1]October 16 - March 31.
[2]October 16 - March 31.
[3]April 1 - April 31.
[4]October 16 - March 31

Note: This table shows unit values for imports into the Netherlands calculated from Nimexe quantity and value statistics. Within the time available it would have been difficult to prepare similar data for each of the individual member states. Therefore, the Netherlands was selected because it is a major market for both the United States and many of the preference recipient countries.

Source: US.

3.59 The United States argued that its winter orange exports to the Dutch market during the period 1966-70 had been priced competitively with other Mediterranean suppliers (ref. Table 3.6), but that the application of the discriminatory tariff preferences rendered the final price non-competitive. The US pointed out that the landed cost including freight and insurance of US oranges in the Netherlands during 1981 was less than 3 per cent above the c.i.f. price of Spanish or Moroccan oranges. Once duties were assessed against imports, however, the cost of US oranges exceeded Spanish and Moroccan fruit by 10 per cent and 18 per cent, respectively. During the same year, the landed cost, excluding duty, of US oranges was actually less than Cypriot oranges. Once the duty was applied, however, US oranges were priced 5 per cent above Cypriot oranges. The United States also noted that the landed cost (excluding duty) of US oranges had exceeded record levels for Mediterranean suppliers in 1980, partly due to quality differences for the particular grades of fruit shipped by the US and also a rise in Mediterranean fruit production and export availabilities that year. The absence of the US from the Dutch market in 1982 was a result of a sharp reduction in US navel production and significantly higher price levels.

3.60 The EEC argued that just as the statistics on annual imports into the Community did not establish a link between the trend of imports and the various preferential rates, similarly one did not find any such relationship as regards imports during the summer and winter periods, after 1972. As for the winter period, no comparison could be made for the United States since its exports during the winter period had traditionally been negligible. This pattern for the US (and South Africa) was already evident even before preferences were introduced, thus was not the result of them. The decline of a few thousand tons must be seen in the context of the general decline in Community consumption, which had been more pronounced during the winter period while it had remained practically stable during the summer period. In the case of South Africa, one noted two distinct periods: a relatively good performance from 1972 to 1974 when Community consumption was at its highest level, and the period from 1975 to 1983 when exports were relatively stable at a lower level largely paralleling the decline in consumption. For the Mediterranean countries, one saw trends that were largely similar to those noted for South Africa, with some small but important differences however. In spite of the fact that the preference for Spain was much inferior to that for Morocco and was closer to that for Israel, the decline in Spanish exports between 1972 and 1983 remained below 15 per cent whereas the decline was of the order of 40 per cent for Moroccan exports and 65 per cent for Israeli exports (56 per cent if the average for 1972 and 1973 was taken as the base) (ref. Table 2.15).

3.61 As regards the summer period, the EEC noted in the case of United States exports, the same phenomena as shown by the annual statistics, i.e., wide fluctuations that were difficult to interpret. For South Africa, the figures indicated a relatively stable or even improved situation in its exports to the EEC/6, if one compared the period of 1981/1983 with that of 1972/1974. For the Mediterranean countries, one noted three different trends: Spanish exports had fallen sharply during the last four years; Israeli exports had stabilized at a high level since 1975; and Moroccan exports had increased significantly. These disparate trends were all the more remarkable as the duties applied during the summer period were relatively low and the phenomenon could certainly not be due to the differences in those duties (ref. Table 2.15).

3.62 As to the trend of imports by the United Kingdom, Ireland and Denmark since 1974, the EEC noted that it largely paralleled those by the EEC/6 as regards both global imports and imports from individual supplier countries.

3.63 The EEC stated that most of the production of the Mediterranean countries had always been in winter oranges, and it was difficult to believe that United States producers could have reasonably hoped to compete with those countries during the winter period. Moreover, the preferential agreements between the EEC and certain Mediterranean countries had not stimulated orange production in those countries since the principal orange-growing areas had been planted, again, prior to 1970. In Spain,

for example, the orange-growing area had increased only 7 per cent between 1970 and 1975, and has contracted since then. The EC stated that since 1970, California orange acreage had only expanded 8 per cent, almost equally for navels as for valencias.

3.64 The United States responded that the EC arguments regarding US production were based on an inaccurate reading Of California Fruit and Nut Acreage tables, which did not represent standing acreage in 1970, but the acreage still bearing in 1982 that was planted in 1970 and earlier. Much of the acreage standing in 1970 had in fact been taken out of production as new trees had been planted. A comparison of acres standing in California in 1969 with those in 1989 showed a decline in total acreage for oranges (ref. Table 3.7). US production of all varieties of citrus had increased significantly between the mid-1960s and the early 1980s. Most of the increase in California and Arizona orange and lemon production came from trees that were planted during the 1960s. Planting of new trees all but ended during the 1970s (ref. Table 3.8).

TABLE 3.7

California: Citrus Area, 1969 and 1982
(Hectares)

Fruit	1969			1982		
	Bearing	Non-bearing	Total	Bearing	Non-bearing	Total
Navel Orange	31,763	17,451	49,214	43,583*	902**	44,485
Valencia Orange	32,915	8,236	41,151	27,425	620	28,045
Lemon	15,137	5,194	20,331	20,125	1,764	1,889

* Includes approximately 300 hectares of miscellaneous oranges.
** Includes approximately 30 hectares of miscellaneous oranges.

Source: California Crop and Livestock Reporting Service.

3.65 The EC pointed out that nevertheless there had been new plantings of orange trees after 1970, which corresponded to 6.8 per cent of planted acreage in California in 1982. For lemon trees the figure was 41.7 per cent.

3.66 The United States responded that the figures quoted by the EC were misleading, as they had been arrived at by adding the years since 1970 in which the net acreage change for oranges and lemons had been positive. It was only meaningful to look at the net change over the entire period in order to discount routine changes in acreage due to replacement of old trees and relocation of production.

(b) Fresh tangerines

3.67 The EEC stated that its imports in the category of citrus hybrids (mandarins, clementines, tangerines, etc.) had tended to increase since 1974 but that the market shares of the Mediterranean countries (99 per cent in 1974 and 98 per cent in 1982) and the United States (around 1 per cent) had remained stable. In absolute terms, exports from Spain and Morocco had increased considerably to the EC, but this was also true of their exports to other destinations. Moreover, due to the fragility of the product, suppliers which were closer to the EC market were automatically in a more favourable situation (ref. Table 2.16).

TABLE 3.8

California and Arizona: Net Changes in Citrus Area, 1965/66 - 1981/82
(hectares)

Season	Navel Oranges	Valencia Oranges	Lemons
1965/66	+ 3,407	+ 6,669	-364
1966/67	+ 4,461	+ 4,399	+ 1,700
1967/68	+ 2,229	+ 1,035	+ 809
1968/69	+ 2,479	-479	+ 1,902
1969/70	+ 4,063	-3	+ 1,174
1970/71	+ 800	-1,848	+ 2,792
1971/72	+ 1,540,	-550	+ 1,659
1972/73	+ 665	-824	+ 1,983
1973/74	-1,660	-1,170	+ 3,512
1974/75	+ 762	-1,748	-363
1975/76	-582	-2,021	+ 1,700
1976/77	-924	-2,308	-931
1977/78	-2,915	-2,755	-2,832
1978/79	-1,497	-1,360	-2,347
1979/80	+ 318	+ 185	-364
1980/81	-985	-1,255	-80
1981/82	-888	-362	+ 1,052

Source: Sunkist Growers, Citrus Fruit Industry Statistical Bulletin
Horticultural and Tropical Products Division, FAS/USDA.

3.68 The United States argued that the issue was not lost market share, but rather lost opportunity. Stability of market share was not evidence that the preferences had no effect on trade (especially when the base year selected for comparison was also a year in which preferences were in effect). The real question was whether, in the absence of tariff preferences, exports by non-preference recipients would

have increased. The United States exported only minor volumes of tangerines to the EC. If the Mediterranean preference system were eliminated, in all likelihood this would precipitate only a small addition to US exports of tangerines to the EC. Nevertheless, some increase could be expected (ref. Table 2.6).

(c) Fresh lemons

3.69 The United States stated that EC imports of lemons had approximately doubled since the late 1960s. However, EEC imports of US lemons had dropped by over one third. The US added that its total exports to the world had increased from 113,000 metric tons in 1966 to 132,000 metric tons in 1982. However, US exports to the EC had dropped from 56,000 metric tons to 6,000 metric tons in the same period (ref. Tables 2.7, 3.9 and 3.10).

TABLE 3.9

EC-9 Imports of Lemons, 1974-1982*
(3 Year Average)

Country	1974-1976	1977-1979	1980-1982
	Per cent of import market		
Mediterranean preference recipients	66	79	84
USA	20	14	8
South Africa	5	4	4
Other	9	4	4
Total	100	100	100

*Intra-EC trade and imports from Greece excluded for entire period.

Source: US.

TABLE 3.10

US Exports of Lemons to EC-9 and other destinations
Marketing Year August - July 1967/68 - 1982/83

G R A P H

3.70 The EEC stated that its imports had increased considerably since 1974 and that the share of the Mediterranean countries had grown from 70 per cent in 1974 to 81 per cent in 1981 (1982 was not a representative year) while the US share had fallen during that period from 21 per cent to 10 per cent. The trade figures gave no clear evidence that the existence of preferences for some, or the absence of them for others, determined the performance of individual countries. The EC stated that in the period 1974-1983 Spain, Israel and Cyprus, for whom the preference margin was relatively small, had increased their exports to the EC of lemons, while Turkey and Morocco, which enjoyed bigger preferences, had declined. Morocco had disappeared virtually from the Community market. Israel, which was accorded the same preference simultaneously with Spain, had not been able to expand its exports further. Factors other than preferences were thus at work. Among the non-preferential suppliers, South Africa had maintained a stable position, Argentina had grown and the USA had declined. The EC added that US exports in 1982 were the lowest ever recorded, reflecting bad crop results and the effect of the high dollar. US exports had in fact held up well from 1966 until 1977, when Spain's increased production and competencies began to take a larger part of the market (ref. Table 2.18).

3.71 The United States stated that as in the case of oranges, Mediterranean preference recipients had steadily increased their market share over the past decade at the expense of non-preference suppliers. Not only had the US and other non-preference suppliers lost a significant part of their share of the EC market, the average volume of shipments from the United States, South Africa, and from those nations (mostly South American) in the "other" category, had declined from 1974-1976 period to the 1980-1982 period. This had occurred during a time of rapid growth in EC lemon imports (ref. Table 3.9). Moreover, the United States contended that it was misleading for the EC to compare the trend in imports from Spain, a very large producer to that of imports from two small producers - Israel and Morocco. It was much more instructive to look at the trend in imports from the Mediterranean region as a whole. In the US view, the EC was wrong to imply that preference recipients other than Spain had not been successful in the EC market. Between 1974 and 1976, average annual imports from Cyprus were 9,609 tons. The 1980-1982 average was 14,949 tons. Over that period, Cyprus passed the United States to become the second leading third-country exporter to the EC market. Average annual imports for Israel in the 1974-1976 period were 4,298 tons. In 1980-1982, the average was 6,802 tons.

3.72 The EC noted that US exports of lemons to all destinations had dropped substantially from the highest levels reached in 1976-78. Conversely, exports of lemons from Spain had risen to the Community as well as elsewhere due to structural and promotional measures undertaken by the government and industry. The EC recalled that exports from Cyprus had been strongly affected by political events in 1974, thus comparisons between this period and 1980-82 were biased by this special factor. The EC considered it unrealistic to claim that the preference granted to Spain (4.8 per cent versus 8 per cent) was a major element in the evolution of its exports. The reference price was in effect during the whole year and the difference between the preferential duty and that applicable to the US (3.2 percentage points) on lemons was nearly identical, with the difference in duties on grapefruit (3.1 percentage points in 1981). US exports of grapefruit to the EC had registered appreciable increases. The EC also noted that the US was at a disadvantage vis-à-vis Spain as regards transportation costs on lemons. (ref. Tables 2.17 and 2.8).

3.73 The United States responded that its lemon exports to the EC had fallen dramatically from 59,000 metric tons, in 1974 to 13,000 metric tons, in 1983. In contrast, US lemon exports to all non-EC destinations had risen from 141,000 tons in 1974 to 148,000 tons in 1983. Total lemon exports over the period had fallen somewhat, but only because of the impact of lost sales in the EC (ref. Tables 2.7 and 3.10).

3.74 Moreover, the United States pointed out that the EC's MFN duty rate for grapefruit was significantly lower than for lemons, and, therefore, the Mediterranean preference system had had less

of a discriminatory impact over the years on US grapefruit exports to the EC. The growth in US grapefruit exports to the EC would by itself show the positive influence on US exports when discrimination was reduced. US grapefruit exports to the EC benefitted from a significant quality advantage over competing suppliers. EC consumers expressed a strong brand recognition for US grapefruit in appreciation of the high quality of US fruit and the promotional efforts undertaken by the US industry. While high quality us lemons might be preferred by many EC consumers, the quality gap had not always been sufficient in offsetting the difference in duty treatment and, therefore, US exports of lemons to the EC had fallen. If the EC duties on Spanish and US lemons were equalized, the artificial premium paid by EC consumers for US lemons would disappear, EC imports would more accurately reflect consumer taste preferences and US exports would be allowed to increase.

3.75 The EC further noted that California acreage had expanded 75 per cent since 1970. The first EEC preference agreements on lemons were concluded in 1969 with Morocco and Tunisia and in 1970 with Israel and Spain. At that time, Spain's production and exports had already undergone full expansion.

3.76 The United States noted that since 1969, there had been a slight increase in California acreage for lemons, but most of the increase in lemon production had come from trees planted during the 1960s (ref. Tables 3.7 and 3.8).

(d) Fresh grapefruit

3.77 The United States stated that it was the world's leading exporter of fresh grapefruit with exports valued at US$100 million in 1981-82. While EC destinations had not shared in the growth of US lemon exports during the past 15 years, US fresh grapefruit exports to the EC in contrast had grown at a faster rate than shipments to other markets. The United States considered that the relatively low EC import duty on grapefruit, which minimized the effect of the preference, was an important factor in this favourable performance (ref. Table 2.8).

3.78 The EEC noted that its imports of grapefruit and pomelos had increased somewhat since 1974. The United States had been the principal beneficiary in terms of percentage of market share. EC imports of grapefruit from Israel had remained relatively stable with some downward tendency. Over the same period, Cyprus had recorded an increase in its exports to the Community, albeit less than that of the United States. In the EC's view, the contrasting trends for Israel and Cyprus, which enjoyed the same preference, indicated clearly that elements, other than the preference, were of decisive significance in determining the trend in citrus exports to the Community (ref. Table 2.19).

3.79 The United States responded that the growth of Cypriot grapefruit exports between 1974 and 1979 reflected a recapturing of lost market share that had been enjoyed prior to the *de facto* partition of the island in early 1974. As a result of the ensuing political turmoil, it had taken six years for Cypriot grapefruit shipments to the Community to reach again the 50,000 ton mark that had been recorded in 1973.

3.80 The EEC noted that California grapefruit acreage had practically doubled since 1970, the year of the first agreement on grapefruit between the EEC and Israel, and the EEC and Spain. Moreover, Israel in particular had already been a big producer and exporter of grapefruit before 1970, and there was nothing to suggest that it would not try to exploit to the full the investments it had made. The EEC pointed out that there were certain parallels in the evolution of grapefruit production in Israel, the principal supplier of the EC, and that in the US. Both countries had recognized foreign market opportunities and had invested in production. The two had government assistance programmes and thus had taken the largest share of the market. The investments which had assured the success of Israeli

exports in this sector constituted proof that the success or failure of an exporting country was ultimately determined by established structures rather than by the level of Community tariffs (ref. Table 2.19).

(e) Citrus juices

3.81 The United States pointed out that its share of the value of EEC-6 orange juice imports had been 17 per cent in 1970-72 but had declined to 12 per cent in 1979-81. The US share of the value of EEC-6 grapefruit juice imports had declined slightly from 22 per cent of the total in 1970-71 to 20 per cent in 1979-81. Israel and Morocco, which were the main beneficiaries of EEC Mediterranean duty preferences for grapefruit juice, had been able to gain 55 per cent of the EEC-6 market in 1979-81, up from 43 per cent in 1970-72 (ref. Tables 2.11, 2.12 and 2.13).

3.82 The EEC stated that its imports of citrus juices had increased overall by around 70 per cent since 1974. EC imports from the Mediterranean countries had fallen, those from the United States had been stable, and those from Brazil had increased by four times. The increase in imports of citrus juices had been almost exclusively attributable to the pronounced rise in imports of orange juice, a development that could account for the decline in EC imports of fresh oranges. Exports of orange juice by the United States and the Mediterranean countries had been relatively stable in terms of volume. As regards market share, however, both regions had lost a considerable amount in favour of Brazil, which did not enjoy any Community preferences, and whose market share had likewise increased in the fresh orange sector. As regards lemon juice, the trend in EC imports had been favourable overall but the quantities involved were not particularly large. Some decline could be seen with respect to EC imports of grapefruit juice. However, the United States had maintained if not increased its share of the EEC market since 1974. Israel, too, had virtually maintained its share. This country had not only invested substantially in grapefruit production but had also pursued a dynamic policy of valorizing its primary products (ref. Tables 2.22, 2.23 and 2.24).

(f) Grapefruit segments and pectin

3.83 The parties did not present arguments specifically on these products (ref. Tables 2.9, 2.10, 2.20 and 2.21).

B. Mediterranean countries

1. Egypt

3.84 Egypt stated that its agreement with the EEC constituted an interim agreement leading to the formation of a free-trade area within the meaning of Article XXIV:5(b). The objectives of the agreement, as expressed in its Preamble, were the harmonious expansion of trade and the progressive elimination of obstacles to substantially all the trade between the parties. The agreement itself and its application were in Egypt's view in full conformity with the spirit and letter of the General Agreement. Egypt considered that such an agreement should serve as a model for cooperation between developed and developing countries. Moreover, any change to the agreement after so long a period would be inequitable to Egypt, a developing country, as it had invested in its citrus industry on the basis of continued preferential access for its exports into the EEC market.

2. Israel

3.85 Israel stressed the important economic interests and the high trade coverage under its agreement with the EC.

3.86 Israel stated that the US complaint appeared to have been submitted on the basis of Article XXIII:1(a); i.e. the failure of another contracting party to carry out its obligations under the General Agreement. Yet Article XXIV was clearly a permitted exception to Article I. Article XXIV:4 even recognized the desirability of countries to enter into agreements of closer economic integration.

3.87 Israel considered that an examination of the conformity of the agreements under Article XXIV could only be conducted under the prescribed procedures thereunder, and not within the Panel. The EC-Israel agreement had been submitted and examined in the GATT. After having studied the agreement's plan and schedule, there was no finding by CONTRACTING PARTIES that the agreement was not likely to result in the formation of a free-trade area. Therefore, the CONTRACTING PARTIES had made no recommendations to the parties as provided under Article XXIV:7(b), and the agreement had been approved implicitly. Article XXIV:7 did not require a positive acceptance by CONTRACTING PARTIES of an agreement. In this connection, Israel referred to the following interpretations to Article XXIV:7 that were contained in the Analytical Index (Third Revision, 1970, p. 135):

(a) It was stated during the course of the discussion in the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment and Tariff Negotiations in Geneva, that there was "no question of [the CONTRACTING PARTIES]... having any power to approve or disapprove a customs union... If the [CONTRACTING PARTIES] find that the proposals made by the country... will in fact lead towards a customs union in some reasonable period of time... they must approve it. They have no power to object". (EPCT/TAC/PV/11 p. 37);

(b) "Consideration by the CONTRACTING PARTIES of proposals for customs unions would have to be based on the circumstances and conditions of each proposal and, therefore,... no general procedures can be established beyond those provided in the Article itself". (Vol.II/181 para. 20).

3.88 According to Israel, a contracting party which considered an agreement not to be in conformity with Article XXIV could submit a proposal to the CONTRACTING PARTIES to make recommendations under Article XXIV:7(b). No such proposal had been submitted. Israel acknowledged that certain contracting parties had reserved their rights during the examination of its agreement, and thus could still propose to the CONTRACTING PARTIES to make such recommendations. But the legality of the agreement could not be challenged by them under Article XXIII:1(a). Recourse could only be made to Article XXIII:1(b) or (c).

3.89 Israel also quoted from a Swiss study which, in its view, confirmed that the procedures for examining the consistency of an agreement with Article XXIV provided in paragraphs 7, 9 and 10 thereunder were meant to be exclusive.[7]

3.90 Moreover even if the United States were indeed not challenging the legality of the EC agreements with certain Mediterranean countries, Israel doubted whether it would be possible to look at only one specific element thereof; namely, the EC tariff treatment applied to the citrus sector.

[7]Rodlophe S. Imhoof, Le GATT et les zones de libre-échange, Société Suisse de Droit International, Georg, Genève (1979), p. 95:

"The formal provisions of Article XXIV of the GATT are paragraphs 7,9 and 10. Formal or procedural provisions, since these three paragraphs establish modes of consultation and conciliation, negotiation and decision. These provisions establish methods that allow the CONTRACTING PARTIES to verify the consistency of regional integration agreements with the letter and the spirit of the material requirements of Articles XXIV and institute their decision-making process in this regard."

3. Spain

3.91 Spain noted that Article XXIV, as clearly established in its paragraph 5, was an exception to Article I, and that according to Article XXIV:4 countries were encouraged to proceed to the closer integration of their economies. Spain recalled that the agreement it had concluded with the EEC in 1970 had been transmitted and examined by the CONTRACTING PARTIES as an interim agreement leading to a customs union and that subsequently information relating to the agreement had been communicated and examined periodically. In the view of Spain, therefore, the requirements set down by the CONTRACTING PARTIES and by the General Agreement had been fulfilled as concerned the examination and evaluation of an agreement leading to the formation of a customs union between contracting parties. Article XXIV required an overall study of an agreement to determine whether it covered "substantially all the trade between the parties; and in the event of a negative finding, the making of recommendations to the parties intending to form a customs union. Spain pointed out that the CONTRACTING PARTIES had made no recommendations on its agreement with the EEC, because they had made no finding that the agreement did not conform with Article XXIV, thus allowing the agreement to enter into force and generate trade flows.

3.92 In the view of Spain, it was not the role of the Panel to examine whether the EEC agreement with Spain complied with the provisions of Article XXIV, as this matter had been examined thoroughly by a working party and by the CONTRACTING PARTIES. To re-open this matter some thirteen years later, would be contrary to the need to guarantee security and stability of international trade and legal relations and furthermore would cause serious erosion of GATT's credibility. Neither could one examine only a part of an agreement leading to a customs union; in this instance, the particular regime applicable to citrus products. A judgement on the conformity of an agreement with Article XXIV could only be made on the basis of an overall examination of the whole agreement, as had already taken place. Moreover, the elimination or modification of the EC tariff regime on citrus products, which constituted an important share of Spain's total exports to the Community, would mean a substantial modification of the EEC-Spain agreement itself, and would jeopardize its conformity with the substantially all the trade requirement of Article XIV.

3.93 Spain also referred to the following interpretations to Article XXIV:7 that were contained in the Analytical Index (Third Revision, 1970, p. 135):

(a) It was stated during the course of the discussion in the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment and Tariff Negotiations in Geneva, that there was "no question of [the CONTRACTING PARTIES]… having any power to approve or disapprove a customs union… If the [CONTRACTING PARTIES] find that the proposals made by the country… will in fact lead towards a customs union in some reasonable period of time… they must approve it. They have no power to object". (EPCT/TAC/PV/11 p. 37);

(b) "Consideration by the CONTRACTING PARTIES of proposals for customs unions would have to be based on the circumstances and conditions of each proposal and, therefore,… no general procedures can be established beyond those provided in the Article itself." (Vol.II/181 para. 20).

3.94 The United States responded that some members of the working party examining the EEC agreement with Spain had claimed that it was impossible to discharge their responsibilities under paragraph 7(b), since the agreement contained no specific time period for the formation of a free-trade area or customs union (BISD 18S/172). Furthermore, working party members had reserved their GATT rights. Discussion of biennial reports in the Council had revealed continued concern by some contracting parties about the sufficiency of the information provided (C/M/114, p. 4, C/M/128 p. 8). Thus, the US considered it inappropriate to assert, as Spain had done, that no recommendations had been made

because the CONTRACTING PARTIES' findings had not been negative. Rather, in the opinion of the US, it was a case of not having information to make findings at all. The United States considered therefore the Spanish reference to the interpretation of paragraph 7(b) contained in the Analytical Index to be irrelevant, as the CONTRACTING PARTIES did not find that the EEC-Spain agreement "will in fact lead towards a customs union in some reasonable period of time." The United States also stated that it was customary in the GATT to refrain from raising legal principles in cases where a contracting party after taking into account overall economic interests and political concerns, was unsure that its trade interests would be adversely affected. Given this customary practice and the history of GATT consideration of these agreements, one could not characterize the failure to make recommendations under paragraph 7(b) as constituting approval by the CONTRACTING PARTIES.

3.95 The United States referred to the Spanish argument that its agreement with the EEC, having been once reviewed under the procedures of Article XXIV:7(a) and (b), could not in the interests of preserving stability in international relations, be subjected to further revision. The US noted in this regard that paragraph 7(c) clearly envisaged the possibility of further review and revision of these agreements.

3.96 Spain underlined that one could not speak of insufficiency of information when the working party and the Council had examined the EEC/Spain Agreement, since any contracting party could have requested any information it deemed necessary. Spain repeated that there had been no finding by CONTRACTING PARTIES within the meaning of Article XXIV:7(b) that the EEC-Spain agreement was "not likely to result in the formation of a customs union or free-trade area". There had only been reservations and doubts expressed by a few countries. Had there been such a finding, the CONTRACTING PARTIES would have made a recommendation, on the basis of a proposal by some delegation or by the Chairman of the body concerned. No such proposal had been made, nor had there been a request for a vote under Article XXIV:10 or XXV:4. Spain in referring to legal security and to stability of international relations, had not disputed the possibility that any of the contracting parties which had entered a reservation in the Council could ask that body for a revision of an agreement. In the opinion of Spain, that contracting party would have once more to invoke Article XXIV:7(c), if it had the necessary grounds, or Article XXIII:1(b) or l(c). Article XXIII:1(a) would not be applicable because there had been no failure to comply with GATT obligations. Spain supported the arguments presented by the EEC in this connection (ref. para. 3.21, 3.27, 3.34 and 3.36).

4. Morocco

3.97 Morocco stated that not being a contracting party, it had no rights and assumed no obligations under the General Agreement. Therefore, it would not intervene in the legal debate at hand, except to state that Morocco supported the approach and arguments of the Community. The citrus problem could not be reduced only to its juridical component but had to be considered in the context of the complex system of political, economic and trade relations underlying the Mediterranean situation. Morocco characterized the legal debate as being anachronistic, given that the Cooperation Agreement concluded in 1976 between it and the Community had merely taken over in respect of citrus products the provisions contained in the 1969 Association Agreement between the two. The latter in turn had constituted a prolongation over a wider economic area of the age-old relations existing between Morocco and its main outlet, namely France. Morocco pointed out that it was on the eve of important negotiations with respect to the enlargement of the Community, which would put into question the stability and the very future of the Mediterranean region. At this crucial moment the problem of tariff concessions on citrus and the interests of the United States appeared microscopic in comparison.

3.98 Morocco called attention to the flagrant disparity between the returns and the benefits which the United States could hope to gain if its demands were satisfied, and the losses and risks which the Mediterranean countries and hence equilibrium in the Mediterranean area might suffer. In the view

of Morocco, an alignment of the tariffs granted to American exports of citrus products with those enjoyed by the so-called "preferential" recipients, or even a reduction of the Common Customs Tariff, could not possibly bring about a substantial increase in US exports. Tariff concessions were an economic advantage, not a commercial advantage. Morocco stated that there was no world market in citrus products. The main trade flows were concentrated in the Mediterranean area, in a North-South direction, leaving little room for any outside suppliers. In the opinion of Morocco, the cumulative effects of the level of freight costs and the appreciation of the dollar excluded any possibility for the United States, even with duty-free entry, to make any significant inroads into the Community market. During the season 1981/82, exports of oranges from the Mediterranean countries as a whole had amounted to approximately 2.5 million tonnes, mostly intended for the markets of the Community. United States exports of oranges to Western Europe in 1982 had been 6,000 tonnes. As regards lemons, Mediterranean exports had been 750,000 tonnes, while US exports to Western Europe had been 8,800 tonnes.

3.99 Morocco recalled that it was a developing country whose citrus exports constituted approximately 10 per cent of its overall export receipts. It was not the tariff preference, appreciable as it might have been, which was behind the trade results of Morocco, but the protracted efforts it had carried out to promote trade and to adapt its products to a changing market.

3.100 The Cooperation Agreement Morocco had concluded with the European Economic Community went beyond the narrow bounds of trade. It included provisions concerning manpower and technical and financial cooperation. It constituted the basis for a dialogue on relations in spheres as diverse as fisheries, transfer of technology, and training. It was likewise within this framework that the basic problems connected with the enlargement of EEC were being discussed. Morocco questioned what would be the sense of this exercise, and what value would it have, if the validity of the arrangements arising out of it would be the subject of constant challenge within the GATT.

C. Other interested parties

1. Australia

3.101 Australia noted that its interest in this dispute was based on its longstanding concern with the question of the conformity with the GATT of the European Economic Community's preferential trade agreements, under which the tariff preferences on citrus products were granted to certain Mediterranean countries. It recognized the economic benefits developing countries could derive from preferential access to markets. However, it was concerned with the implications of these preferential arrangements, which had been presented under Article XXIV, for the principle of reciprocal rights and concessions and in particular their effects upon the trade of third countries.

3.102 Australia did not share the EC view that since the CONTRACTING PARTIES had never made recommendations under paragraph 7 of Article XXIV to the parties to the agreements, these agreements, and therefore the tariff preferences on citrus products, had received a form of GATT "recognition" and could not be challenged in the context of an Article XXIII proceeding. Rather, Australia considered that the EC preferential trade agreements had not been found by either the working parties established to examine these agreements or the CONTRACTING PARTIES to be in conformity with Article XXIV of the GATT. While the preamble to paragraph 5 of Article XXIV permitted the formation of customs unions, free-trade areas and interim agreements, it also provided that the conditions in sub-paragraphs (a), (b) or (c) were to be met. In the case of interim agreements, such as those involving the EC and certain Mediterranean countries, the relevant provision (c) specified that such an agreement "shall include a plan and schedule for the formation of a customs union or such a free-trade area within a reasonable length of time". In most of the interim agreements in question, there was no provision for a full customs union or free-trade area to be established "within a reasonable length of time". Indeed, some of these arrangements had already been in existence for more than a decade, and there was no

indication on most of them that progress has been made in transforming them into full customs unions or free-trade areas. In the view of Australia, the fact that the working party examinations of these agreements were inconclusive, and that no specific recommendations were made under Article XXIV:7(b) did not indicate an unconditional acceptance of these agreements by the CONTRACTING PARTIES nor that a challenge to them under the GATT was "inadmissible". Several contracting parties had clearly expressed their doubts as to the conformity of the agreements with the provisions of the GATT, and in three cases (Malta, Spain and Yugoslavia) some members of the working parties (including Australia) had reserved their rights under the General Agreement.

3.103 Australia considered then that the European Economic Community's preferential trade agreements with certain Mediterranean countries had not been found by the CONTRACTING PARTIES to be in conformity with the relevant provisions of the GATT, and that the tariff preferences accorded to certain Mediterranean countries on citrus products under the terms of these agreements were therefore inconsistent with Article I of the General Agreement. Moreover, Australia noted that under the decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, the European Economic Community had an obligation to ensure that any differential and more favourable treatment provided to developing countries did not "create undue difficulties for the trade of any other contracting parties" (BISD 26S/203).

2. Chile

3.104 Chile recalled its long-standing position that the EC agreements with the Mediterranean countries concerned did not conform to the requirements of Article XXIV. When these agreements had been examined in the GATT, Chile had expressed doubts on some of the agreements as to whether they were compatible, and as regards the other agreements it had clearly stated they were not compatible. None of the agreements included a plan and schedule for the formation of a customs union or a free-trade area within a reasonable length of time, nor did they eliminate duties on substantially all the trade between the parties on a reciprocal basis.

3.105 Chile noted that the Community had argued that some of the agreements could be justified on the basis of Part IV and Article XXIV. In Chile's view, the EC granting of preferences to the Mediterranean countries was praiseworthy and in keeping with the objectives of Part IV. However, neither Part IV nor the Enabling Clause (BISD 26S/203-205) allowed a developed country to discriminate among developing country beneficiaries. The only exception to this was in the case of the least developed developing countries. Chile believed that the important objectives and purposes of the agreements should not only be encouraged but more importantly be furthered and extended to the benefit of all developing countries. In this connection, the Panel might consider making a recommendation to the EEC to include all of the citrus products concerned under its Generalized System of Preferences (GSP). There would thus be no question as to the consistency of the citrus preferences with the General Agreement.

3.106 Chile pointed out that there were important differences among the agreements. Spain, for instance, was in the process of negotiating its accession into the Community. Although its present agreement with the EC did not fulfil the requirements of Article XXIV, these parallel negotiations indicated the parties' intentions to form a customs union. Chile expressed the hope that when Spain did enter the Community, it would endeavour to improve EC preferences to developing countries on products of interest to Latin American countries. On the other hand, the other agreements were far from even beginning an economic integration process, and accordingly did not conform to, nor even come close to meeting the requirements of Article XXIV.

3.107 Another important difference among the agreements, in the view of Chile was that the EC discriminated among the Mediterranean beneficiaries themselves. The preferences granted by the EC

on citrus products varied considerably, within some cases the countries which were among the closest to the EC market as well as being non-contracting parties, enjoying the most advantages.

3.108 Chile stated that its geographical position put it at a great disadvantage in selling to the EC and therefore Chile needed preferential treatment more than the countries located in the Mediterranean region. During the last decade, Chile had expanded its agricultural production and exports considerably, based on her comparative advantages. One of Chile's exports which had increased substantially was fresh lemons (CCCN 08.02) as the following statistics demonstrated:

TABLE 3.10

Value of Chile's Exports of Fresh Lemons in US$l,000

1977	1978	1979	1980	1981	1982
158	751	2,360	3,094	2,763	1,200

Exports had dropped in 1981 and 1982 due to both a reduction in quantities exported as well as a fall in international prices. In terms of volume there was again a growing trend as Chile had exported 2.8 million kg. in 1982 and 3.9 million kg. in 1983, a gain of over 1 million kg. of fresh lemons. Chile also mentioned that its orange, canned fruit and fruit juice industries had developed, and exports thereof were of increasing importance. About 98 per cent of Chile's exports of fresh lemons in 1981 had gone to the EEC market. The Netherlands had absorbed around 85 per cent, while the Federal Republic of Germany had imported 13 per cent. Improved conditions of market access to the EC, whether through preferential or MFN treatment would provide a strong incentive for Chile to expand its trade in lemons, other citrus fruits, canned fruits and fruit juices. The continued development of Chile's agricultural exports would help Chile to meet its social and development needs.

3.109 The United States supported Chile's position regarding Part IV. Were the EC to grant GSP on citrus products from all developing countries, however that would obviously not improve the US' access to the EC market, Nevertheless such a situation would allow the United States to look forward to the possibility of a reduction in the most-favoured-tariff rates since it was stated clearly in paragraph 3(b) of the Enabling Clause that any differential and more favourable treatment provided thereunder "shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis".

3.110 While the United States recognized that the agreements, pursuant to which the EC granted preferences on citrus, did vary from one Mediterranean country to another, in no case did the US find that any agreement met the requirements of Article XXIV. It did not feel that too much weight should be attached to the ongoing discussions between Spain and the Community, in the absence still of a binding commitment by the parties to form a customs union. The agreements had to be considered on their face value as they stood presently.

3.111 The European Community repeated its position that its agreements with the Mediterranean countries concerned constituted an exception to Article I as provided under Article XXIV, and had been examined and approved by the CONTRACTING PARTIES on that basis. The EC had never invoked Part IV nor the Enabling Clause to justify discrimination among developing countries, but rather to justify the lack of reciprocal obligations by certain Mediterranean countries towards the Community.

3.112 The EEC expressed doubts as to whether Chile was experiencing problems in selling citrus to the Community as a result of the preferences to the Mediterranean countries, given the growing trend of Chile's exports. Trade in citrus was seasonal. Chile's exports arrived during the summer period in the EC when there was no competition from EC or Mediterranean producers. EC tariffs were also more favourable in certain cases during the summer. The EC suggested that the competition faced by Chile was that with other suppliers from the Southern Hemisphere who were closer geographically to the EC market.

3.113 Chile did not agree with the EC position that the agreements with the Mediterranean countries had been approved by the CONTRACTING PARTIES. Moreover, in its view, one could not confuse or mix together the requirements of Article XXIV and of Part IV, as these were completely distinct. Article XXIV governed customs unions, free-trade areas, or interim agreements leading thereto and required reciprocal obligations by the parties to the agreement concerned to eliminate duties on substantially all the trade between them. Part IV dealt with trade relations and commitments by developed contracting parties towards developing contracting parties. No distinction was made among the developing contracting parties, all of them were covered under Part IV. However, the EC preferences on citrus were accorded to some but not to all developing contracting parties and to some developing non-contracting parties.

3.114 Chile also contended that the question was not whether it was experiencing problems in exporting citrus, as suggested by the EC, but rather that there was a lack of opportunity being provided to a developing country to export more and earn more receipts. Presently exports of fresh lemons from Chile to the EC were at a disadvantage during the entire year because they faced a duty rate of 8 per cent, while some other Mediterranean countries that were not contracting parties enjoyed a duty rate of 1.6 per cent, and one Mediterranean supplier enjoyed duty-free access. Moreover, the MFN duty rates on lemon juice were prohibitive; i.e. as high as 40 per cent.

3.115 The EEC stated that Chile's trade interest in citrus was marginal. It agreed that if the MFN rates applied by the EC on lemons or summer oranges were reduced 2 or 3 percentage points, this could influence Chile's exports, but only marginally so. The EC inquired as to the trend of Chile's exports to the United States and the tariffs applied thereby.

3.116 Chile responded that seen perhaps from the context of total EC trade, Chile's interests were marginal. But this was not so from the point of view of the interests of Chile itself, as every bit of foreign exchange contributed to solving its debt problems. Moreover, it should not be forgotten that Chile was a developing country. In 1982 Chile had diversified its exports of fresh lemons to various markets as follows: 75.1 per cent to the EC, 23.3 per cent to Canada, 0.5 per cent to Sweden, 0.6 per cent to Switzerland and 0.5 per cent to the United States. Based on 1983 figures for the period January-September, the US became Chile's principal market, accounting for 64 per cent of sendings, followed by the EC, 28 per cent, and Canada, 6.3 per cent.

3.117 The United States stated the US tariff on fresh lemons was 1.25 US cents per pound. In 1982 the US had imported over 12 million pounds of fresh lemons, over 90 per cent of which had come from Spain.

3.118 Egypt stated that, as expressed in the Preamble of its agreement with the EC, the objectives thereof were the harmonious expansion of mutual trade and the progressive elimination of obstacles to substantially all the trade between the parties.

3.119 Chile responded that Egypt's argument relating to the declaration of intent in its agreement with the EC was valid, but such a declaration did not suffice for the Agreement to conform with the requirements of Article XXIV. There must be an effective plan and schedule for the reciprocal

elimination of trade barriers between the parties. Chile recalled that when a regional agreement among certain Latin American countries had been presented to the GATT, some contracting parties had argued that its plan and schedule for eliminating duties was not complete.

3.120 Egypt responded that the value of a declaration of intent should not be underestimated; e.g. the GSP had begun from such a basis. The attainment of the elimination of obstacles to trade was a slow process but progress was being made.

3.121 Israel stated that certain procedures existed under Article XXIV namely under paragraph 7(b) for determining whether an agreement conformed to the provisions of that Article. If Chile, or any other contracting party, considered that the EC-Israel agreement was not in conformity with Article XXIV, it could submit a proposal to the CONTRACTING PARTIES for a recommendation to that effect by them. As long as no such recommendation existed, no one could contest the legality of this agreement in other organs of the GATT.

3.122 Chile did not share the view of Israel that the absence of recommendations by CONTRACTING PARTIES under Article XXIV:7(b) implied an acknowledgement that an agreement was consistent with Article XXIV. Contracting parties had held differing views as to the conformity of the agreements in question, which were recorded in the reports of the working parties. The lack of consensus at that time among the interested parties prevented their reaching a consensus on formulating recommendations at that time. Chile recalled that the usual practice in the GATT was to work on the basis of consensus.

3.123 Israel pointed out that the CONTRACTING PARTIES had affirmed that consensus was the "traditional method" only with respect to the settlement of disputes (Ministerial Declaration of November 1982). In all other cases, not specially provided for, the General Agreement prescribed in Article XXV:4 that decisions of the CONTRACTING PARTIES "shall be taken by a majority of the votes cast".

IV. Findings

4.1 The Panel noted that its terms of reference were:

> "To examine in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States, relating to the tariff treatment accorded by the European Community to imports of citrus products from certain countries in the Mediterranean region (L/5337), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2."

Article I

4.2 The United States had contended, *inter alia*, that the preferences granted on citrus products from certain Mediterranean countries by the EEC were inconsistent with the obligations of the EEC under Article I of the General Agreement. The Panel found that a tariff preference did indeed constitute an "advantage, favour, privilege or immunity" with respect to a customs duty within the meaning of Article I:1. The Panel noted that the report of the Panel on the tariff treatment applied by Spain to imports of unroasted coffee, adopted on 11 June 1981, had stated that "Article I:1 equally applied to bound and unbound tariff items" (BISD 28S/III para. 4.37). The Panel found therefore that the granting by the EEC of tariff preferences on certain citrus products originating in certain Mediterranean countries and not on those products originating in all other contracting parties, including the United States, would be inconsistent with the obligations of the EEC under the General Agreement as regards Article I:1, unless otherwise permitted under other provisions of the General Agreement or under a decision of the CONTRACTING PARTIES.

Article XXIV

4.3 In this connection, the Panel noted the EC's contention that the tariff preferences it accorded to imports of certain citrus products originating from certain Mediterranean countries were an integral part of agreements which were permitted under Article XXIV. The Panel therefore considered Article XXIV to be a relevant provision to the matter the Panel had been established to examine. As it had been expected to do on the basis of the understandings regarding its terms of reference, the Panel took due account of the reports of the working parties relating to the agreements entered into by the European Community with certain Mediterranean countries, and of the minutes of the Council sessions where these reports were discussed and adopted (ref. Annex to the Factual Aspects).

4.4 The Panel noted that the agreements currently in force between the Community and the Mediterranean countries concerned, under which EC preferences on citrus were granted at this time, had been presented to the GATT by the parties as interim agreements leading to the formation of a customs union under Article XXIV (Cyprus, Malta and Turkey), as interim agreements leading to the formation of a free-trade area under Article XXIV (Israel and Spain), or as agreements comprising a free-trade area obligation on the part of the EC under Article XXIV but no reciprocal commitments by the other parties consonant with Part IV (Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia). The Panel further noted that the CONTRACTING PARTIES had proceeded to examine the agreements under Article XXIV.

4.5 The Panel noted that Article XXIV sets out certain conditions which a customs union, a free-trade area, or interim agreement leading to the formation thereto must fulfil. Article XXIV:5(c) specifies that the provisions of the General Agreement "shall not prevent, as between the territories of contracting parties … the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; provided that:

> …
> …
> (c) any interim agreement … shall include a plan and schedule for the formation of such a customs union or such a free-trade area within a reasonable length of time."

Moreover, Article XXIV:8 sets out what a customs union and a free-trade area are to be understood to mean for the purposes of the General Agreement, specifying, *inter alia*, that in a customs union or a free-trade area, duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories.

4.6 The Panel noted that at the time of the examination of the agreements entered into by the European Community with certain Mediterranean countries, there was no consensus among contracting parties as to the conformity of the agreements with Article XXIV:5. In fact, the parties to the agreements and some other contracting parties had held the view that the agreements were compatible with the requirements of Article XXIV, while some other contracting parties had held the view that the agreements were either not compatible or it was doubtful that the agreements were compatible with the requirements of Article XXIV. The Panel noted that the Community itself had recognized this lack of consensus as well-established (ref. para. 3.9). The reports of the working parties established to examine these agreements reflected this lack of consensus as did the minutes of the Council sessions when some of these reports were discussed and adopted.

4.7 Those members of the working parties or the Council who had held the view that the agreements did not comply entirely with the requirements of the General Agreement had, *inter alia*, criticized or expressed concern about, in their view, the agreements':

(a) lacking a firm commitment or a plan and schedule for establishing a customs union or free-trade area within a 4); reasonable length of time (Cyprus[1], Malta[2], Spain[3], Turkey[4]);

(b) lacking a plan and schedule on the basis of which CONTRACTING PARTIES could make findings or recommendations in accordance with Article XXIV:7(b) (Malta[5], Spain[6]);

(c) not covering substantially all the trade between parties (Cyprus[7], Egypt[8], Israel[9], Jordan[10], Malta[12], Turkey[13]);

(d) not providing for the elimination of all duties, only for partial tariff reductions (Israel[14], Spain[15]);

(e) excluding most agricultural products from the elimination or reductions of customs duties or quantitative restrictions (Algeria[16], Egypt[17], Israel[18], Jordan[19], Lebanon[20], Malta[21], Morocco[22], Tunisia[23] and Turkey[24]);

(f) lacking reciprocal obligations to eliminate or reduce customs duties or other regulations of commerce with respect to 28 imports from the EC (Algeria[25], Egypt[26], Jordan[27], Lebanon[28], Morocco[29], Tunisia[30]);

(g) discriminating against other developing countries, which was inappropriate in light of Part IV (Algeria[31], Egypt[32], Jordan[33], Lebanon[34], Morocco[35], Tunisia[36]);

(h) restrictive character of the rules of origin (Algeria[37], Cyprus[38], Egypt[39], Israel[40], Jordan[41], Lebanon[42], Morocco[43], Tunisia[44]).

4.8 The Panel noted that Article XXIV also set out certain procedural requirements under paragraphs 7 and 10 relating to the determination of the conformity of the agreements with the other provisions of that Article. The Panel considered that in accordance with Article XXIV:7(a) the EEC and the Mediterranean countries with whom it had concluded agreements had notified the CONTRACTING PARTIES and made available to them information regarding the proposed union or area that could have enabled the CONTRACTING PARTIES to make reports and recommendations as they deemed appropriate.

4.9 As regards the United States' contention that a free-trade area including a non-contracting party can only be considered under the provisions of Article XXIV:10 and not under those of Article XXIV:7(b) the Panel noted that the CONTRACTING PARTIES had considered several such cases under the provisions of Article XXIV:7(b) (see EFTA: BISD 9S/20; LAFTA: BISD 9S/21; Arab Common Market: BISD 14S/20F UK/Ireland Free-Trade Area Agreement: BISD 14S/23).

4.10 The Panel noted that Article XXIV:7(b) provides that CONTRACTING PARTIES shall make recommendations to the parties to the agreement when they find that "such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one". Given the lack of consensus among contracting parties regarding the conformity of the agreements referred to above, the Panel considered that the CONTRACTING PARTIES had not found that the agreements were "not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such a period [was] not a reasonable one". Neither had the CONTRACTING PARTIES, in the view of the Panel, found that the agreements would likely result in the formation of a customs union or of a free-trade area or that the period contemplated was a

reasonable one. The Panel considered that, in effect, the CONTRACTING PARTIES had withheld judgment at that time as to the conformity of the agreements with the requirements of Article XXIV. The agreements had not been disapproved, nor had they been approved. The Panel found therefore that the question of the conformity of the agreements with the requirements of Article XXIV and their legal status remained open. However, the Panel noted that the parties to the agreements concerned had agreed to supply information on the implementation of and developments in the agreements. It also recalled that the Council, upon instruction from the CONTRACTING PARTIES at their twenty-seventh session, had established a calendar fixing dates for the examination every two years, of the reports on regional agreements (SR.27/5, 7 and 12 and C/M/76).

4.11 The Panel considered that Article XXIV and Part IV constituted distinct sets of rights and obligations and that measures taken under one could not be covered by the other. As these agreements had been presented under the specific provisions of Article XXIV, then, whatever the general impact of Part IV and the Enabling Clause on the GATT as a whole, the agreements would in any event need to conform to the precise criteria of Article XXIV. The Panel therefore did not consider Part IV and the Enabling Clause as being relevant and therefore did not consider it any further.

4.12 The Panel noted that it had been several years since the agreements had been examined and not disapproved by the CONTRACTING PARTIES, nor approved by them (ref. para. 2.9). The agreements had, in fact, been put into force or maintained following their examination in the GATT. Since that time, the CONTRACTING PARTIES had received no communications from the parties, either in the biennial reports or in any other communications, that they had realized the formation of a customs union or a free-trade area, as discussed in the working parties. Steps had been taken to reduce customs duties as provided within the framework of the agreements. In certain cases negotiations had been initiated to conclude new and broader instruments between the parties, but these negotiations had not yet been completed.

4.13 The Panel recalled that at the time of the examination of the agreements, certain individual contracting parties, including the United States had reserved their rights under the General Agreement as regards the agreements. The United States was now invoking its rights in the framework of this complaint.

4.14 The Panel noted that its terms of reference related specifically, as had the United States' complaint (L/5337), to the tariff treatment accorded by the European Community to imports of citrus products from certain countries in the Mediterranean region. The Panel also noted that the united States had stated that "its purpose in bringing this complaint was not to seek a ruling on the legal validity of the EEC's preferential trading agreements as a whole but to seek redress for the nullification or impairment of those benefits accruing to the US under Article I arising from the EEC's practice of granting preferential tariff treatment to imports of certain citrus products". Accordingly the Panel found that it had not been requested to pass judgement on the conformity of the agreements as a whole with the provisions of Article XXIV.

4.15 The Panel recalled that it had found that the question of the conformity of the agreements with the requirements of Article XXIV and their legal status remained open (ref. para. 4.10). In the opinion of the Panel, the examination - or re-examination - of Article XXIV agreements was the responsibility of the CONTRACTING PARTIES. In the absence of a decision by the CONTRACTING PARTIES and without prejudice to any decision CONTRACTING PARTIES might take in the future on such a matter, the Panel was of the view that it would not be appropriate to determine the conformity of an agreement with the requirements of Article XXIV on the basis of a complaint by a contracting party under Article XXIII:1(a). The Panel did not preclude that amongst the procedures available to CONTRACTING PARTIES, a panel could be established to give an advisory opinion on the conformity of an agreement or an interpretation of specific criteria under Article XXIV to assist CONTRACTING

PARTIES in making findings or recommendations under Article XXIV:7(b). However, the Panel was of the view that irrespective of the procedure to be followed for this purpose, including a panel, this should be done clearly in the context of Article XXIV and not Article XXIII, as an assessment of all the duties, regulations of commerce and trade coverage as well as the interests and rights of all contracting parties were at stake in such an examination, and not just the interests and rights of one contracting party raising a complaint.

4.16 The Panel considered that the practice, so far followed by the CONTRACTING PARTIES, never to use the procedures of Article XXIII:2 to make recommendations or rulings on the GATT-conformity of measures subject to special review procedures was sound. It felt that the purposes these procedures served and the balance of interests underlying them would be lost if contracting parties could invoke the general procedures of Article XXIII:2 for the purpose of requesting decisions by the CONTRACTING PARTIES, on measures to be reviewed under the special procedures. The Panel therefore concluded that it should, in the absence of a specific mandate by the Council to the contrary, follow this practice also in the case before it and therefore abstain from an overall examination of the bilateral agreements.

4.17 The Panel further noted that the decision-making processes under Article XXIV:7 and under Article XXIII:2 ultimately led to action by the CONTRACTING PARTIES. In both cases, a positive decision by a majority of the votes cast was formally required (cf. Article XXV:4), but, traditionally, in both cases, decisions were arrived at through a consensus process.

4.18 The Panel further noted that in some of the conclusions on agreements, following their examination under Article XXIV:7, the CONTRACTING PARTIES had recalled that procedures for consultations under Article XXII had been accepted and had then noted that "the other normal procedures of the General Agreement would also be available to contracting parties to call into question any measures taken" under the interim agreements (see Rome Treaty: BISD 7S/71; EFTA: BISD 9S/20; LAFTA: BISD 9S/21, and Finnish Association with EFTA: BISD 10S/24). The reference to "the other normal procedures of the General Agreement", after the mention of Article XXII, can only be understood to mean the procedures of Article XXIII. The CONTRACTING PARTIES have established in the above conclusions that this procedure could be used to call into question "any measure" taken by the parties to the agreements; they did not mention the possibility of calling into question the agreements as a whole, under the procedures of Article XXIII. Furthermore, the Panel noted that in the reports of the working parties relating to the respective EEC agreements with Egypt, Lebanon, and Jordan, it was specified that "as regards the possibility of consultations with the contracting parties concerning the incidence of the Agreement on their trade interests, which had been mentioned by some members of the Working Party, the spokesman for the European Communities stated that nothing prevented these countries from invoking the relevant provisions of the General Agreement, such as Articles XXII and XXIII" (BISD 25S/119 para. 15, 139 para. 16, and 147 para. 15).

Article XXIII

4.19 In the light of its findings in connection with the legal status of the agreements (ref. para. 4.10) and with the Panel's terms of reference (ref. para. 4.14), and of its views as to the appropriate procedures for determining the conformity of agreements with Article XXIV (ref. paras. 4.15, 4.16, 4.17 and 4.18), the Panel examined the possibility of raising the matter under Article XXIII. In doing so, it recalled that a decision of the CONTRACTING PARTIES on the agreements would inevitably have amounted to a judgement on their conformity with Article XXIV. Had it been recognized that an agreement was in conformity with the requirements of Article XXIV, the implementation of this agreement could no longer be considered as nullifying or impairing benefits accruing under the General Agreement. On the other hand, had the agreement been considered by the CONTRACTING PARTIES as not being in conformity with the said requirements, its implementation would amount to a clear

infringement of the provisions of the General Agreement which would constitute *prima facie* a clear case of nullification or impairment in the sense of Article XXIII:1(a).

4.20 The Panel also noted that the EC and the respective Mediterranean countries had presented the agreements to the GATT under Article XXIV (see para. 4.4). Third countries could not therefore necessarily claim the rights they would have had, if there had been no opportunity for the CONTRACTING PARTIES to make a judgement on their conformity of the agreements with the General Agreement. But, at the same time, in the absence of a decision by the CONTRACTING PARTIES, no contracting party could rely on either legal consequence such a decision might have had (see para. 4.19). In other words, pending such a decision by the CONTRACTING PARTIES, the implementation of the said agreements or any parts thereof, (ref. para. 4.14) could neither be considered as precluding any infringement and therefore also any nullification or impairment, nor as constituting a *prima facie* case of such nullification or impairment in the sense of Article XXIII.

4.21 The Panel then examined if Article XXIII:1(b) applied to the case; i.e., whether the consequences of the implementation of the agreements could be considered as nullifying or impairing the benefits accruing from the General Agreement as the result of the application of measures not conflicting with the provisions of the General Agreement. In this respect the Panel noted that the absence of a pertinent decision by the CONTRACTING PARTIES did not create a legal vacuum. In fact the decision had to be considered as pending and could therefore be taken at any time in the future. This situation, as created by the CONTRACTING PARTIES, could not justify claims as might any ordinary, autonomous measure. At this stage, on the multilateral level, the status of the agreements had to be considered as still undetermined.

4.22 The situation created by the CONTRACTING PARTIES suspended the normal impact of certain GATT rules. However, this could not mean that contracting parties no longer had any rights and obligations. Pending the determination on the conformity of the agreements, contracting parties retained in principle their original rights such as access to m.f.n. treatment under Article I:1, but their exercise was circumscribed by the special - and provisional - multilateral contractual arrangements resulting from the examinations by working parties and by the Council. Rights and corresponding obligations also derived from the situation of suspended decisions created by the CONTRACTING PARTIES. They were confined in this context and lasted only as long as this special situation remained in force. Such rights might but need not be explicitly formulated in the reports of the working parties or conclusions of the Council. They were addressed by the reservations made by individual contracting parties but they did not depend on them. These rights and obligations applied to all contracting parties, and were not linked to particular statements or reservations made during the discussions of the working party or in the Council.

4.23 Rights arising from the results of the examination by the CONTRACTING PARTIES consisted of:

- For the parties to the agreements, a right to implement them in the submitted form, pending decisions by the CONTRACTING PARTIES or any recommendation to modify them;

- For third countries, a right to examine periodically and regularly (biennially) the implementation of the agreements on the basis of information provided by the parties thereto.

The examinations might provide the basis for subsequent definitive decisions of the CONTRACTING PARTIES or for recommendations to modify the agreements. The setting up of such examinations

clearly indicated that there was an implicit right of the contracting parties to bring up trade matters in relation with the implementation of the agreements and to have them adequately settled.

4.24 Finally, the Panel discussed the nature of matters to be brought up in this context and the basis on which they could be settled adequately. As regards the nature of the problems concerned it was felt that obviously contracting parties could only make a claim in respect of interests affected by the implementation of the agreements. As to their settlement, the following considerations appeared to be relevant:

- It was clear for the reasons given above that, considerations of law aside, the implementation of the agreements could not in itself be considered as affecting adversely the trade interests of third countries;

- Trade interests could only be considered as affected where the adverse effects on third countries resulting from the implementation of an agreement had in practice turned out to be substantial;

- Remedial measures, pending a definitive decision of the CONTRACTING PARTIES or any modification of the agreements recommended by them, would be aimed at offsetting or compensating for these adverse effects.

Article XXIII:1(b)

4.25 In the light of the above, the Panel proceeded to examine in accordance with Article XXIII:1(b) whether and how a benefit accruing to the US directly or indirectly under Article I:1 had been nullified or impaired as a result of the EEC's application of tariff preferences on citrus products from certain Mediterranean countries, whether or not these preferences conflicted with the provisions of the General Agreement (ref. para. 4.2). The Panel considered that such an examination was in keeping with its terms of reference to examine the matter in the light of the relevant GATT provisions. The US, in its complaint, had not specified any particular provision of Article XXIII:1, and therefore the matter could also be considered under Article XXIII:1(b). The US had indeed contended *inter alia* that the preferences continued to have an adverse effect on US citrus exports. Moreover the US had stated that even if the granting of tariff preferences was consistent with the General Agreement, Article XXIII:1(b) would justify the US complaint that GATT benefits were being nullified or impaired (ref. para. 3.33).

4.26 The Panel considered whether it could be guided in its examination of the matter at hand by the two previous rulings that had been made by CONTRACTING PARTIES with reference to Article XXIII:1(b); i.e., the report of the Working Party on the Australian subsidy on ammonium sulphate (BISD Vol. II/188-196) and the report of the Panel on the treatment by Germany of imports of sardines (BISD 1S/53-59), which were adopted by CONTRACTING PARTIES on 3 April 1950 and 31 October 1952, respectively. In these two cases nullification or impairment (in one case *prima facie* nullification or impairment) of a benefit was found, as a result of the existence of the following three conditions:

(a) a tariff concession was negotiated;

(b) a governmental measure, not inconsistent with the General Agreement, had been introduced subsequently which upset the competitive relationship between the bound product with regard to directly competitive products from other origins; and

(c) the measure could not have been reasonably anticipated by the party to whom the binding was made, at the time of the negotiation of the tariff concession (BISD Vol. II/192-193 para. 12, BISD 1S/58-59 paras. 16 and 17).

4.27 The Panel noted that the EC had accorded tariff bindings over the years on many but not all of the citrus products covered under the complaint (ref. para. 2.4). Fresh "winter" sweet oranges (CCT No. 08.02 A.I. (d)), fresh tangerines (ex CCT No. 08.02 B), fresh lemons (ex CCT No. 08.02 C), dry pectin (ex CCT 13.03 B.I.) and the more concentrated orange, grapefruit, and lemon juices (ex CCT No. 20.07 A.III) were not bound. Therefore the Panel found that it could be neither guided nor bound by the above rulings as regards the preferential tariff treatment applicable on these products on which no tariff concessions had been negotiated.

4.28 On the other hand, the Panel noted that tariff concessions had been granted by the EC on fresh, sweet "summer" oranges (CCT No. 08.02 A.I.(a), (b), and (c)), fresh grapefruit (ex CCT No. 08.02 D), grapefruit segments (ex CCT No. 20.06 B.II), and other orange, grapefruit, and lemon juices (ex CCT No. 20.07 B.II) (ref. Table 2.3). The Panel also noted that the EC considered that the tariff concessions previously granted by the Community of the Six and by the United Kingdom, Denmark and Ireland had been withdrawn with effect from 1 August 1974, and replaced by the concessions in the Common Tariff of the European Communities contained in Schedules LXXII and LXXII bis (ref. footnote 2 to Table 2.3). The United States has initial negotiating rights on the bound citrus products which were confirmed at that time (except for fresh grapefruit and lemon juice with added sugar) (ref. Table 2.3).

4.29 The Panel noted that by 1973 the EC already was granting on fresh, sweet oranges an 80 per cent preference to Morocco and Tunisia and a 40 per cent preference to Cyprus, Egypt, Israel, Lebanon, Malta, Spain and Turkey, as well as a 40 per cent preference on fresh grapefruit and grapefruit segments to Israel (ref. para. 2.6). During the period 1975-1978, the EC increased the 40 per cent preference on fresh, sweet oranges for the countries concerned (except Spain) to 60 per cent, accorded an 80 per cent preference on fresh grapefruit (except to Malta and Spain) and grapefruit segments (except to Maghreb countries, Malta and Spain), introduced preferences on citrus juices, and added Algeria and Jordan to the list of Mediterranean preference recipients (ref. para. 2.8).

4.30 Although tariff concessions had indeed been negotiated or confirmed in 1973 on fresh, sweet "summer" oranges, fresh grapefruit, and grapefruit segments, the Panel did not find that a governmental measure had been introduced subsequently which upset the competitive relationship between the bound product with regard to directly competitive products from other origins, according to the above-mentioned second condition (b) in previous case law (ref. para. 4.26). The matter before the Panel indeed concerned a preference which was a governmental measure that would affect the competitive relationship between like products from different origins. However, the Panel could not find that the preferences had been introduced subsequent to the relevant tariff negotiation in 1973, as EC preferences had existed before then on behalf of the principal Mediterranean exporters of oranges (Spain, Morocco, Israel and Cyprus) and grapefruit (Israel).

4.31 The Panel noted that during 1971, the EC Commission was having contacts with certain Mediterranean countries regarding the problems they would face as a result of the Community's enlargement. These countries stressed the economic risks that enlargement would involve for them particularly as regards their "trade in fresh and processed agricultural produce which benefit from a very low or even a zero tariff in the candidate countries" (EC Bulletin 8-1971 pp. 79-80 and EC Commission document "Cinquieme Rapport général sur l'activite des Communautes" pp. 330-331). In the Commission's report to the Council on these contacts, the problem of citrus fruit and juices was specifically raised. The Commission stated therein that new advantages should be granted on products of particular interest to the Mediterranean countries, some of which were not included in the

existing agreements (EC Commission document SEC(71)2963 final of 14 September 1971 pp. 7-8). In June 1972, the EC Council decided to examine a global approach to the problems of developing EC relations with countries in the Mediterranean Basin, which might lead to the renegotiation of existing agreements. The Commission submitted recommendations to the Council in September and November 1982, aimed at the progressive elimination of obstacles to trade (EC Commission document "Sixieme Rapport général sur l'activite des Communautes 1972" p. 273). The recommendations proposed *inter alia* to improve to the extent possible the EC concessions already in existence on agricultural products and to envisage new concessions so that at least 80 per cent of the agricultural exports of each Mediterranean country to the enlarged Community would be covered by concessions (EC Commission Information Note P-48 of October 1972, p. 6).

4.32 In the light of these developments in 1971 and 1972 which were public knowledge, and with reference to the above-mentioned third condition (c) in previous case law (ref. para. 4.26), the Panel could not find that the United States Government could not have reasonably anticipated in 1973, when it negotiated the tariff concessions on fresh, sweet "summer" oranges and fresh grapefruit and when its concessions on grapefruit segments were confirmed, that the tariff preferences accorded to certain Mediterranean countries by the Community of the Six already in place, would be extended to the Community of the Nine as well as improved in favour of the Mediterranean countries.

4.33 As regards the other citrus products on which the EC had granted tariff concessions; namely certain citrus juices, the Panel did find that preferences had been introduced by the EC on behalf of certain Mediterranean countries subsequent to the negotiation of tariff concessions in 1973. However in light of the above-mentioned developments in 1971 and 1972 (ref. para. 4.31) the Pane] could not find that the United States Government could not have reasonably anticipated when it negotiated the tariff concessions on certain citrus juices in 1973, that subsequently the EC would introduce preferences on imports of these products originating in certain Mediterranean countries.

4.34 In arriving at its findings under paras. 4.30, 4.32 and 4.33, the Panel considered that US citrus producers who had invested in new plantings in the late 1960's and early 1970s might not have expected by the time this citrus fruit was available for exportation either in fresh or processed form in the mid-1970s and thereafter, that their Mediterranean competitors would enjoy preferential access to the Community market. Similarly, when it negotiated tariff concessions on certain citrus products during the formation of the Community of the Six in 1962 and later in the Kennedy Round in 1967, the United States Government might not have anticipated that the EC would grant tariff preferences to certain Mediterranean countries to the extent it does presently. However, US Government negotiators must have been aware during the negotiation of the new tariff schedule of the Community of the Nine in 1973, that the value of the new tariff concessions that they received, or the old concessions which here confirmed, would be affected by the anticipated extension and deepening of the tariff preferences on citrus to the Mediterranean countries. The Panel did note that there appeared to have been an informal understanding between the EC Commission and the US Administration in 1973, according to which, *inter alia*, the US Government believed that the EC would be prepared to seek solutions in the event that EC preferences caused difficulties for US trade. The United States had stated that in this context, the US had raised the specific problem of citrus without obtaining satisfaction, as the present complaint would seem to indicate (ref. paras. 3.21 and 3.22).

Practical operation of the preferences

4.35 Given the undetermined legal status of the preferences with Article XXIV, the Panel had not been able to conclude that there had been a clear case of infringement of the provisions of the General Agreement which would constitute, in the sense of Article XXIII:1(a), *prima facie* nullification or impairment of a benefit accruing to the United States under Article I:1 (ref. para. 4.20). Moreover the Panel had not been able to conclude that there was a *prima facie* nullification or impairment in

the sense of Article XXIII:1(b) on the basis of past precedents (ref. paras. 4.27, 4.30, 4.32 and 4.33), which had been limited to benefits accruing under Article II. Tariff preferences, in principle, were obviously less favourable to an exporting country which was not a beneficiary vis-a-vis the beneficiary exporters. But since the Panel had not been able to conclude that there was *prima facie* nullification and impairment on the basis of either Article XXIII:1(a) or (b), the Panel could not presume that the existence of the EEC tariff preferences in itself was *prima facie* evidence of injury to or of adverse effect on trade based on past precedents. The Panel proceeded to examine whether the EEC tariff preferences accorded to certain citrus products had operated in practice to affect adversely US trade in the products with the EC and upset the competitive relationship between the US and the EC's Mediterranean suppliers, and whether as a result this would mean nullification and impairment of a benefit accruing to the United States in the sense of Article XXIII:1(b).

4.36 In doing so, the Panel considered that although complaints brought previously under Article XXIII:l(b) had related to benefits arising from Article II, it believed that this did not signify that Article XXIII:1(b) was limited only to those benefits. The drafting history of Article XXIII confirmed that this Article, including paragraph l(b) thereof, protected any benefit under the General Agreement (p. 7 of document E/PC/T/A/PV/12 of 12 June 1947). This would include then the benefits accruing to the United States under Article I:1 which applied to bound and unbound tariff items alike (ref. para. 4.2).

4.37 The Panel noted that the basic purpose of Article XXIII:1(b) was to provide for offsetting or compensatory adjustment in situations in which the balance of rights and obligations of the contracting parties had been disturbed (see page 5 of document E/PC/T/A/PV/6 of 2 June 1947). One of the fundamental benefits accruing to the contracting parties under the General Agreement, therefore, was the right to such adjustment in situations in which the balance of their rights and obligations had been upset to their disadvantage. The Panel, considering that:

- the CONTRACTING PARTIES had refrained from making a recommendation under Article XXIV:7 on the EEC agreements with the Mediterranean countries on the understanding that the rights of third countries would thereby not be affected;

- the CONTRACTING PARTIES had not prevented the EEC to implement the agreements with the Mediterranean countries on the understanding that the practical effects of their implementation would be kept under review;

- and further that the formation of customs unions or free-trade areas between the EEC and the Mediterranean countries concerned had not yet been realized since the examination of the agreements by the CONTACTING PARTIES;

reached the conclusion that in this particular situation the balance of rights and obligations underlying Articles I and XXIV of the General Agreement had been upset to the disadvantage of the contracting parties not parties to these agreements and that the United States was therefore entitled to offsetting or compensatory adjustment to the extent that the grant of the preferences had caused substantial adverse effects to its actual trade or its trade opportunities.

4.38 The information furnished and arguments presented by the United States to support its contention that the EEC preferences continued to have an adverse effect on US citrus exports were considered by the Panel as constituting the required detailed justification in this connection (ref. BISD 26S/216 para. 5 last sentence). As regards the EEC, the Panel had requested the Community repeatedly to furnish all information it deemed necessary, relevant to the effects of the EEC preferences on the trade in these products with the United States and with the Mediterranean countries concerned. The Panel therefore considered that it had provided adequate opportunities to the EEC to rebut the charge of the

United States that the EEC preferences continued to have an adverse effect on US citrus exports. The information furnished and arguments presented by the EEC regarding trade were considered by the Panel as constituting the EEC's position on the matter.

4.39 The Panel proceeded to examine by individual citrus product whether the EEC tariff preferences accorded to certain Mediterranean countries appeared to have had an adverse effect on United States' exports to the Community. Generally speaking, the Panel noted that the preferential tariffs, the preferential rates of reduction from the EC Common Customs Tariff, and the margins between the CCT and the preferential tariffs, varied among the Mediterranean countries as well as among the products concerned (ref. tables 2.1 and 2.2). The Panel also noted that the trade performances of the individual Mediterranean countries varied as well, without there being necessarily a direct correlation between those receiving the most favourable preferential rates and those exporting the most citrus. This being said, the Panel did not view the differences in individual trade performances as signifying *a priori* that the preferences had had no, or only a limited, effect on the competition between the United States and the Mediterranean suppliers on the whole, or between the United States and the more dynamic Mediterranean exporters. Although it appeared that the preferences had not operated to induce all Mediterranean recipients to develop their exports, the Panel considered that the preferences might still operate in some cases to upset the competitive relationship between preferential and non-preferential suppliers.

4.40 On the basis of the information presented by the parties, the Panel looked closely at the trend in the volume of imports by the Community of the products concerned from the United States, from the Mediterranean preference recipients, and from any other major supplying countries, in particular those not benefitting from preferential tariff treatment. It also looked at the trend in the share of the various suppliers of the EC market, at the trend of US exports to non-EC destinations, and at price information where this was given. In examining the trend of US exports to non-EC destinations, the Panel did not consider that the trend of US exports to the Community should necessarily reflect perfectly the pattern of US trade elsewhere, but that this was one of several factors to be looked at in arriving at possible findings. The Panel tried to ascertain on the basis of all these factors taken together whether the preferences had had an adverse impact on US exports to the EC, not only in terms of declining sales or market shares but also of eventual lost trade opportunities.

4.41 Panel considered that the EEC preferences would not appear to have operated to affect adversely United States' trade on a product and upset the competitive relationship between the US and the Mediterranean suppliers of the EC, where neither the US nor at least one or some Mediterranean countries were trading in the product. In other words, there would at least have to be exports from one Mediterranean country to the EC and exports from the US to the EC or anywhere else to denote possible competition between the two sides and in order to consider the possibility that the preference had operated to affect US trade adversely and upset competitive relationships in the EC market.

Processed citrus

4.42 Accordingly, the Panel did not find on the basis of the information made available to it, that the EEC tariff preferences applicable to certain Mediterranean countries on dry pectin and grapefruit segments had affected adversely United States' exports thereof to the Community. The parties had not advanced any arguments specifically on these products, other than trade statistics (ref. tables 2.9, 2.10, 2.20 and 2.21), which indicated that exports from the Mediterranean countries to the EEC were negligible or small, and exports from the United States to the EC and to non-EC destinations were negligible as well. In the Panel's opinion the fact that neither the US nor the Mediterranean countries traded very much in these products meant that factors other than the EC tariff preferences to the Mediterranean countries were behind the US export performance.

4.43 The Panel noted that EC imports of lemon juice were also not particularly large. The constant level of EC imports in terms of volume (1,000 m.t.) from Israel, the only Mediterranean country shown to be exporting this product, and its declining market share since 1974, the growth in imports from Brazil which enjoyed no preference both in terms of volume and market share, and the fact that EC imports from the United States had been at their highest level during 1977 and 1979 in terms of both volume and market share, i.e. after the preferences had been introduced, (ref. table 2.24), were all factors which led the Panel not to find that EEC tariff preferences on lemon juice had affected adversely United States' exports thereof to the Community.

4.44 The Panel noted that since 1974, EC imports of grapefruit juice from the Mediterranean basin (mostly Israel) had not grown in terms of share of total imports and had declined in terms of volume, whereas imports from the United States had generally increased in terms of share of total imports and in terms of volume (ref. table 2.23). Moreover, in terms of value, United States' exports of grapefruit juice to the EC had recorded their highest levels during 1979 through 1982 (as did United States' exports to non-EC destinations), i.e. after the EC preferences had been introduced (ref. table 2.12). Accordingly, these factors taken together led the Panel not to find that the EEC tariff preferences applicable to certain Mediterranean countries on grapefruit juice had affected adversely United States' exports thereof to the Community.

4.45 As regards orange juice, total EC imports had grown considerably since 1974, primarily due to an increase in imports from Brazil which did not benefit from any EC tariff preference. The volume of Brazil's exports to the EC had more than tripled since 1974 and its share of total EC imports had more than doubled. During the same period, the share of the Mediterranean countries in total EC imports had declined generally as had imports from these countries in terms of volume. Imports from the United States had recorded their highest levels in 1976 and 1977 both in terms of market share and volume, thereafter declining (ref. table 2.22). United States' exports of orange juice to the EC had recorded their highest level in terms of value during 1980 through 1982 (as they had to non-EC destinations), i.e. after the EEC tariff preferences had been established (ref. table 2.11). Accordingly, taking these factors together, the Panel did not find that it had evidence that the EEC tariff preferences accorded to certain Mediterranean countries on orange juice had affected adversely United States' exports thereof to the Community.

Fresh tangerines

4.46 The Panel noted that United States' exports of tangerines to the EC had been negligible before 1976, and that also during that period virtually all United States' exports had gone to markets other than the Community (ref. table 2.6). The Panel also noted that United States' exports to the EC were much higher in 1976 and thereafter as compared with the earlier period, albeit with considerable fluctuations from year to year. United States' exports to the EC had been greatest in 1979 in terms of volume as well as share of total US exports, i.e. after the introduction of the EEC tariff preferences. Total US exports had been at their highest level that year as well, with exports to both EC and non-EC destinations generally declining thereafter.

4.47 The volume of EC imports of tangerines from the United States as well as the United States' share of total EC imports varied considerably from year to year after 1976 (ref. Table 2.16). The Panel noted that total EC imports of tangerines were small but growing. A change of less than 1,000 metric tons in imports from any supplier translated into a dramatic change in share of the EC

market[8]. EC imports from the United States had reached their highest level in 1979 and second highest in 1981. Imports from Spain and Israel had increased both in terms of volume and market share in 1982 and 1983.

4.48 Given the general pattern of US exports of tangerines as well as the considerable annual variations in the trade performances of the United States, the Mediterranean countries and Brazil (which did not enjoy a tariff preference) both as regards EC market share and in terms of volume, the Panel did not find that it had evidence that EEC tariff preferences to certain Mediterranean countries on fresh tangerines had affected adversely United States' exports thereof to the Community. The Panel did not rule out the possibility that in the absence of preferences, there might have been greater trade opportunities for the United States, but the Panel felt that it had no evidence before it that would allow it to make such a finding.

4.49 The Panel noted that the parties to the dispute had appeared to focus their argumentation relating to trade aspects primarily on the situation for fresh grapefruit, fresh lemons and fresh oranges. The parties had not only submitted data on exports and imports of those products, but they had also provided relatively more commentaries and analyses on these products in particular. The Panel noted that there could be important fluctuations annually in the trade in these products. This is why the Panel, where necessary, examined the trends in volume and market share on the basis of three-yearly averages, to arrive at its findings. It also noted that import statistics as regards the Community of Nine existed only beginning in 1974 (and EC of Ten beginning 1981 but imports of citrus into Greece were minimal), when preferences were already in place for many Mediterranean suppliers as regards fresh citrus.

Fresh grapefruit

4.50 The Panel noted that total EC imports of grapefruit had generally increased since 1974, as had EC imports from the United States both in terms of volume and market share. The trend in EC imports from the Mediterranean basin varied by individual supplier (Cyprus, Israel, Spain and Turkey), but in general, imports from this region had grown in volume during 1974 through 1979, after which they had been declining (ref. table 2.19). Beginning in 1975, United States' exports of grapefruit to the EC had grown at a faster pace than exports to other destinations, the EC thus accounting for an increased share of total US exports (ref. table 2.8).

Fresh lemons

4.51 The Panel noted that total EC imports of lemons had generally increased since 1984 due chiefly to higher imports from the Mediterranean countries, primarily Spain (ref. Tables 2.4, 2.17 and 2.18). This trend was confirmed by EC imports on a 3-yearly basis as follows:

[8]Calculated from the figures contained in Table 2.16, the following represent share of the EC market in %:

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
EC-9(10)imports from:										
US	0	0	43	51	14	26	25	36	9	14
Spain and Israel	0	0	12	35	25	46	47	38	80	78
Brazil	55	73	33	0	50	19	22	15	6	6

EC-9(10) Imports of Fresh Lemons 1974-1982
(3-year average)
(1,000 m.t.)

Origin	1974-1976	1977-1979	1980-1982[1]
United States	42	31	24
Mediterranean preference recipients	137	181	218
South Africa	10	10	10
Other	19	23	8
Total Extra-EC	208	235	260

[1]In its calculations on a 3-yearly basis on lemons as well as on oranges the Panel noted that the trend in average volumes or market shares were basically the same for 1980-1982 and 1980-1983.

This indicated that EC imports from the US had been constantly declining while they had been constantly rising from the Mediterranean countries. Imports from South Africa, which did not enjoy a tariff preference had been constant.

4.52 The Panel noted Table 3.9 which had been submitted by the United States, which gave the trend in market shares of imports of lemons into the EC on a three-yearly basis. This showed that the share of the import market of the Mediterranean countries had been increasing steadily, while that of other suppliers, including the United States, had been declining.

4.53 The Panel noted also that during this period when the EC was importing more from the Mediterranean countries while importing less from the United States, US exports were on the rise generally to markets other than the EC (ref. Table 2.7). Using the export statistics submitted by the US, the Panel calculated the following averages on a three-yearly basis:

US Exports of Fresh Lemons (1974-1982)
(3-Year Average)
(1,000 m.t.)

Destinations:	1974-1976	1977-1979	1980-1982
EC-9	56	37	23
Other	147	175	137

While US exports to non-EC destinations had retracted during the 1980s after their high level of 1977-1979, this decline was less (22 per cent) than that registered for US exports to the EC (38 per cent). Compared to the earlier average for 1974-1976, the contrast was sharper: the decline in US exports to the EC market was 59 per cent, while to other destinations it was 7 per cent. The Panel noted that compared with US export performance during 1966-1969, i.e. basically before EC preferences were in place, US exports to the EC had dropped significantly during the late 1970s and early 1980s, while US exports had doubled elsewhere. During the late 60s, the EC market accounted

for almost half of US shipments, but in 1982 and 1983 the Community received less than 10 per cent of total US exports of lemons. The Panel noted that these trends had been shown graphically by the US (ref. Table 3.10).

Fresh sweet oranges

4.54 The Panel noted that following relatively stable levels during the period 1966 to 1975, total EC imports of sweet oranges had been dropping annually since then (ref. Tables 2.4, 2.14 and 2.15). The Panel noted that according to calculations by the United States, the share of the Mediterranean preference recipients of the EC import market had been growing during the period 1974-1982 on a 3-year average basis, while the US share had declined (ref. Table 3.1). The shares of South Africa and Brazil, which enjoyed no tariff preferences in the EC market, had been relatively constant, while imports from other suppliers had dropped.

4.55 The Panel next examined the particular trends for "winter" oranges and for "summer" oranges[8]. It noted that during the period 1966 to 1971 the Community imported more oranges during the summer period than the winter. Thereafter, this situation was reversed (ref. Table 2.15).

4.56 As regards summer oranges, the Panel calculated the trend in EC imports on the basis of 3-year averages as follows:

EC-9(10) Imports of Fresh Sweet "Summer" Oranges 1974-1982
(3-Year Average)
(1,000 m.t.)

Origin	1974-1976	1977-1979	1980-1982
United States	87	40	38
Mediterranean preference recipients	399	423	400
South Africa	187	186	172
Brazil	26	34	32
Other	74	32	37
Total extra-EC imports	734	715	677

This indicated that total EC imports of summer oranges had been declining: by 3 per cent in between 1974-1976 and 1977-1979 and a further 5 per cent in 1980-1982. Imports from the Mediterranean countries, however, increased by 6 per cent from 1974-1976 to 1977-1979 and then retracted by 5.4 per cent in 1980-1982; in other words the volume of imports in the Mediterranean remained virtually constant in 1980-1982 as compared with 1974-1976. On the other hand, imports from the US dropped by more than half in between 1974-1976 and 1977-1979 and continued downward in 1980-1982. Imports from the other major supplier, South Africa, remained constant during the period 1974-1979 and then decreased by 8 per cent in 1980-1982.

[8]The US and the EC have slightly different definitions for the two seasons. For the US, winter oranges are those marketed during November-April and summer oranges during May-October. For the EC, winter oranges are those imported form 16 October to 31 March and summer oranges from 1 April to 15 October. When the Panel refers to winter and summer oranges, it is following the EC's designation as this corresponds to the EC's tariff periods.

4.57 The Panel also calculated the trend in market shares as regards summer oranges into the EC on a 3-yearly basis:

EC-9(10) Imports of Fresh Sweet "Summer" Oranges 1974-1982
(3-Year Average)
(& of total Extra-EC imports)

Origin	1974-1976	1977-1979	1980-1982
United States	12	6	5
Mediterranean preference recipients	54	59	59
South Africa	26	26	25
Brazil	4	5	5
Other	5	4	6
	100	100	100

This indicated that the Mediterranean countries had increased by 9 per cent their share of the EC's (declining) import market during 1977-1979 as compared with 1974-1976, and maintained that share during 1980-1982. On the other hand the US share dropped by 50 per cent during 1977-1979 as compared with 1974-1976 and went down a further 17 per cent during 1980-1982. The share of the other major supplier, South Africa, had been constant during 1974-1979, declining by 4 per cent during 1980-1982.

4.58 Similarly as regards winter oranges, the Panel calculated the trend in imports on the basis of 3-year averages as follows:

EC-9(10) Imports of Fresh Sweet "Winter" Oranges
(3-Year Average)
(1,000 m.t.)

Origin	1974-1976	1977-1979	1980-1982
United States	2	1	1
Mediterranean preference recipients	1,192	1,064	1,007
South Africa	29	8	6
Other	37	42	12
Total extra-EC imports	1,259	1,115	1,024

This indicated that total EC imports of winter oranges had also been declining, but more sharply than had been the case for summer oranges: by 11 per cent in between 1974-1976 and 1977-1979, and a further 8 per cent in 1980-1982. Imports from the Mediterranean countries had also dropped but by less: 11 per cent and 5 per cent. Imports from the US, which were small, had declined in between 1974-1976 and 1977-1979 and then virtually disappeared. Imports from South Africa, the other major supplier declined by 72 per cent in between 1974-1976 and 1977-1979 and dropped a further 25 per cent in 1980-1982.

4.59 The Panel also calculated the trend in market shares as regards winter oranges into the EC on a 3-yearly basis:

EC-9(10) Imports of Fresh Sweet "Winter" Oranges
(3-Year Average)
(% of total Extra-EC imports)

Origin	1974-1976	1977-1979	1980-1982
United States	.1	.1	0
Mediterranean preference recipients	95	95	98
South Africa	2	1	1
Other	3	4	1
	100	100	100

This indicated that the share of the Mediterranean countries of the EC's (declining) import market had been constant during 1974-1979, and then increased by 3 per cent during 1980-1982. The share of the united States was tiny during 1974-1979 and then non-existent in 1980-1982. The share of South Africa, also small, had been halved in between 1974-1976 and 1977-1979 and stayed at that level in 1980-1982.

4.60 The Panel also noted the trend in US exports of oranges to markets other than the EC (ref. Table 2.5). The Panel noted that there were fluctuations in these figures from year-to-year. However, it could be said that basically US exports to non-EC destinations had doubled since the late 1960s while they had declined to the Community, with the exception of the record performance during the years 1975 and 1976. In addition, the EC was accounting for less and less of US shipments.

4.61 Also as regards the trend in US exports of oranges, the Panel noted the particular situations for summer oranges and winter oranges. The Panel noted that the United States tended to export a little more oranges during the winter season than in the summer to markets other than the EC, whereas summer oranges accounted for three-quarters of US exports to the Community (ref. Table 3.3). The Panel noted the graphic representation submitted by the United States of trends of US exports of summer oranges and of winter oranges (ref. Tables 3.4 and 3.5). This indicated that US exports of winter oranges to non-EC destinations had more than doubled from 1967 to the present. Whereas exports to the Community, which were small to begin with, had stagnated, with the exception of the years 1974-1975. The Panel noted that the trend in US exports of summer oranges to the Community tended to follow more closely that of exports to other destinations, in contrast with the above-mentioned trend for winter oranges. However exports of summer oranges to non-EC destinations were basically growing from their levels of the late 1960s, while US exports to the Community were not, except for the peak performance in 1975, 1976 and 1980.

4.62 The Panel also noted the information relating to unit values of imports of winter oranges in the Netherlands that was submitted by the United States (ref. Table 3.6). The Panel considered that it was true that the performance of any exporting country was governed by a myriad of factors relating, *inter alia*, to quality, transportation costs, exchange rates and market promotion. The information contained in the above-mentioned table revealed the price competitiveness of the various suppliers to the Community at the border when all of these factors had been taken into account and translated into offer prices, and before the tariffs and tariff preferences were applied. Accordingly, this information helped to understand how the tariffs and tariff preferences affected the competitive relationships among

the various suppliers. The table indicated that winter oranges from the United States appeared to have been price-competitive with the other Mediterranean suppliers for some but not all the years shown. To the extent that EC purchases of oranges were governed by price, it would appear that the poor US performance in the EC market could not then be completely explained away by the alleged lack of price competitiveness on the part of the United States, before the tariffs were applied at the border. On the basis of information submitted by the parties, there appeared to be no other market except the Community where the Mediterranean and US exporters of oranges competed, as the principal markets for fresh US citrus were in Asia and Canada, and when the Mediterranean countries exported elsewhere than to the EC, which was their major outlet, they did so to other European markets. Therefore the Panel could not observe the extent of the competitiveness of US and Mediterranean exports with one another in any other market.

Findings on fresh grapefruit, lemons and oranges

4.63 Given the increase in EC imports from the US of fresh grapefruit, both in terms of volume and market share, the decline in EC imports from the Mediterranean basin, and the relatively higher growth in US to the EC as compared to other destinations, the Panel did not find that it had evidence that the EEC tariff preferences accorded to certain Mediterranean countries on fresh grapefruit had affected adversely United States' exports thereof to the Community.

4.64 Given the decline in imports by the EC (a growing market) of fresh lemons from the US and the increase in imports from the Mediterranean countries, both in terms of volume and market share, the constant level of imports from South Africa and its falling market share, and the general rise in US exports of lemons to non-EC destinations, the Panel found that the tariff preferences granted by the EEC to certain Mediterranean countries on fresh lemons appeared to have affected adversely United States' exports thereof to the Community.

4.65 Given the sharper decline in EC imports of fresh, sweet oranges from the US generally in terms of volume as compared with imports from the Mediterranean countries, the decline in the US share of the EC market, the increase in that of Mediterranean countries into the EC, the decline in imports from and share of South Africa, the general rise in US exports to non-EC destinations, and the price information indicating that in certain years US oranges were priced competitively with Mediterranean supplies before EC tariffs were applied, the Panel found that the tariff preferences granted by the EEC to certain Mediterranean countries on fresh, sweet oranges appeared to have affected adversely United States' exports thereof to the Community. The Panel found that this was particularly true in the case of winter oranges where the United States had virtually disappeared from the EC market.

4.66 The Panel considered that the performance of United States' exports of fresh citrus to the EC appeared related to the level of the EC common customs tariff rates, of which the preferential tariff rates were a function. In other words, the margin of preference appeared to be a key factor, perhaps more important, in some cases, than the preferential rates of reduction accorded. This view appeared to be borne out by comparing United States' exports of grapefruit, here the most-favoured nation rate applied by the EC was relatively low, i.e. moving progressively down to 3 per cent, with US exports of lemons on which an MFN rate of 8 per cent applied. Similarly one could compare the differences in the US performance on summer oranges on which duty rates of 4, 6 and 13 per cent applied on the one hand, and winter oranges on which there was an MFN rate of 20 per cent. The Panel found, therefore, that the margin of preference between the MFN rates and preferential rates had upset the competitive relationship between the United States and Mediterranean suppliers of fresh lemons and oranges, especially winter oranges.

Other considerations

4.67 The Panel noted that according to the decision of CONTRACTING PARTIES on 28 November 1979 as regards Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, it was stated, *inter alia*, that any differential and more favourable treatment provided under the Enabling Clause "shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis". The Panel noted that such a provision did not exist *per se* as regards preferential treatment provided by members of a customs union or free-trade area to one another, except for the general exhortation contained in Article XXIV:4 that "the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories". The Preamble of the General Agreement spoke of contributing to the objectives of the Agreement "by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce". The Panel also noted that the United States had stated that it had sought to negotiate a solution to the problem of access for its citrus into the Community for many years (ref. para. 3.5).

4.68 However, the Panel also considered that it was up to individual contracting parties to decide whether or not to grant tariff concessions, it being understood that any action taken in this connection must be in conformity with the rules of the General Agreement.

Notes to paragraph 4.7

[1]BISD 21S/95 para. 5, 96 para. 7, and 101 para. 24.
[2]BISD 19S/92 para. 8, 96 para. 21.
[3]BISD 21S/109 para. 7, 110 paras. 8 and 9.
[4]BISD 13S/61 para. 8, BISD 19S/104 para. 6 and 108 para. 14; and
BISD 21S/109 para. 7, 110 paras. 8 and 9.
[5]BISD 19S/92 para. 9, 96 para. 21.
[6]BISD 18S/172 para. 21.
[7]BISD 21S/100 para. 21 and 101 para. 24.
[8]BISD 25S/118 paras. 12 and 13, 119 para. 14.
[9]BISD 23S/58 para. 6, 59 para. 7, 63 para. 21.
[10]BISD 25S/137 paras. 13 and 14, 138 para. 15.
[11]BISD 25S/147 paras. 13, 14 and 15.
[12]BISD 19S/95 paras. 18 and 19, 96 para. 21
[13]BISD 21S/109 para. 7, 110 para. 9.
[14]BISD 23S/62 para. 19, 63 para. 21.
[15]BISD 18S/173 para. 26.
[16]BISD 24S/85 para. 12.
[17]BISD 25S/118 para. 12, 119 paras. 13 and 14.
[18]BISD 23S/59 para. 7.
[19]BISD 25S/137 para. 13.
[20]BISD 25S/147 paras. 13 and 15.
[21]BISD 19S/92 para. 9.
[22]BISD 24S/93-94 para. 12.
[23]BISD 24S/102 para. 12.
[24]BISD 19S/104 para. 6, 107 para. 11, and 108 para. 14, BISD 21S/109 para. 7.
[25]BISD 24S/84 para. 10, 85 para. 12.
[26]BISD 25S/118 para. 12.
[27]BISD 25S/137 para. 13.
[28]BISD 25S/146 para. 13.
[29]BISD 24S/92 para. 10, 93-94 para. 12.
[30]BISD 24S/101-102 para. 10, 103 para. 12.
[31]BISD 24S/84 paras. 10 and 11, 85 para. 12.
[32]BISD 25S/118 paras 12 and 13, 119-120 paras. 18,19, 22 and 23.
[33]BISD 25S/137 paras. 13 and 14, 138 paras. 18 and 19, 139 paras. 22 and 23.
[34]BISD 25S/146-147 paras. 13 and 14, 148 paras. 18, 19 and 22, 149 para. 23.
[35]BISD 24S/93 paras. 10 and 11, 94 para. 12.
[36]BISD 24S/102 paras. 10 and 11, 103 para. 12.
[37]BISD 24S/83 para. 8.
[38]BISD 21S/96 para. 7, 98 paras. 13 and 14, and 101 para. 24.
[39]BISD 25S/118 paras. 11 and 12, 121-122 para. 24.
[40]BISD 23S/58 para. 6.
[41]BISD 25S/136-137 paras. 12 and 13, 139 para. 24.
[42]BISD 25S/146 para. 12, 147 para. 13 and 149 para. 24.
[43]BISD 42S/92 para. 8.
[44]BISD 24S/101 para. 8.

