

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Trade and Development
Ad Hoc Group on Legal Amendments to the
General Agreement

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PROPOSAL SUBMITTED BY THE BRAZILIAN AND URUGUAYAN DELEGATIONS

Draft Decision on Article XXIII

The CONTRACTING PARTIES

Recognizing that the prompt settlement of situations in which a contracting party considers that any benefits accruing to it directly or indirectly from the General Agreement are being impaired by measures taken by another contracting party, is essential to the effective functioning of the General Agreement and the maintenance of a proper balance between the rights and obligations of all contracting parties.

Recognizing further that the existence of such a situation can cause severe damage to the trade and economic development of the less-developed contracting parties.

Affirming their resolve to facilitate the solution of such situations while taking fully into account the need for safeguarding both the present and potential trade of less-developed contracting parties affected by such measures as well as adequate compensation for the damage which these contracting parties may have suffered.

Decide that

1. If consultations between contracting parties in regard to any matter falling under paragraph 1 of Article XXIII do not lead to a satisfactory settlement the less-developed contracting party complaining of the measure may refer the matter to the Director-General so that, acting in an ex officio capacity, he may use his good offices with a view to facilitating a solution.
2. To this effect the contracting party or parties primarily concerned shall, at the request of the Director-General, promptly furnish all relevant information.
3. On receipt of this information the Director-General shall consult with the contracting party or party or parties primarily concerned and with such other contracting parties or inter-governmental organizations as he considers appropriate with a view to promoting a mutually acceptable solution.
4. If within a period of two months from the commencement of the consultations no satisfactory solution has been reached, the Director-General shall bring the matter to the attention of the CONTRACTING PARTIES or the Council, to whom he shall submit a report on the action taken by him, together with all background information.

5. Upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith appoint a Panel of experts, who shall function in a personal capacity, to investigate the matter and make recommendations.

6. In conducting its examination and having before it all the background information, the Panel shall take due account of all the circumstances and considerations which motivated the application of the measures complained of and more particularly of the following elements:

- (a) the damage incurred through the incidence of the measures complained of upon the growth of the export earnings and economic effort of the less-developed contracting party;
- (b) the means available to the contracting party whose measures are complained of to make good the damage inflicted by their application;
- (c) the relative effects of such remedial measures as the injured contracting party may take in relation to the contracting party whose measures have nullified or impaired the benefits deriving from the General Agreement which the former contracting party is entitled to expect.

7. In the event that the measures complained of have been applied by a developed contracting party and it is established that they are adversely affecting the trade and the economic prospects of the less-developed contracting party or parties concerned, the Panel may recommend, where it is not possible to eliminate the measures complained of or to obtain an adequate commercial remedy, that the damage caused should be compensated by means of an indemnity of a financial character on mutually acceptable terms.

8. The Panel shall submit its findings and recommendations to the CONTRACTING PARTIES or to the Council for endorsement within a period of sixty days from the date the matter was referred to it. In the latter case the Council may, in accordance with Rule 8 of the Intersessional Procedures adopted by the CONTRACTING PARTIES at their thirteenth session, address its recommendations directly to the interested contracting parties and concurrently report to the CONTRACTING PARTIES.

9. The contracting party to whom a recommendation is directed shall report to the Panel on the action taken by it in pursuance of the recommendation within a period of two months from the date the recommendation was endorsed by the CONTRACTING PARTIES or the Council.

10. If, on examination of this report, the Panel considers that damage continues to be caused to the trade of the less-developed contracting party or parties concerned, and that the circumstances are serious enough to justify such action, it may recommend to the CONTRACTING PARTIES that they authorize the affected contracting party or parties to suspend, in regard to the contracting party causing the damage, application of any concession or any other obligation under the General Agreement whose suspension is considered warranted, taking account of the circumstances.

11. In the event that measures are adopted by developed contracting parties such as to contravene the provisions of the General Agreement and to impair the import capacity of a less-developed contracting party, the latter shall be released from its obligations under the General Agreement, towards the contracting party acting contrary to the provisions of the General Agreement, for the purpose of taking appropriate remedial or retaliatory measures pending the examination of the case by the CONTRACTING PARTIES.
12. Without prejudice to the provisions of the preceding paragraph, and in the event that a recommendation by the CONTRACTING PARTIES is not applied within the time-limit prescribed in paragraph 9, the CONTRACTING PARTIES shall decide what collective measures shall be taken to ensure compliance with the General Agreement.
13. If consultations held under paragraph 2 of Article XXXVII, relate to restrictions for which there is no authority under any other provisions of the General Agreement, any of the parties to the consultations may in the absence of a satisfactory solution request that consultations be carried out by the CONTRACTING PARTIES, pursuant to paragraph 2 of Article XXIII and in accordance with the procedures set out in the present Decision, it being understood that a consultation held under paragraph 2 of Article XXXVII in respect of such restrictions, would be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII.