parties concerned and with other contracting parties who had indicated an interest in the matter, and in consultation with the two parties concerned, to

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

| 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 | | | | | | | | |
| C<br>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<br>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 | 55+0.13 | 16.8 | 42 + L | 42.0 | 16.8 | 42 | 42 | 16.8 |
| ex 2. | | | | | | | | |

TBT-0 1 -1 -0 38316.56 144.48 Tm/E20 8 T55 -0.18 ETBT-0 1 -1 -0 42specific16.56 144.48 Tm/F20 8 T55 16.814 66.48 Tm0 g 4 20 gravit56 47.04 0.296 re f303.6 55 16.8 7 ETBT-0 1 -1 -0.48 144.48 Tm/

| 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<br>(aa) containing added sugar | 18 B + ads | 18 + ads | 18 + ads | 18 + ads | 18 + ads | 18 + ads | 18 + ads | 7.2 + ads |
| (bb) Other<br>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<br>(aa) with an added sugar content exceeding 30% by weight | 19 B + ads | 5.7 + ads | 19 + ads | | | | | |

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 |

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

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 |
|---|---|---|---|---|
| O8.02 | | | | |

| 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 |
|---|---|---|---|---|

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

2.9 The citrus preferences described above were granted to Mediterranean countries under agreements which were notified and examined

(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 2.4

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 | | | | | | | | | | | | | |
| 1967 | 65 | 1,492 | | | | | | | | | | | | | |
| 1968 | 10 | 1,494 | | | | | | | | | | | | | |
| 1969 | 70 | 1,575 | | | | | | | | | | | | | |
| 1970 | 41 | 1,679 | | | | | | | | | | | | | |
| 1971 | 33 | 1,527 | | | | | | | | | | | | | |
| 1972 | 36 | 1,671 | | | | | | | | | | | | | |
| 1973 | 31 | 1,798 | | | | | | | | | | | | | |
| 1974 | 35 | 1,576 | | | | | | | | | | | | | |
| 1975 | 100 | 1,515 | | | | | | | | | | | | | |
| 1976 | 69 | 1,456 | | | | | | | | | | | | | |
| 1977 | 53 | 1,434 | | | | | | | | | | | | | |
| 1978 | 30 | 1,446 | | | | | | | | | | | | | |
| 1979 | 19 | 1,43 181.68 Tm/F20 8 Tf(1,BT-0 1 -1 -0 217.2 181.68 Tm/F20 8 -0 177.36 181.68 Tm/0-0 1 -1 -0 247.2 147.12 Tm/F20. 8 -0 177.36 181.68 Tm 8 Tf(53) TjETBT33) TjET0 g 144.436 181.68 T | | | | | | | | | | | | | |
| 1980 | 63 | | | | | | | | | | | | | | |
| 1981[1] | 20 | | | | | | | | | | | | | | |
| 1982[1] | 3 | | | | | | | | | | | | | | |

| Commodity and Year | EC-6: Excluding Intra-EC Trade | EC-9: Excluding Intra-EC Trade | EC-9: Including Intra-EC Trade |
|---|---|---|---|

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

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.

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

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] | | | | |

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 | | | |
| 1968 | 138 | | | | |
| 1969 | 68 | | | | |
| 1970 | 139 | | | | |
| 1971 | 56 | | | | |
| 1972 | 38 | | | | |
| 1973 | 51 | | | | |
| 1974 | 71 | | | | |
| 1975 | 225 | | | | |
| 1976 | 8 | | | | |
| 1977 | 12 | | | | |
| 1978 | 5 | | | | |
| 1979 | 39 | | | | |
| 1980 | 105 | | | | |
| 1981 | 41 | | | | |
| 1982 | 7 | | | | |
| 1983 | 3 | | | | |

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

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 | | |
| United States | 43 | 125 | 96 | 70 | 34 | 20 | 80 | 25 | | |
| Brazil | 23 | 44 | 23 | 27 | 31 | 55 | 43 | 24 | | |
| South Africa | 228 | 224 | 195 | 176 | 216 | 192 | 185 | 177 | | |

TABLE 2.15
EEC IMPORTS OF FRESH SWEET ORANGES (in '000 tons)

| Season | Importer | Imported free |
| --- | --- | --- |

| 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 | | | | | | | | | | |

| Season | Importer | Imported free |
| --- | --- | --- |

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 | [illegible] | 1980 | 1981 | 1982 |
|---|---|---|---|---|---|---|---|---|---|
| Non-EEC | 209 | 189 | 226 | 222 | 245 | [illegible] | [illegible] | 243 | 293 |
| USA | 43 | 41 | 43 | 43 | 28 | 22 | [illegible] | 25 | 8 |
| Australia | - | - | - | - | - | 2 | [illegible] | - | - |
| Brazil | - | - | - | - | - | 1 | [illegible] | [illegible] | [illegible] |
| Chile | - | 3 | 5 | 1 | 3 | 4 | [illegible] | [illegible] | [illegible] |
| South Africa | 0 | 11 | 10 | 10 | 11 | 8 | 9 | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

LEMONS

(In '000 tons)

| | | STATISTICS FOR EEC (9) | | | | | | | STATISTICS FOR EEC (10) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 |
| | | 43 | 41 | 43 | 43 | 28 | 22 | 31 | 25 | 8 | 12 |
| | | 5 | 5 | 7 | 5 | 5 | 4 | 5 | 3 | - | 1 |
| | | 38 | 36 | 36 | 38 | 23 | 18 | 26 | 22 | 8 | 11 |
| | | 113 | 83 | 132 | 138 | 172 | 159 | 162 | 162 | 236 | 182 |
| | | 7 | 2 | 5 | 7 | 13 | 10 | 12 | 14 | 28 | 17 |
| | | 106 | 81 | 127 | 131 | 159 | 149 | 150 | 148 | 208 | 165 |
| | | 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 | 5 | 2 | 4 | 5 | 3 | 3 | 4 | 3 | 1 |
| EEC | Extra | 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 | 180 | 158 | 192 | 191 | 212 | 203 | 204 | 204 | 241 | 220 |

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]
Gibraltar
Malta
Yugoslavia
Turkey
Albania
MoroccoETBT-0 1 -1 -0 336.72 7d4 800 g /F20 8 Tf(263) TjEr

TABLE 2.20

IMPORTS BY THE COMMUNITY

Pectic Substances, Pectinates and Pectates

(Tons)

| | 1979 | 1980 | 1981 | 1982 | 1983 |
|---|---|---|---|---|---|
| 13 03 B I<br>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<br>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 | |
|---|---|

TABLE 2.22

IMPORTS EEC 9*

Orange Juice

(In '000 tons)

| Imported from | |
|---|---|

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 | - | - | - | - | - | - | - | - | - |

*1981/1982 EEC of 10

[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

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

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

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 arrangemETmf

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.

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

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

a result of the preferences. The United States had failed to furnish this proof. In the

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

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

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

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 |
|---|---|---|

3.55 The United St[illegible]ed [illegible]re of orang[illegible]t[illegible]d not been stable, but rather had clearly f[illegible]he[illegible]though EC [illegible]m[illegible] be[illegible]om year to year, there had been a clear[illegible]le trend towards a redu[illegible]sha[illegible]e of EC imports of oranges from "other" countries had also fallen in order to compensat[illegible] in EC imports from Mediterranean preference countries (ref. Table 3.1). Moreover, t[illegible] US shipments to the EC were in stark contrast to steady and significant increases in shipmen[illegible] 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

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

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 |

3.59 The United States argued that its winter orange exports to the Dutch market during the

for example, the orange-growing area

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).

Tablts

(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 i4ml96 642 Tm/F8 11 Tf204.16 629.04 Tm/F8 11 Tf(otal3)2,[illegible]BT1 0 0 1 125592 629.04 Tm/F8 11 Tf(expo

ie However, had EC

ie

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

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 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 EEC 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 resign

exports in this sector constituted proof that the success or failure of an exporting country was ultimately determined by

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

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

because the CONTRACTING PARTIES'

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 examinationETBT1 0 0 1 73.68 7ion

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

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

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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

(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 28Algeria

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

XXIe the 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

infringement of the provisions of the General Agreement whi uld constitute *prima facie* case of nullification or impairment in the sense of Article XX (a).

4.20 The Panel also noted that the EC and the respective erranean countries had pr ted the agreements to the GATT under Article XXIV (see para. 4. hird countries could not th ore necessarily claim the rights they would have had, if the d been no opportunity the CONTRACTING PARTIES to make a judgement on their confo of the agreements with the eral Agreement. But, at the same time, in the absence of a decisio the CONTRACTING PA ES, no contracting party could rely on either legal consequence a decision might have h (see para. 4.19). In other words, pending such a decision by CONTRACTING PARTI the implementation of the said agreements or any parts thereof, (ref 4.14) could neither be co ered as precluding any infringement and therefore also any nullific or impairment, nor as cons ting a *prima facie* case of such nullification or impairment in the of Article XXIII.

4.21 The Panel then examined if Article XXIII:1(b) applied t ase; i.e., whether the conse nces of the implementation of the agreements could be considered llifying or impairing the efits accruing from the General Agreement as the result of the app n of measures not conflicti with the provisions of the General Agreement. In this respect the oted that the absence of a p nent decision by the CONTRACTING PARTIES did not c vacuum. In fact the decis had to be considered as pending and could therefore h me in the future. This situation, as created by the CONTRACTING PARTIE claims as might any ordinary, autonomous measure. At this stage, on the mu status of the agreements had to be considered as still undetermined.

4.22 The situation created by the CONTRACT pended the normal impact of certain GATT rules. However, this could not mean t ies no longer had any rights and obligations. Pending the determination on the co ments, 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

agreement168r14T1 0 0 1 261.12 52 11 Tf(corresponding) TjET15jEr14T

525.12 Tm/F8 11 7727.ETBT(of) TjET7.(fa6.5.64 434.4 Tm/F8 11 Tf(BT1 0 0 1 137.04 589ETBT1 0 0 1 314.4 382.56

clearly indicated that there was an implicit right of the contracting parties to bring up trade

(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, grap9 Tm/F8 11 Tf(n) TjET2.44 667.92 Tm/F8

fresh

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

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

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

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 Mediterran

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

| Origin | |
|---|---|

for almost half of US shipments, but in 1982 and 1983 the Community received less than 10 per cent of total US exports

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

4.59 The Panel

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.

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 e3.683e24 641.7TBT1 0 0 1 156.96 589.92in Tm/F8 11 Tf(to) Tj38BT1 0 0 1 156.96 589.9

that

## 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

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 Coop

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

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 inad

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 togee0

followed other agreements, virtually identical in form, already concluded with the

concerned should submit a report on

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

37. The working party therefore limited itself to reporting

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

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

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

the Canadian suggestion[10] (C/W/163) which had received broad support from a number of representatives. Between these

68. A new Cooperation Agreement between the European Economic Community and the Kingdom of Morocco

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 a

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

86. This Working Party was separate from the working parties established to examine

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 consid