V. CONCLUSIONS AND RECOMMENDATIONS

5.1 Based on the considerations and findings contained in the previous section, the Panel arrived at the following conclusions with regard to the matter it had been established to examine:

(a) The granting by the EEC of tariff preferences on certain citrus products originating in certain Mediterranean countries and not on those products originating in all other contracting parties, including the United States, would be inconsistent with the obligations of the EEC under the General Agreement as regards Article I:1, unless otherwise permitted under other provisions of the General Agreement or under a decision of the CONTRACTING PARTIES;

(b) Given the lack of consensus among contracting parties, there had been no decision by the CONTRACTING PARTIES on the conformity with Article XXIV of the agreements under which the EC grants tariff preferences to certain citrus products originating from certain Mediterranean countries, and therefore the legal status of the agreements remained open;

(c) The Panel had not been requested, nor would it be proper for it to pass judgment on the conformity of the EC agreements as a whole with the provisions of Article XXIV;

(d) In the light of the conclusions contained in (b) and (c) above, there could not be said to be a clear case of infringement by the EEC of the provisions of the General Agreement which would constitute *prima facie* nullification or impairment in the sense of Article XXIII:1(a);

(e) The examination of the matter in accordance with Article XXIII:1(b) was in keeping with the Panel's terms of reference;

(f) Given that the tariffs on some of the products covered by the complaint of the United States were not bound, that the preferences were already being granted by the EC to certain Mediterranean countries on certain fresh citrus before the negotiation of concessions by the Community of the Nine in 1973, and that it could be expected that these preferences would be deepened and extended thereafter, *prima facie* nullification or impairment of benefits accruing under Article II in the sense of Article XXIII:1(b) could not be concluded on the basis of past precedents;

(g) One of the fundamental benefits accruing to the contracting parties under the General Agreement was the right to adjustment in situations in which the balance of their rights and obligations had been upset to their disadvantage. In view of the fact that:

- the CONTRACTING PARTIES had refrained from making a recommendation under Article XXIV:7 on EEC agreements with the Mediterranean countries on the understanding that the rights of third countries would thereby not be affected;

- the CONTRACTING PARTIES had not prevented the EEC to implement the agreements with the Mediterranean countries on the understanding that the practical effects of their implementation would be kept under review, and further that the formation of customs unions or free-trade areas between the EEC and the Mediterranean countries concerned had not yet been realized since the examination of the agreements by the CONTRACTING PARTIES;

the balance of rights and obligations underlying Articles I and XXIV of the General Agreement had been upset to the disadvantage of the contracting parties not parties to these agreements. The United States was therefore entitled to offsetting or compensatory adjustment to the extent that the grant of the preferences had caused substantial adverse effects to its actual trade or its trade opportunities;

(h) Tariff preferences were obviously less favourable to a non-beneficiary exporter but the existence of the EEC tariff preferences in itself could not be presumed in the light of the conclusions contained in (d) and (f) above, as *prima facie* evidence of injury to trade or of adverse effect on trade based on past precedents;

(i) It could not be concluded on the basis of available evidence, that the EC tariff preferences accorded to certain Mediterranean countries on fresh tangerines, fresh grapefruit, dry pectin, grapefruit segments, orange juice, grapefruit juice and lemon juice had operated in practice to affect adversely US trade in these products with the EC and upset the competitive relationship between the United States and the EC's Mediterranean suppliers;

(j) On the basis of all the available evidence taken together, it appeared that the EC tariff preferences accorded to certain Mediterranean countries on fresh oranges and fresh lemons had operated in practice to affect adversely US trade in these products with the EC and upset the competitive relationship between the United States and the EC's Mediterranean suppliers;

(k) In light of the undetermined legal status of the EC agreements with certain Mediterranean countries under which the EC granted tariff preferences on certain citrus products and of the fact that the formation of a customs union or free-trade area had not yet been realized between the EC and the countries concerned, the benefit accruing to the United States directly or indirectly under Article I:1 has been impaired as a result of the EEC's application of tariff preferences on fresh oranges and lemons from certain Mediterranean countries in the sense of Article XXIII:1(b).

5.2 The Panel noted that the Working Party on the Australian Subsidy on Ammonium Sulphate had expressed in its report, which was adopted by CONTRACTING PARTIES, the view that there was "nothing in Article XXIII which would empower the CONTRACTING PARTIES to require a contracting party to withdraw or reduce a consumption subsidy such as that applied by the Government of Australia to ammonium sulphate" (BISD Vol.II/195, para. 16). This was in light of the consideration that this measure did not conflict with the provisions of the General Agreement and that there was no infringement of the Agreement by Australia (BISD Vol.II/194, para. 13). The Working Party further stated that "the ultimate power of the CONTRACTING PARTIES under Article XXIII is that of authorizing an affected contracting party to suspend the application of appropriate obligations or concessions under the General Agreement" (BISD Vol.II/195 para. 16). This being said, the Working Party proceeded to submit a draft recommendation to the CONTRACTING PARTIES calling on Australia to consider adjusting its subsidization in order to remove any competitive inequality between the two products concerned as "it happens that such action appears to afford the best prospect of an adjustment of the matter satisfactory to both parties".

5.3 The Panel did not feel it necessary for it to evaluate precisely the extent to which the US had suffered damage to its actual trade or trade opportunities, as a result of the EC tariff preferences on fresh oranges and lemons, or by what amount the preferences had upset the competitive relationship between the US and the Mediterranean countries. It believed such matters would best be left to the two parties concerned to establish, taking into account the Panel's findings and conclusions. Without

prejudice to other solutions the two parties might ultimately arrive at, the Panel wished to submit to the CONTRACTING PARTIES the following draft recommendation, which after its lengthy examination of the matters the Panel considered appeared to afford the best prospect of an adjustment of the matter satisfactory to both parties, taking into account the interests of all other parties concerned:

> "The EEC should consider limiting the adverse effect on US exports of fresh oranges and fresh lemons, as a result of the preferential tariff treatment the EEC has accorded to these products originating in certain Mediterranean countries. This could be accomplished by reducing the most-favoured-nation tariff rates applied by the EEC on fresh lemons; and as regards fresh oranges, by extending the period of application of the lower MFN tariff rates and/or reducing the MFN tariff rates. In view of the passage of time on this trade problem, the EEC should take action to this effect by no later than 15 October 1985."

ANNEX TO THE FACTUAL ASPECTS

Algeria

1. The Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria was signed on 26 April 1976. It entered into force on 1 November 1978 with effect from 1 January 1979. The trade provisions of the Agreement were implemented from 1 July 1976 by means of an Interim Agreement, which was signed on the same day as the Cooperation Agreement.

2. At the meeting of the Council on 14 June 1976 the parties to the Agreements informed the CONTRACTING PARTIES that they had signed the Agreements. The texts of the Agreements were circulated on 28 July 1976 (L/4380). A working party was set up by the Council at its meeting of 17 September 1976 to examine the provisions of the Agreements in the light of the relevant GATT provisions. The working party met on 3 and 17 October 1977.

3. The representative of the European Communities stated that the Cooperation Agreements concluded between the EC and respectively Algeria, Morocco and Tunisia were aimed at contributing to the economic and social development of the three Maghreb countries. Since 1 July 1976 the EEC had been respecting the obligations to eliminate duties and other restrictive regulations of commerce with respect to substantially all its trade with the Maghreb countries, as provided in the General Agreement for the formation of the free-trade area. For products other than those covered by the common agricultural policy, exports from the Maghreb countries enjoyed unrestricted access to the EC market (except temporarily for cork and refined petroleum products). The regime applied by the EC to agricultural imports from the Maghreb countries covered the major part, but not all of those products with certain conditions. Tariff concessions granted by the EEC on agricultural products, ranging between 20 and 100 per cent covered approximately 80 per cent of the three countries' exports. The Agreement did not at present comprise any reciprocal free trade obligation on the part of Algeria, Morocco and Tunisia, which undertook to maintain the regime existing at 1 July 1976, while retaining the possibility of strengthening its customs protection to the extent necessary for its industrialization and development needs. The Community explained that the Agreements were therefore consonant with the principles set in force in Part IV of the General Agreement. Nevertheless trade liberalization was the ultimate objective of the Agreements. The parties to the Agreements and several other members of the working party considered that the Agreements were entirely consistent with the objectives and the relevant provisions of the General Agreement taken as a whole, and that it constituted a positive contribution to solving the economic development problems of Algeria, Morocco and Tunisia.

4. Other members of the working party, however, held the view that it was doubtful that the Agreements were entirely compatible with the requirements of the General Agreement. One member of the working party noted that most agricultural products were excluded from the elimination or reduction of customs duties or quantitative restrictions provided for in the Agreements and that the Maghreb countries were not obliged to eliminate or reduce their customs duties or other regulations of commerce with respect to imports from the EEC. Those factors led his government to doubt whether the Agreements were compatible with Article XXIV. Moreover his authorities considered that the Agreements discriminated against other developing countries, which was inappropriate in the light of Part IV. He considered that it would have been better to include the preferential features of the Agreements in the EEC scheme under the Generalized System of Preferences. Another member stated that his authorities could not agree that Part IV or any Article thereof took precedence over the requirements of Article XXIV, the only exceptions to which appeared to be spelled out in Article XXIV:8(b).

5. The working party noted that the parties to the Agreements were prepared, in accordance with the GATT procedures, for examination of biennial reports on regional agreements, to supply all appropriate information on the implementation of the Agreements. Some of the members urged that the examination of those reports includes an analysis of the impact of the rules of origin on these countries' trade.

6. At its meeting of 11 November 1977 the Council adopted the reports of the working parties (L/4558, L/4559, L/4560, BISD 24S) and agreed that in accordance with the calendar for biennial reports the first biennial report on developments under these Agreements should be submitted in October 1979 (C/M/123).

7. The last communication from the parties regarding the status of the Cooperation Agreements is contained in L/5674 of 13 September 1384. It is noted therein that the provisions relating to trade contained in the Co-operation Agreements between the EEC and each of the Maghreb countries (Algeria, Morocco, and Tunisia) have been applied since 1 July 1976. Since then, the Maghreb countries have benefited from trade concessions for the greater part of their agricultural exports to the Community and from free access to the Community market for exports of raw materials and industrial products. As provided in the agreements, temporary exceptions to the rule of free access to the Community market have been discontinued since 1 January 1980. Their purpose was to allow the Community to re-establish customs duties on a few sensitive products (cork products and refined petroleum products) above a certain volume of imports (ceiling). Owing to the grave crisis of the textile industry in the EEC, however, Morocco and Tunisia have agreed, provisionally, to an administrative co-operation arrangement with the Community in regard to exports of certain textile products. By virtue of the provisions of the Agreements, the Maghreb partners of the Community have not so far granted it any concessions in conformity with the principles of Part IV of the General Agreement.

Cyprus

8. The Agreement establishing an Association between the European Economic Community and the Republic of Cyprus was signed on 19 December 1972 and entered into force on 1 June 1973. The Agreement provided for two stages, the first stage should have been completed on 30 June 1977 but has been subsequently extended.

9. The parties informed the CONTRACTING PARTIES at the meeting of the Council on 5 February 1973 that this Agreement had been signed as well as a Protocol consequent on the accession of the new member States to the EEC. The text of the Agreement was circulated on 13 June 1973 (L/3870). A Working Party was established at the meeting of the Council on 30 July 1973 to examine the provisions of the Agreement in the light of the relevant GATT provisions. The Working Party met on 22 February and on 21 March 1974.

10. The representative of the European Community presented the views of the parties to the Agreement that it should be considered to be in full conformity with Article XXIV of the General Agreement both as regards the first stage, which was aimed at the progressive elimination of obstacles to trade, and as regards the second stage which was aimed ultimately at the establishment of a customs union. In the view of the parties, the Agreement fully satisfied the requirements of Article XXIV:5 (a) in respect of duties and other regulations of commerce. The parties to the Agreement, supported by several other members of the working party, held the view that the Agreement conformed fully to Article XXIV of the General Agreement. The trade coverage was high and in the Joint Declaration, the European Economic Community had declared its readiness to examine these aspects of the arrangement. In fact the parties felt that at the end of the first stage it was more likely that the trade coverage would increase than decrease and that this would apply both to the agricultural and industrial

sectors. The rules of origin were neither restrictive nor unduly complex, and had been drawn up solely with the aim of identifying the origin of imported products.

11. However, some embers of the working party were of the opinion that the Agreement constituted a preferential trading arrangement that was not in conformity with Article XXIV of the General Agreement. Rather than a firm commitment to establish a customs union, there was only an undertaking to pursue a further elimination of trade obstacles; these did not constitute a plan and schedule, as required by Article XXIV:5(c). The trade coverage was clearly inadequate in the light of the requirement of Article XXIV:8(a)(i) that substantially all the trade between the parties be covered by the arrangement. Moreover, there was no assurance that the degree of liberalization of agricultural imports into the United Kingdom from Cyprus in the first stage would be maintained in the second stage. The rules of origin were unduly complex and restrictive with respect to third party suppliers, and appeared to have been drawn up without regard to the trade between the parties.

12. The working party could not reach any unanimous conclusions as to the compatibility of the Agreement with the provisions of the General Agreement. Thus, it felt that it should limit itself to reporting the opinions expressed to the competent parties of the CONTRACTING PARTIES (L/4009, BISD 21S/94-101).

13. During the consideration of the report of the working party by the Council at its meeting of 21 June 1974, the representative of the United States, *inter alia*, associated itself with the views expressed in the working party as regards the incompatibility of the Agreement with the GATT. The Council noted the differences of views expressed and adopted the report (C/M/98).

14. The last communication from the parties regarding the status of the Association is contained in L/5668 of 31 July 1984. It is noted therein that industrial products originating in Cyprus are admitted for import by the Community without any quantitative restrictions and are exempt from customs duties, with the exception of two textile products which are imported free of customs duties within the limits of annual Community tariff quotas. Cyprus, for its part, applies tariff reductions of 35 per cent in respect of most of its imports originating in the Community. Pending negotiations to work out trade arrangements on a contractual basis, both parties have applied the 1981 trade arrangements on an autonomous basis during 1982 and the early part of 1983. A Protocol laying down trade arrangements to be applied between the Community and Cyprus during 1983 was signed in July 1983, within the context of the decision adopted by the EEC-Cyprus Association Council on 24 November 1980, establishing the process into the second stage of the Association Agreement (ref. L/5379). This Protocol, in particular, provided for certain improvements in the trade arrangements for imports into the Community of a number of Cypriot agricultural products. Pending negotiations for a Protocol laying down the conditions and procedures for the implementation of Article 2(3) of the Association Agreement, which provides for a further elimination of obstacles to trade between the parties and the adoption by the Republic of Cyprus of the Common Customs Tariff, both parties have been applying the 1983 trade arrangements on an autonomous basis since 1 January 1984.

Egypt

15. The Agreement between the European Economic Community and the Arab Republic of Egypt was signed on 18 December 1972 and entered into force on 1 November 1973. The Agreement provided for a first stage to last five years and for decisions to be taken in a second stage.

16. At the meeting of the Council on 5 February 1973 the parties informed the CONTRACTING PARTIES that they had signed an Agreement as well as a Protocol consequent on the accession of new member States to the EEC. The text of the Agreement was circulated on 26 October 1973 (L/3938/Add.1). At the meeting of the Council on 19 October 1973 a working party was set up to

examine the provisions of the Agreement in the light of the relevant GATT provisions. The Working Party met on 17 May and 1 July 1974.

17. The representatives of the Community and of Egypt considered that the agreement was fully consistent with the spirit and letter of the General Agreement, in particular Article XXIV:5-9, and constituted an interim agreement leading to the formation of a free-trade area as provided in Article XXIV:5(b). The parties stated that the developments towards economic integration and the region concerned, the political will of the parties to achieve the declared objectives of the Agreement to establish free trade, and the actual provisions of the Agreement in its first stage together with the intention to take further decisions in due course all constituted elements substantiating this view. It would not have been possible through action in the context of the Generalized System of Preferences to achieve the objectives that the parties had set for themselves. The parties accordingly considered that they were justified under Article XXIV to depart from the provisions of the General Agreement to the extent necessary to permit the formation of the free-trade area.

18. However, a number of members of the working party were of the opinion that no plan and schedule as provided for in paragraph 5 of Article XXIV existed. Without a complete plan and schedule, it would be impossible for the CONTRACTING PARTIES to make a finding with regard to whether the agreement was likely to result in a free-trade area within a reasonable period, and, if necessary, to make recommendations. Furthermore, the percentages of trade did not cover substantially all the trade between the parties as required by paragraph 8(b) of Article XXIV, and in view of the widely differing stages of industrialization between the countries involved, these members did not consider that GATT compatibility could presently be established for the Agreement. Some of these members suggested that it would have been preferable for the EEC to take account of Egypt's interests through its GSP.

19. The working party could not reach any unanimous conclusions as to the compatibility of the Agreement with the provisions of the General Agreement. It therefore considered that it should limit itself to reporting the opinion expressed to the competent bodies of the CONTRACTING PARTIES. (L/4054, BISD 21S/102-107)

20. During the meeting of the Council on 19 July 1974, the representative of the United States, *inter alia*, pointed out that it had expressed reservations on the Agreement which was stated in the report (L/4054, BISD 21S/102 to 107). The Council noted the differences of view expressed and adopted the report (C/M/99).

21. At the meeting of the Council on 23 May 1977, the CONTRACTING PARTIES were informed that an Interim Agreement between the European Economic Community and the Arab Republic of Egypt had been signed on 18 January 1977. This Interim Agreement was signed at the same time as a new Cooperation Agreement. Pending completion of the procedures for ratification of the Cooperation Agreement, the provisions regarding trade contained therein were given advance implementation with effect from 1 July 1977 by the conclusion of the Interim Agreement. In a communication from the parties circulated on 15 July 1977 (L/4521) it was noted that a copy of the text would be sent to each contracting party. At its meeting of 26 July 1977 the Council set up a working party to examine the provisions of the Agreement in the light of the relevant GATT provisions. The working party met on 19 and 27 April 1978.

22. The representative of the European Economic Community recalled that the Cooperation Agreements that the EEC had signed on 18 January 1977 with the Arab Republic of Egypt, the Hashemite Kingdom of Jordan, the Syrian Arab Republic[9] and, on 3 May 1977, with the Lebanese Republic had

[9]The EC agreement with Syria comprises no EC preferences for citrus products.

followed other agreements, virtually identical in form, already concluded with the three countries of the Maghreb. These Agreements fell within the context of the global and balanced approach of the European Community *vis-a-vis* the countries of the Mediterranean basin. The European Economic Community, as an economically more developed entity, had conceived its obligations in the form of a regime affording unrestrictive access to its market, as provided in the General Agreement for the formation of the free-trade area. Since the entry into force of the trade provisions of the four agreements, the EEC had been observing the obligation to eliminate duties and other restrictive regulations of commerce with respect to substantially all its trade with Egypt, Jordan, Syria and Lebanon respectively. For the products other than those covered by the common agricultural policy, these four countries' exports enjoyed unrestricted access to the EEC market. Customs duties and quantitative restrictions on imports as well as measures with equivalent effect had been eliminated as from 1 July 1977, with a few temporary exceptions. On the agricultural side, EC imports from these four countries enjoyed tariff concessions varying between 40 and 80 per cent. Taking into account the current level of development and economic development needs for these four countries, and likewise the need to ensure a better balance in their trade with the EC, the Agreements did not at present comprise any reciprocal free-trade obligation. Exports by the Community to these countries will enjoy most-favoured-nation treatment, although exceptions could nevertheless be provided in favour of developing countries, The four countries of the Maghreb undertook to maintain *vis-a-vis* the EEC the regime existing at the date of entry into force of the interim agreements, while retaining the possibility of strengthening their customs protection to the extent necessary for their industrialization and development needs. In the view of the parties to the Agreements therefore, the Agreements were consonant with the spirit and the letter of Part IV of the General Agreement. Nevertheless trade liberalization was the ultimate objective of the Agreements. The parties to the Agreements considered that the Agreements were entirely consistent with the objectives and the relevant provisions of the General Agreement taken as a whole and that they constituted a positive contribution to solving the economic development problems of the Maghreb countries.

23. As regards the possibility of consultations with the CONTRACTING PARTIES concerning the incidence of the Agreements on their trade interests, which had been mentioned by some members of the working party, the spokesman for the European Communities stated that nothing prevented these countries from invoking the relevant provisions of the General Agreement, such as Article XXII and XXIII. The representative of Egypt said that his government was also prepared to enter in consultation under Article XXII and XXIII should the need rise.

24. Other members of the working party however held the view that it was doubtful that the Agreements were entirely compatible with the requirements of the General Agreement. Some members expressed the view that the concessions under the Agreements should have been extended to developing countries generally. It was stated that Part IV had been drawn up on an MFN basis for all developing countries and did not allow for a selective application to some developing countries but not to others. One member did not share the view that Part IV of the General Agreement took precedence over Article XXIV. Certain gaps in the trade coverage particularly as regards agricultural exports to the EC were pointed out.

25. The working party noted that the parties to the Agreements were prepared in accordance with the GATT procedures for examination of biennial reports on regional agreements, to supply all appropriate information on the implementation of the Agreements. Some of these members urged that the examination of these reports include an analysis of the impact of the rules of origin on third countries' trade.

