

2 March 1984

PANEL ON JAPANESE MEASURES ON  
IMPORTS OF LEATHER

*Report of the Panel adopted on 15/16 May 1984  
(L/5623 - 31S/94)*

I. Introduction

1. At the request of the delegation of the United States the Council agreed to establish the Panel on 20 April 1983, and authorized the Chairman to draw up its terms of reference and to designate its chairman and members in consultation with the parties concerned (C/M/167, item 12).
2. On 12 July 1983 the Council was informed that following such consultations the composition and terms of reference of the Panel were as follows (C/M/170, item 14):

Composition

Chairman: Mr. M. Huslid  
Members: Mr. D. Jayasekera  
          Mr. H. Reed

Terms of reference

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States (L/5462), relating to restrictions maintained by Japan on the import of certain semi-processed and finished leather, and to make such findings, including findings on the question of nullification or impairment, as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2."

3. The Panel met on 26 September, 15 November and 13 December 1983, 17 January, 2 February and 9 February 1984.
4. In the course of its work the Panel consulted with the delegations of Japan and the United States. Arguments and relevant information submitted by both parties, replies to questions put by the Panel as well as all relevant GATT documentation served as a basis for the examination of the matter. In addition, in accordance with requests they had made in the Council, the delegations of Australia, the European Communities, India, New Zealand and Pakistan were invited and heard by the Panel. The delegations of Australia and New Zealand also submitted written briefs.
5. During the proceedings the Panel provided the two parties adequate opportunity to develop a mutually satisfactory solution in the matter before it.
6. The Panel urged the parties to respect the need for confidentiality and requested them not to release any papers or make any statements in public regarding the dispute. The same was impressed upon the five other delegations when they appeared before the Panel.

II. Factual aspects

7. The case before the Panel concerned import restrictions maintained by Japan on the following lines in the Japanese tariff:

41.02-2 Bovine cattle leather and equine leather, dyed, coloured, stamped, embossed or other, other than parchment dressed (excluding chamois-dressed leather or patent leather; including cattle, horse, buffalo, calf and kip leather, and including both finished leather and semi-tanned leather which includes "wet-blue" leather, i.e. semi-processed chrome-tanned leather, shipped wet, purchased by tanners for further processing);

41.03-2-(1) Sheep and lamb leather, dyed, coloured, stamped or embossed, other than parchment-dressed (excluding chamois-dressed leather or patent leather);

41.04-2-(1) Goat and kid leather, dyed, coloured, stamped or embossed, other than parchment dressed (excluding chamois-dressed leather or patent leather).

8. Article 52 of the

14. On 9 November 1982 the United States requested Article XXIII:1 consultations, as notified to the CONTRACTING PARTIES in a communication dated 16 December 1982 (L/5440). Such consultations were held first on 27 and 28 January 1983. As they were not

's example in this case were followed by other contracting parties. Because the measures were inconsistent with specific GATT obligations, there was prima facie nullification or impairment of benefits accruing to the United States under the General Agreement, and the attainment of GATT objectives was impeded, within the meaning of Article XXIII:1. In support of its case, the United States quoted paragraph 5 of the Agreed Description of the Customary Practice of the GATT in the Field

accruing to the United States under the GATT had been nullified or impaired by Japan. Japan had actually benefited the United States and other countries by opening a large quota for them. This had resulted in the steady increase in United States exports of leather to Japan, even in comparison with the level of exports from other developed countries. The large quota would continue to offer sufficient opportunities for the United States to export to Japan and Japan had proposed further access in efforts to seek a realistic resolution of the matter through

21. Japan explained to the Panel in detail the historical, cultural and socio-economic background of the case, relating to the so-called "Dowa problem". The main points contained in this statement are set out below:

- (i) This was a most serious and important social problem deriving from the fact that a segment of the Japanese people, owing to discrimination based on a class system formed in the process of the historical development of Japanese society, was placed in an inferior position economically, socially and culturally;
- (ii) A major characteristic of the problem was that large numbers of people (according to a survey of 1975 the population was about 1,120,000) lived together in particular districts (about 4,400) on account of actual discrimination in social life. The growing number of persons who in recent times had left these particular districts were still subjected to discrimination in social standing either directly or indirectly;
- (iii) The Dowa districts had been founded by those who suffered from political, economic and social discrimination in the feudal society. Especially in the early 17th century, the people of Dowa districts had been, as an established social institution, classified as being outside and below the class hierarchy of Samurais, peasants, artisans and merchants, and had been subjected to severe institutional discrimination in all aspects of social life: prohibition on a change of occupation, moving, and association or marriage with people other than their own Dowa Class, obligation to wear certain

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projected that the United States' exports to Japan would have been ten times larger if the Japanese market had been as open as that of the EC. Trade figures showed that from 1977 to 1981, Japan had imported only US\$6 to US\$8 million of United States leather annually, i.e. under 2 per cent of United States leather exports. In 1982 United States leather exports to Japan had been US\$9.8 million (3.5 per cent of total United States leather exports).

- (i) Australia, whose major interest was item 41.02, had entered into a bilateral arrangement with Japan for the period October 1979-September 1982, but stated that no substantial exports had taken place under it. Its exports to Japan in 1982/83 of raw hides and skins had amounted to \$A38 million and its total world exports of semi-processed and processed leather in that period had amounted to \$A40 million. Nevertheless, its export of such leather to Japan had been negligible;
- (ii) The European Communities explained that it had a trade deficit with Japan in the leather sector (importing 110 tons and exporting 49 tons, in 1982), a phenomenon they found particularly strange in the bovine sector in view of the relative herd sizes and tanning capacities. They had asked for the Japanese régime to be progressively liberalized on an m.f.n. basis but no satisfactory solution had been achieved in regular bilateral meetings held since 1976;
- (iii) India, whose main interests were items 41.03.100 and 41.04.100, said that, after having had recourse to the special dispute settlement procedures of the GATT in matters involving developed and less-developed contracting parties, had reached a settlement with Japan concerning finished leather in July, 1980, but had not had its expectations fulfilled. Its exports (according to Japanese statistics) had declined from US\$3.2 million (accounting for a 65.8 per cent share in Japanese global imports of sheep and goat leather) in leather year 1980, to US\$2.2 million (market share of 61.7 per cent) in leather year 1982. Exports of finished sheep leather had declined from US\$64,000 (market share of 11.2 per cent) to US\$5,000 (market share 1.4 per cent);
- (iv) New Zealand noted that, in addition to a global quota on certain tariff lines, Japan had negotiated exclusive bilateral quotas with Australia, Canada and the United States for bovine products of tariff line 41.02-2. With particular emphasis on wet-blue semi-processed bovine hides, it had sought access bilaterally for several years without success. Its global exports of semi-processed hides and skins had increased by 27 per cent from 16,000 tons to 21,000 tons between 1982 and 1983, while exports to Japan had increased by 12 per cent from 134 tons to 151 tons. Japan was currently New Zealand's largest market for raw hides and skins with about 44 per cent by volume of its total exports. By comparison, Japan represented only 0.008 per cent of its semi-processed hide and skin exports. The retention of the principle of basing additional quotas on raw hide imports would close New Zealand's access as exports of raw hide would diminish in accordance with the steady move to processing;
- (v) Pakistan, whose main interests were in CCCN 41.03 and 41.04, had held discussions with Japan in the spring of 1982 as part of the consultations in the Committee on Trade and Development without sufficient light having been shed on why it should be necessary to maintain the restrictions. Its exports to Japan in 1982 had been approximately Y 78.5 million, which it considered to be an amount sufficiently significant for it to show interest in the matter.

39. In the view of Australia, the European Communities, India and New Zealand, the restrictions would not be justified in the light of Japan's GATT obligations, notably Articles XI and X:1, and had the effect of nullification or impairment of benefits accruing to them under the GATT. Australia, India and New Zealand also referred to Article X:3 and held that the non-discrimination provisions of

restrictions nullified and impaired bound tariff concessions contrary to Article II.

43. The Panel appreciated the difficult socio-economic

49. The Panel examined the trade figures supplied by Japan in support of this contention, which related to the period from 1978 (before conclusion of the bilateral agreement) to 1982. It noted that these figures showed that, while United States' total exports of bovine and equine leather had increased from about US\$113 million to about US\$213 million, or approximately 88 per cent, its exports to Japan had increased by about 350 per cent, from US\$2 million to about US\$9 million. In comparison, United States' exports to the Federal Republic of Germany and Italy had, taken together, increased from about US\$2.6 million to about US\$8.5 million, i.e. a growth of only 227 per cent, and United States' exports to France and the United Kingdom had actually declined by 36 per In

55. In any event, the Panel wished to stress that the existence of a quantitative restriction