26. At its meeting of 17 May 1978, the Council adopted the reports relating to the Agreements between the European Communities and Egypt, Syria, Jordan and Lebanon (L/4660, L/4661, L/4662, L/4663, all of which are contained in BISD 25S). The Council also agreed that the contracting parties

concerned should submit a report on developments under these Agreements in April 1980 in accordance with the procedures for the examination of biennial reports on regional agreements (C/M/125).

27. The last communication from the parties regarding the Cooperation Agreements between the EEC and each of the Machrek countries (Egypt, Jordan, Lebanon, Syria) is contained in L/5674 of 13 September 1984. It is noted therein that the provisions relating to trade contained in these Agreements have been applied since 1 July 1977. Since then, the Machrek have benefitted from trade concessions for the greater part of their agricultural exports to the Community and from free access to the Community market for exports of raw materials and industrial products (except, in the case of Egypt, products coming under the Multifibre Agreement). As provided in the agreements, temporary exceptions to the rule of free access to the Community market have been discontinued since 1 January 1980. Their purpose was to allow the Community to re-establish customs duties on a few sensitive products (refined petroleum products, phosphate fertilizers, and certain textile products) above a certain volume of imports (ceiling). Owing to the grave crisis of the textile industry in the EEC, however, Egypt has agreed, provisionally, to an administrative co-operation arrangement with the Community in regard to exports of certain textile products. By virtue of the provisions of the Agreements, the Machrek partners of the Community have not so far granted it any concessions in conformity with the principles of Part IV of the General Agreement.

Israel

28. In a Communication dated 23 July 1969 and circulated to contracting parties on 5 August 1969, the European Economic Community requested a waiver under Article XXV:5 from its obligations under Article I of the General Agreement, in order to reduce customs duties in respect of certain citrus fruits originating from Israel and Spain (L/3239). The preferences were put into force on 1 September 1969. At its meeting on 10 September 1969 the Council established a working party to examine the EC request. The working party met on 24-25 September, 3-4 and 29 November 1969. The deliberations of the working party showed that there was a distinct divergence of views between the EEC on the one hand, and the great majority of the non-beneficiaries which took part in the discussion on the other, as to whether the import regime and the preferential tariff treatment it included would have an effect on the trade of third countries, as well as to the prejudicial effect such preferences would have for the integrity of the General Agreement. The working party did not endeavour to prepare the draft text of a waiver but limited itself to setting out in its report the facts of the case as well as the views expressed on trade effects, legality and principle (L/3281, BISD 17S/61-69).

29. On 29 June 1970 an Agreement was concluded between the European Economic Community and the State of Israel, which entered into force on 1 October 1970. The text of the Agreement was circulated in the GATT on 7 September 1970 (L/3428 and Corr.1). At its meeting of 29 September 1970 the Council set up a working party to examine the provisions of the Agreement in the light of the relevant GATT provisions. The Working Party met on 13 July and 15 September 1971.

30. The representative of the European Communities stated that the Agreement was, within the meaning of Article XXIV:5(b) an interim agreement leading to the formation of the free-trade area. The parties to the Agreement, together with a number of other members of the working party, maintained the contention that the Agreement was in conformity with Article XXIV:5-8. They pointed out that the elimination of obstacles to substantially all the trade as from the initial stage of the interim agreement was not an essential condition under the provisions of Article XXIV. Consequently they considered that the parties were justified, under Article XXIV:5, to depart from the provisions of the General Agreement to the extent necessary to permit the formation of this free-trade area.

31. However, a number of the members of the Working Party were of the opinion that no plan and schedule within the meaning of Article XXIV were included in the Agreement. Without such a

plan and schedule, no study of the implementation of the agreement as required by Article XXIV:7 could be undertaken, and any reliable assessment of compliance with the important criterion of "reasonable length of time" was excluded. Moreover, this precluded in their view the possibility of recommendations under paragraph 7(b), since that paragraph assumed the existence of a plan and schedule. In the view of these members of the working party, the Agreement being a preferential arrangement was not in conformity with the basic principles and fundamental requirements of Article XXIV:5-8. Some of these members, however, were willing to accept the preferences deriving from the Agreement on a provisional basis since the perspectives of the gradual implementation of a general free-trade area were relatively promising. Their provisional acceptance was, however, conditional upon progress on liberalization to be made and to be regularly reported on by the parties to the Agreement.

32. Having regard to the differences of view expressed on the legal issues involved, the members of the working party reserved their rights under the General Agreement.

33. At the meeting of the Council on 6-7 October 1971, several representatives including the United States indicated that their previous comments during the meeting as regards the Agreement between the EEC and Spain also applied to the EEC Agreement with Israel (see paragraph 77). The Council noted the differences of view expressed on the legal issues involved, and noted the willingness of the parties to the Agreement to provide regularly information on the operation of the Agreement (C/M/73). The Council adopted the report of the working party (L/3581, BISD 18S/156-166).

34. At the meeting of the Council on 2 June 1975, the CONTRACTING PARTIES were informed that on 11 May 1975 the European Communities and Israel had concluded a new agreement. This Agreement entered into force on 1 July 1975. The text of the Agreement was circulated on 9 July 1975 (L/4194 and Add.1). At its meeting of 11 July 1975 the Council set up a working party to examine the provisions of the Agreement in the light of the relevant provisions. The working party met on 10 and 18 June 1976.

35. The representative of the European Communities explained that the new agreement was designed to replace the earlier 1970 Agreement and was in the context of a global approach for Mediterranean policy that had been decided by the EEC in 1972. With respect to the industrial sector, the Agreement provided for the complete abolition of tariff and quota barriers in respect of all industrial products, to be achieved by 1 July 1977 in respect of imports by the EEC from Israel (except for certain petroleum, textile and chemical products on which surveillance measures would be eliminated at the end of 1979), As regards imports by Israel from the EC, customs duties would be abolished on January 1980 in respect of a list comprising 60 per cent of Israel's imports from the Community and on 1 January 1985 for the remaining 40 per cent. The two parties could agree to postpone this date to 1 January 1989. Furthermore the Community had made substantial tariff reductions covering approximately 80 per cent of its agricultural imports from Israel. The parties to the Agreement, supported by some members of the working party held the view that the Agreement conformed fully with Article XXIV of the General Agreement, since it covered "substantially all the trade" and included a plan and schedule for the progressive attainment of free trade with a reasonable length of time.

36. However, some other members held the view that it was doubtful that the Agreement was compatible with the requirements of Article XXIV. One member stated that his authorities viewed the Agreement as a preferential and discriminatory industrial trade agreement. He referred to the very restrictive character of the rules of origin as a violation of the Article XXIV:5(b) requirement that they not be more restrictive towards third countries than before. Consequently his government reserved its rights under the General Agreement, notably those provided for in Article I, with respect to its trade interest, including exports of citrus fruits.

37. The working party therefore limited itself to reporting the opinions expressed on the issues (L/4365, BISD 23S/55 to 64). At its meeting of 15 July 1976, the Council adopted the report without comment (C/M/115).

38. The last communication from the parties regarding the status of the Agreement is contained in L/5531 of 26 August 1983. It is noted therein that on 1 July 1981 and 1 January 1983 the Israeli Government made reductions, to 10 per cent and 20 per cent respectively, in the customs duties and charges having equivalent effect on certain industrial products originating in the EEC. The total reduction hitherto in respect of these products has thus reached 50 per cent. In respect of the other industrial products covered by the Agreement, duties and charges have been entirely eliminated by Israel *vis-à-vis* the EC on 1 January 1980. On 1 July 1977, the Community for its part had entirely eliminated the duties and charges applicable to Israeli industrial products, in addition to the tariff reductions granted on most of Israel's agricultural exports. It is also noted that following the accession of Greece to the Community on 1 January 1981, the provisions of the Agreement were extended to trade between that country and Israel.

Jordan

39. The Cooperation Agreement between the European Economic Community and the Hashemite Kingdom of Jordan was signed on 18 January 1977 and entered into force as of 1 November 1979 with effect from 1 January 1979. The parties also signed on that day an Interim Agreement by which the trade provisions of the Cooperation Agreement were implemented from 1 July 1977.

40. At the meeting of the Council on 23 May 1977, the CONTRACTING PARTIES were informed that the Interim Agreement had been signed. In a communication circulated on 15 July 1977, the EEC advised that a copy of the text would be sent in due course to each contracting party (L/4523). A working party was set up by the Council at its meeting of 26 July 1977 to examine the provisions of the agreement in the light of the relevant GATT provisions. The working party met on 19 and 27 April 1978. This working party was separate from the working parties established to examine the EC Agreements with Egypt, Syria and Lebanon respectively. However, these agreements being similar were discussed more or less together. Accordingly, please refer to paragraphs 22 to 25 for relevant extracts from the discussion and conclusions of the working party and to paragraph 26 for Council adoption of the report of the working party on Jordan (L/4662). Similarly the last communication regarding the application of the Cooperation Agreement between EEC and Jordan also related to the EEC agreements with the other Mashraq countries. Please refer to paragraph 27 for relevant extracts from this communication.

Lebanon

41. The Agreement between the European Economic Community and the Lebanese Republic was signed on 18 December 1972 and entered into force as of 1 January 1975.

42. At the meeting of the Council on 5 February 1973, the CONTRACTING PARTIES were informed that this Agreement had been signed together with a Protocol consequent on the accession of new member States to the EEC.

43. The text of the Agreement was transmitted to the GATT and circulated on 8 March 1974 (L/4002). A working party was set up by the Council at its meeting of 28 March 1974 to examine the provisions of the Agreement in the light of the relevant GATT provisions. The working party met on 11 and 13 December 1974.

44. In the opinion of the parties to the Agreement it constituted an interim agreement within the meaning of Article XXIV:5(b) leading to the formation of a free-trade area. The Agreement set forth the measures to be taken during the first stage and stipulated how the modalities for pursuing the free-trade objective were to be defined later, thus setting in motion a process aimed at elimination of obstacles to substantially all the trade between the two parties. The parties to the Agreement, supported by some members of the working party held the view that it conformed fully with Article XXIV:5-9.

45. However, other members of the working party were of the view that it was not possible at this time to establish whether the Agreement conformed fully to the requirements of the GATT. They considered that the Agreement did not contain a plan and schedule as required by Article XXIV:5(c) and 7(b). There was no binding commitment in the Agreement that a free-trade area would be established after the expiry of the first stage of five years or in any other specified time period. One member questioned whether Article XXIV would permit treating non-contracting parties more favourably than other contracting parties. There was also the view that the rules of origin were unduly restrictive.

46. The working party could not reach any unanimous conclusions as to the compatibility of the Agreement with the General Agreement. It therefore considered that it should limit itself to reporting the opinion expressed to the competent bodies of the CONTRACTING PARTIES (L/4131, BISD 22S/41-47).

47. The Council noted the differences of views expressed and adopted the report. It agreed that the parties should be invited to submit in April 1977 the first biennial report (C/M/103).

48. A new Cooperation Agreement between the European Economic Community and the Lebanese Republic was signed on 3 May 1977 and entered into force as of 1 November 1978. The parties also signed on that day an Interim Agreement by which the trade provisions of the Cooperation Agreement were implemented from 1 July 1977.

49. At the meeting of the Council on 23 May 1977, the CONTRACTING PARTIES were informed that the Interim Agreement had been signed. In a communication circulated on 15 July 1977, the EC advised that a copy of the text would be sent in due course to each contracting party (L/4524). A working party was set up by the Council at its meeting of 26 July 1977 to examine the provisions of the Agreement in the light of the relevant GATT provisions. The working party met on 19 and 27 April 1978.

50. This working party was separate from the working parties established to examine the EC Agreements with Egypt, Jordan and Syria, respectively. However, these Agreements, being similar, were discussed more or less together. Accordingly, please refer to paragraphs 22 to 25 for relevant extracts from the discussion and conclusions of the working party and to paragraph 26 for Council adoption of the report of the working party on Lebanon (L/4663). Similarly the last communication regarding the application of the Cooperation Agreement between EEC and Lebanon also related to the EEC agreements with the other Mashreq countries. Please refer to paragraph 27 for relevant extracts from this communication.

Malta

51. The Agreement establishing an Association between the European Economic Community and Malta was signed on 5 December 1970 and entered into force on 1 April 1971. The Agreement provided for two stages. The duration of the first stage was to have been five years but it has been since extended by an agreement and additional protocol.

52. In March 1971, the parties notified the Agreement to the CONTRACTING PARTIES. The text of the Agreement was contained in L/3512. A working party was set up by the Council at its meeting of 21 April 1971 to examine the provisions of the Agreement in the light of the relevant GATT provisions (C/M/68). The working party met on 9 and 24 February 1972.

53. The parties to the Agreement stated that it was an interim agreement leading to the formation of the customs union, within the meaning of Article XXIV:5, in respect of both its immediate objectives - the progressive elimination of obstacles to trade - and its ultimate objective, the establishment of a customs union in two stages. Supported by several members of the Working Party, the parties to the Agreement considered that the Agreement, as an interim agreement, met the requirements of paragraphs 5-9 of Article XXIV. The Agreement provided a realistic plan and schedule on the basis of which the customs union would come about within a reasonable length of time compatible with the development of Malta's economy.

54. However, some members of the working party were of the opinion that neither with regard to the plan and schedule, nor with respect to trade coverage did the Agreement comply fully with the provisions of Article XXIV.

55. Having regard to the differences of view expressed on the legal issues involved, the members of the working party reserved their rights under the General Agreement.

56. At its meeting of 29 May 1972 the Council noted the differences of view which had been expressed on the legal issues involved and that contracting parties had reserved their rights under the General Agreement (C/M/77). It also noted the assurance of the parties to the Agreement that they would submit reports on its implementation. The Council adopted the report of the working party (L/3665, BISD 19S/90-96).

57. The last communication from the parties regarding the status of the Association is contained in L/5667 of 31 July 1984. It is noted therein that industrial products originating in Malta are admitted for import by the Community without any quantitative restrictions and are exempted from customs duties. Malta, for its part, applies tariff reductions of 35 per cent in respect of substantially all imports originating in the Community. Pending negotiations to work out trade arrangements beyond 31 December 1980 on a contractual basis, the trade arrangements of 1980 have been applied by both parties on an autonomous basis since 1 January 1981.

Morocco

58. The Agreement of Association between the European Economic Community and the Kingdom of Morocco was signed on 31 March 1969.

59. On 11 July 1969, the EC notified the CONTRACTING PARTIES of this Agreement, the full text of which was circulated on 22 September 1969 (L/3227/Add.1 and Corr.1). A working party was set up by the Council at its meeting of 23 July 1969, to examine the provisions of this Agreement (as well as a similar EC Agreement with Tunisia) in the light of the relevant GATT provisions. The working party met on 3-4 February and 16-17 March 1970.

60. The representatives of the parties, i.e. the Community, Morocco and Tunisia, recalled that in 1947, when the General Agreement came into force, Tunisia and Morocco had had free access for all their exports to France. At that time French exports were admitted duty free to Tunisia while Morocco applied to France the same treatment as to third countries. Those reciprocal trading systems had been confirmed by the provisions of Article I of the General Agreement. When the Treaty of Rome was signed, there was annexed to it a Declaration of Intention providing for negotiations with

a view to concluding agreements for economic association between these countries and the Community. The representative of the parties stated that the agreements of association represented a first step towards giving effect to this Declaration. They considered that the agreements were "interim agreements" leading to the formation of a free-trade area within the meaning of Article XXIV, paragraph 5(c). The historical background to the agreements, the political will for continuity from which they are derived, the declared objective of the parties to achieve free-trade areas, the provisions of the agreements confirming that objective and the actual content of the agreements regarding that objective, were so many elements substantiating a finding in the view of the parties that the agreements were in conformity with the letter and spirit of Article XXIV:5 to 9. Moreover, a free-trade area which met the conditions in paragraphs 5 to 9 would necessarily be in accordance with Article XXIV:4. On the basis of known precedents, they pointed out that the elimination of obstacles to substantially all the trade as from the initial stage of an interim agreement was not an essential condition under the provisions of Article XXIV. They recalled that most of the contracting parties had had recourse to the provisions of Article XXIV which constituted an integral part of the General Agreement. Experience showed that trade flows had not been disrupted; on the contrary, in general they had developed. Consequently the parties to the agreements considered that they were justified, under Article XXIV:5 to depart from the provisions of the General Agreement to the extent necessary to permit the formation of these two free-trade areas. Three members of the Working Party expressed their support for this view. Two members expressed doubts as to the validity of that legal argument but considered that the CONTRACTING PARTIES should take into consideration the particular historical background to the agreements.

61. A number of members of the Working Party were of the opinion that no plan and schedule, as provided for in paragraph 5 of Article XXIV, existed. Without a precise and complete plan and schedule, it would be impossible for the CONTRACTING PARTIES to make findings with regard to whether the agreements were likely to result in free-trade areas within a reasonable period and, if necessary, to make recommendations. Furthermore, the percentages of trade did not cover substantially all the trade between the parties as required by paragraph 8(b). The agreements, therefore, in their view did not comply with paragraphs 5-9 of Article XXIV. Several delegations expressed concern that the agreements might be trade-diverting instead of trade-creating. Representatives of developing countries felt that their most essential export interests would be jeopardized because Tunisia and Morocco exported similar products as these countries themselves did to the Community, which was their most important market. They maintained that the preferences should be extended to all developing countries. The view was expressed by some members of the Working Party that it would be appropriate to deal with the agreements under paragraph 10 of Article XXIV as Tunisia had only provisionally acceded while Morocco as yet had no relation with the GATT. The question of seeking approval under paragraph 10 might be considered by the parties to the agreements. In a decision under this paragraph, the CONTRACTING PARTIES would undoubtedly take into account the historical links between the parties, which the Working Party felt justified sympathetic consideration of the agreements. It was recommended by some members of the Working Party that the parties should take the necessary early steps to comply with the requirements of a detailed plan and schedule embodying a more satisfactory trade liberalization.

62. The working party considered that is should report the various views expressed on the question of the compatibility of the agreements with the General Agreement in order to permit a fruitful discussion by the competent bodies of the CONTRACTING PARTIES, (L/3379, BISD 8S/149-158).

63. The Council discussed the report at its meetings of 28 April 1970 (C/M/62) and 29 September 1970 (C/M/64). At the former meeting, nearly every member of the Council took part in the discussion. The parties to the Agreements and a number of representatives maintained that the Agreements were in accordance with the provisions of Article XXIV of the General Agreement. Many other representatives claimed that the Agreements fell short of the requirements of Article XXIV and sought another solution. The discussion concentrated on the one alternative solution proposed, namely,

the Canadian suggestion[10] (C/W/163) which had received broad support from a number of representatives. Between these two groups, a smaller group of countries basing themselves mainly on the close historical links, sought some form of intermediate solution.

64. The representative of the United States said that his government was opposed to preferential agreements which could damage the interests of all contracting parties over time. It was important to protect the system of non-discrimination which had served the world well, particularly the smaller countries. The United States did not consider that the Agreements were in conformity with Article XXIV. After careful consideration it was not even able to support the Canadian proposal at this stage. Moreover it reserved the right to take measures to secure compensation and adjustment in the event of damage to United States exports. The Chairman of the Council considered it unrealistic to attempt reconciliation of the conflicting views which had been expressed. He considered that the matter was not one which should be brought to a vote, but that a consensus should be sought. It was agreed that the item would be put on the agenda for the next meeting of the Council (C/M/62).

65. At the meeting of 29 September 1970, there remained widely divergent views in the Council on the matter. The representative of the United States said that his government had carefully re-examined its position and had held informal contacts with the Community. Its views, however, remained unchanged. The United States was opposed to all preferential agreements not fully consistent with the General Agreement and based this position on the desire to preserve the non-discriminatory world trading system. While individual association arrangements might bring short-term advantages to the parties involved, over the long term they damaged the interests of all contracting parties, particularly the smaller countries. In the view of the United States, the EEC association agreements with Tunisia and Morocco fell far short of the requirements of Article XXIV. They neither created nor provided for the future creation of free-trade areas. The agreements had received no support in the working party except from countries which had themselves concluded similar arrangements with the Community. He considered that the differences of view among contracting parties were still too great to enable the Council to reach any decision or conclusion at this time. He urged the Council to allow further time before coming to a decision. Finally, the United States reserved all its rights under GATT including the right of initiating action under Article XXIII. The Chairman stated that it was not possible at this time to achieve agreed conclusions. There was even disagreement as to whether the matter was to be kept for further consideration. There was consensus, however, that on the request of any delegation the matter could be placed again on the agenda of a future Council meeting. In the meantime individual contracting parties fully preserved their rights under the relevant provisions of the General Agreement (C/M/64).

66. During its meeting of 19 December 1972, the Council discussed and took note of a report (L/3769) prepared by the parties to the Association Agreements between the EEC on the one hand and Morocco and Tunisia respectively on the other (C/M/83). At that meeting, *inter alia*, the United States stated that its position on the agreements had not changed and it continued to regard these agreements as inconsistent with Article I and not justified under Article XXIV. The US delegation was opposed to arrangements of this type and reserved all its rights under the GATT.

67. The EEC notified to the GATT under Article XXIV:7 the text of a Protocol between the EEC and Morocco consequent on the accession of the new member States to the EEC. The text was circulated on 23 August 1973 (L/3907).

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[10]The operative portion of the Canadian suggestion was that the Council decided that the Agreements in force between the EEC and Tunisia and Morocco be maintained subject to the condition that the CONTRACTING PARTIES keep the operaiton of the Agreements under review on the basis of annual reports by the parties, that there be consultaitons with a view to arriving at a mutually acceptable settlement, and that the parties to the Agreements inform the CONTRACTING PARTIES of any modification of the agreements and consult with them prior to implementation. The decision was intended to expire no later than 1974 and was not to be construed as affecting the GATT rights of any contracting parties.

68. A new Cooperation Agreement between the European Economic Community and the Kingdom of Morocco was signed on 27 April 1976 and entered into force on 1 November 1978 with effect from 1 January 1979. On the same day, an Interim Agreement was also signed which implemented the trade provisions of the Cooperation Agreement as of 1 July 1976.

69. At that meeting of the Council on 14 June 1976 the CONTRACTING PARTIES were informed that these Agreements had been signed, the texts of which were circulated on 28 July 1976 (L/4381). A working party was set up by the Council at its meeting of 17 September 1976 to examine the provisions of the Agreements in the light of the relevant GATT provisions. The working party met on 3 and 17 October 1977.

70. This working party was separate from the working parties established to examine the EC Cooperation Agreements with Algeria and Tunisia, respectively. However, these Agreements, being similar, were discussed more or less together. Accordingly, please refer to paragraphs 3 to 5 for relevant extracts from the discussion and conclusions of the working party and to paragraph 6 for Council adoption of the report of the Working party on Morocco (L/4560). Similarly, the last communication regarding the application of the Cooperation Agreement between the EEC and Morocco also related to the EEC agreements with the other Maghreb countries. Please refer to paragraph 7 for relevant extracts from this communication.

Spain

71. In a communication dated 23 July 1969 and circulated to contracting parties on 5 August 1969, the European Economic Community requested a waiver under Article XXV:5 from its obligations under Article I of the General Agreement, in order to reduce customs duties in respect of certain citrus fruits originating from Israel and Spain (L/3239). The preferences were put into force on 1 September 1969. At its meeting on 10 September 1969 the Council established a working party to examine the EC request. The working party met on 24-25 September, 3-4 and 29 November 1969. Please refer to paragraph 28 for extracts of the deliberations of this working party.

72. On 29 June 1970 an Agreement was concluded between the European Economic Community and Spain, which entered into force on 1 October 1970. The Agreement was to operate in two stages, the first being of at least six years. The text of the Agreement was circulated in the GATT on 7 September 1970 (L/3427 and Corr.1). At its meeting of 29 September 1970 the Council set up a working party to examine the provisions of the Agreement in the light of the relevant GATT provisions. The working party met on 15 July and 14 September 1971.

73. The parties to the Agreement stated that they had undertaken to remove tariffs and quotas in a first stage, and to take further steps in a second stage to achieve full free trade. In their view, the Agreement met the requirements under Article XXIV:5 for an interim agreement leading to the formation of a customs union or a free-trade area. The minimum objective was the creation of a free-trade area, likely at a later stage to be developed into a customs union. The vast majority of industrial and agricultural products, other than ECSC products, were affected by the gradual elimination of tariffs and non-tariff barriers in the first stage. The parties to the Agreement, supported by other members of the Working Party, considered that the Agreement fully met the requirements of Article XXIV:5-8. They stated that the objective of the Agreement was clearly set forth in Article I of the Agreement. This objective, which was to form a free-trade area or a customs union, was not a mere statement of principle but a firm commitment undertaken by the parties. They noted further that in their view a restrictive interpretation of Article XXIV had not been followed on the occasion of the examination of other agreements which had not been found inconsistent with Article XXIV.

74. However, some members of the working party considered that the Agreement did not meet the requirements of Article XXIV and were of the view that it was, instead, a preferential agreement incompatible with the General Agreement. The main reason for their opinion was that the Agreement did not contain a plan and schedule for the formation of such an area within a reasonable length of time, as required by paragraph 5(c). Since the Agreement contained no definite commitments to eliminate duties on any particular product or products now dutiable, it was not possible for the working party to make an independent judgment as to whether "substantially all" trade in products of the parties to the Agreement would eventually be freed of duty. In their view it was clear that the Agreement itself did not provide for the elimination of duties but only for partial tariff reductions over a period of not less than six years; i.e. the Agreement included a plan and schedule for preferential but not for duty-free treatment. They stressed that an essential function of Article XXIV was to safeguard the trading interests of third countries against discrimination emanating from incomplete economic integration.

75. Other members of the working party said that they were also concerned about the observance of the rules of Article XXIV. They considered, however, that in examining integration agreements it was essential to appraise realistically the intentions of the parties to the agreements in the light of the information given by them and to establish a procedure for examining continuously that the arrangements developed in conformity with the stated objectives. Against that background, they had found that the Agreement between Spain and the Community could be accepted provisionally under Article XXIV.

76. Having regard to the differences of view expressed on the legal issues involved, the members of the working party reserved their rights under the General Agreement.

77. During the Council consideration of the report (L/3579, BISD 18S/166-174), a number of delegations spoke on the matter, reflecting the differing views expressed in the working party. The representative of the United States, referring also to the Agreement with Israel, declared that in his Government's view, the agreements failed to satisfy the requirements of Article XXIV for exceptional treatment as free-trade areas or as interim agreements leading to the formation of free-trade areas and therefore were in violation of the most-favoured-nation provisions of Article I. An attempt to justify the agreements under Article XXIV stretched a reasonable interpretation of that Article to the breaking point and placed in jeopardy, in his Government's view, the multilateral system of trade represented by the General Agreement. Neither of these agreements complied with Article XXIV criteria inasmuch as neither contained a plan and schedule for eliminating duties and other restrictions on trade on substantially all trade between the constituent territories within a reasonable period of time. The plan and schedule in the case of the agreement between the EEC and Israel was defective in three respects: there was no commitment to move toward eliminating duties and other restrictions on substantially all intra-trade; there was no time, reasonable or otherwise, specified for achievement of a free-trade area; and there was no commitment to eliminate duties and restrictions on trade where they now existed. The agreement between the EEC and Spain failed to meet the first two of these key tests and it was not clear whether the third test was met or not. His Government did not agree with the contention of the parties to these agreements that differences in their relative economic strengths meant that the GATT criteria of a "reasonable period of time" could be indefinite. The wording of Article XXIV did not justify such an interpretation which, if accepted, would invalidate Article I. His Government was perfectly willing to accept any arrangement between the EEC and Spain and Israel which was consistent with the rules of the General Agreement. It was only asking that these rules be scrupulously respected. In no way did his Government intend to call into question the basic concept of the EEC itself or of its proposed enlargement or to treat these particular agreements more stringently than others. The United States was of the view that the EEC agreements with Spain and Israel did not respect the rules of GATT and that benefits accruing to the United States under the General Agreement were being nullified and impaired by these agreements. His Government consequently intended to request

consultations with the European Economic Community, Spain and Israel under the provisions of paragraph 1 of Article XXIII to be held at an early date.

78. The Council noted the differences of view expressed on the legal issues involved and noted the willingness of the parties to the Agreement to provide regularly information on the operation of the Agreement. The Council adopted the report. (C/M/73)

79. The last communication from the parties regarding the status of the Agreement is contained in L/5516 of 1 July 1983. It is noted therein that the bulk of Spain's industrial products enter the Community without quantitative restrictions. In respect of nearly all of its imports of industrial products from Spain, the Community applies a tariff reduction of 60 per cent. Most Spanish agricultural products enjoy a tariff reduction upon import into the Community, varying according to the product between a 25 per cent reduction and duty-free admission. Since 1 January 1977 Spain, for its part, has been applying reductions in customs duty of between 25 and 60 per cent in respect of the bulk of its imports of industrial products originating in the Community. For products under quantitative restriction, Spain opens annual quotas *vis-a-vis* the Community. For agricultural products listed in Annex II to the Agreement, Spain grants the Community tariff reductions of between 25 and 60 per cent; in the case of butter and dairy products, it has undertaken to purchase in the Community, on normal market terms, a part of its total annual imports. The negotiations for the admission of Spain to the European Communities began officially on 5 February 1979. Since 1 January 1981 there has been autonomous implementation of a protocol that takes account of the accession of Greece to the European Community.

Tunisia

80. The Agreement of Association between the European Economic Community and Tunisia was signed on 31 March 1969 and entered into force as of 1 September 1969.

81. On 11 July 1969 the EC notified the CONTRACTING PARTIES of this Agreement, the full text of which was circulated on 22 September 1969 (L/3226/Add.1 and Corr.1). A working party was set up by the Council at its meeting of 23 July 1969 to examine the provisions of this Agreement (as well as a similar EC Agreement with Morocco) in the light of the relevant GATT provisions. The working party met on 3-4 February and 16-17 March 1970.

82. Please refer to paragraphs 60 to 62 for relevant extracts from the discussion and conclusions of this working party, to paragraphs 63 to 65 for Council discussion of the report of the working party on Tunisia and Morocco (L/3379, BISD 18S/149-158), and to paragraph 66 relating to the implementation of the Agreements.

83. The EEC notified to the GATT under Article XXIV:7 the text of a Protocol between Tunisia and the EEC consequent on the accession of new member States to the EEC. The text was circulated on 26 October 1973 (L/3940).

84. A new Cooperation Agreement between the European Economic Community and Tunisia was signed on 25 April 1976 and entered into force on 1 November 1978 with effect from 1 January 1979. On the same day, an Interim Agreement was also signed which implemented the trade provisions of the Cooperation Agreement as of 1 July 1976.

85. At the meeting of the Council on 14 June 1976 the CONTRACTING PARTIES were informed that these Agreements had been signed, the texts of which were circulated on 9 July 1976 (L/4379). A working party was set up by the Council at its meeting of 17 September 1976 to examine the provisions of the Agreements in the light of the relevant GATT provisions. The working party met on 3 and 17 October 1977.

86. This Working Party was separate from the working parties established to examine the EC Cooperation Agreement with Algeria and Morocco, respectively. However, these Agreements, being similar, were discussed more or less together. Accordingly, please refer to paragraphs 3 to 5 for relevant extracts from the discussion and conclusions of the Working Party and to paragraph 6 for Council adoption of the report of the Working Party on Tunisia (L/4558, BISD 24S/97-106). Similarly the last communication regarding the application of the Cooperation Agreement between the EEC and Tunisia also related to the EEC agreements with the other Maghreb countries. Please refer to paragraph 7 for relevant extracts from this communication.

Turkey

87. The Agreement establishing an Association between the European Economic Community and Turkey was signed in Ankara on 12 September 1963 and entered into force as of 1 December 1964. The Agreement provided for three stages: (i) a preparatory stage of around five years; (ii) a transitional stage of twelve years; and (iii) a final stage.

88. The parties communicated the text of the Agreement to the GATT on 20 February 1964, (L/2155), which was circulated on 12 March 1964 (L/2155/Add.1). A working party was set up by the Council at its meeting of 28 May 1964 to examine the provisions of the Agreement in the light of the relevant GATT provisions. The working party met on 21-25 September 1964.

89. The representatives of the Community and of Turkey considered that the provisions of the Agreement were not inconsistent with paragraphs 5 to 9 of Article XXIV. They maintained that the Agreement taken as a whole was "an interim agreement leading to the formation of a customs union" in the sense of Article XXIV:5 and that in accordance with paragraph 5(c), it contained a plan for the formation of a customs union "within a reasonable length of time".

90. Two members of the working party took the view that the Agreement did not provide a precise plan and schedule, that the preparatory and transitional stages were of uncertain duration and might be extended over too long a period; and that further, there was no certainty that the customs union would be consummated. Some members had serious misgivings with respect to the effects of the Agreement on their own interests. Other members of the working party considered they needed more time before giving their opinions; while some preferred to wait for the session of the CONTRACTING PARTIES before making observations.

91. In these circumstances, the working party considered it appropriate to confine its report to recording the information, clarifications and arguments which had been put forward (L/2265, BISD 13S/59-64).

92. During the consideration of the report by CONTRACTING PARTIES at their twenty-second session in March 1965, *inter alia*, the United States suggested that the CONTRACTING PARTIES should take no action but keep the matter under review in the light of new information to be provided by the parties (SR.22/9 p. 110). The CONTRACTING PARTIES agreed:

> "(a) to adopt the report of the working party;
>
> (b) to note the diverging views which exist with regard to the compatibility of the Ankara Agreement with the General Agreements;
>
> (c) to note that the parties to the Agreement are prepared to provide further information on the plan and schedule for the formation of the customs union and, in particular, to provide the text of the Additional Protocol;

(d) to keep the matter on the agenda of the CONTRACTING PARTIES, so that at any time when any contracting party feels that it would be useful to resume the examination of the provisions and implementation of the Agreement, it could bring the matter forward for discussion either during the course of a session or at a meeting of the Council which would also have the authority to submit the matter to a working party if so requested;

(e) to note that this would not prejudice the responsibilities of the CONTRACTING PARTIES under the General Agreement nor the rights of individual governments under relevant provisions of the GATT". (SR.22/11 p. 125).

93. An Additional Protocol and an Interim Agreement were concluded between the EEC and Turkey on 23 November 1970 and 27 July 1971, respectively and entered into force on 1 January 1973 and on 1 September 1971, respectively.

94. The parties notified to the CONTRACTING PARTIES the texts of the Additional Protocol and of the Interim Agreement and its Final Act in September 1971 (L/3554 and Add.1 and Add.2 thereof) pursuant to Article XXIV:7(c) and paragraph (c) above of the conclusions adopted by CONTRACTING PARTIES earlier. In the view of the parties, the Association had moved on to the transitional stage and the Additional Protocol defined the rhythm and modalities during this stage with a view toward the realization of the final objective of a customs union as had been provided for in the Ankara Agreement. At its meeting of 6 October 1971, the Council decided to set up a working party to examine the provisions of the Additional Protocol and Interim Agreement (C/M/73). The working party met in September 1972.

95. In the report of the working party, it was noted that there had been differences of views concerning the consistency of some provisions of the Additional Protocol with Article XXIV. The parties to the Agreement, supported by other members of the working party, asserted that the Additional Protocol fully met the requirements of Article XXIV. They were of the view that the difference in the stage of development between Turkey and the EEC should be given adequate consideration. In this connection, the representative of Turkey referred in particular to the special situation of developing countries as provided for in Part IV.

96. Some members of the working party, however, questioned whether the period for the formation of the customs union could be considered a "reasonable length of time", expressed doubts on the appropriateness of the requirements applicable to agricultural products, and criticized the discriminatory removal of quantitative restrictions and import deposits.

97. It was noted that in accordance with Article XXII:1 the parties would give sympathetic consideration to representations made by contracting parties (L/3750, BISD 19S/102-109).

98. During the consideration of the report of the working party by the Council at its meeting of 25 October 1972, *inter alia*, the United States indicated that its views were set forth in the report. The Council adopted the report and agreed to other conclusions along the lines of those agreed to in 1965 and referred to above, with the exception of paragraph (d) (C/M/81 p. 10).

99. On 30 June 1973, the EEC and Turkey signed a Supplementary Protocol consisting of adaptation and transition measures designed to extend the Association to the enlarged Community of the Nine. They also signed an Interim Agreement which implemented as of 1 January 1974, the trade provisions of the Supplementary Protocol pending its ratification. The texts of these instruments were communicated to the GATT and circulated on 17 January 1974 (L/3980).

100. At its meeting of 28 March 1984, the Council set up a working party to examine the provisions of these instruments. The working party met on 25 and 27 September 1974.

101. The parties to the Agreement supported by some members of the working party, held the view that the Supplementary Protocol conformed fully with the provisions of Article XXIV. The parties considered that the Supplementary Protocol was a further step towards Turkish adherence to the European Union and did not change the substance of the earlier instruments between the EEC and Turkey which had been submitted earlier to GATT procedures. The modalities and time period foreseen for the progressive formation of a customs union were based on a realistic assessment of the difference between the levels of development of the parties.

102. However, other members of the working party were of the view that the Supplementary Protocol as it now stood did not conform fully to the requirements of Article XXIV. In this connection, certain members referred to the length of the transition period (twelve years in principle with the possibility of twenty-two years, and with respect to certain products even longer), the absence of a plan and schedule for the elimination of duties on agricultural products, and the possibility of a discriminatory application or removal of quantitative restrictions.

103. The working party limited itself to reporting the opinions expressed (L/4086, BISD 21S/108-112).

104. The Council adopted the report on 21 October 1974, without comment (C/M/100).

105. The last communication from the parties regarding the status of the Association is contained in L/5389 of 22 October 1982. It is noted therein that as regards the industrial sector, the Agreement provides for the exemption of customs duties or equivalent charges on imports of Turkish industrial products into the Community, with the exception of certain petroleum and textile products (duties on which to be eliminated over a twelve-year period from 1973 to 1985). In the agricultural sector, the EEC took on 1 January 1981, the first step in eliminating progressively customs duties on imports of agricultural products originating in Turkey: an abolition of all duties not exceeding 2 per cent and a 30 per cent reduction on all other duties. The second phase, starting on 1 January 1983, provides for a 60 per cent reduction of duties. There are Quantitative conditions or seasonal calendars for certain products. Owing to economic difficulties, Turkey has had to postpone the tariff reductions envisaged in favour of the EEC and the alignment of its customs tariff with the Common Customs Tariff.