

INFORMATION

GENERAL AGREEMENT ON TARIFFS
AND TRADE
ACCORD GÉNÉRAL SUR LES TARIFS
DOUANIERS ET LE COMMERCE

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GATT/40/7

SETTLING TRADE DISPUTES

Since the GATT is not based upon any Utopian ideal, it was always envisaged that trade disputes would occur. The question is how to minimize the damage and produce practical solutions.

GATT's dispute settlement procedure is a unique blend of judicial precision and common sense pragmatism. Although its basis is contained in the General Agreement (Articles XXII and XXIII) signed in 1947, the system has evolved over many years. Naturally, the emphasis is always upon achieving a negotiated solution between disputing countries. Merely bringing a dispute to the notice of the GATT - usually the GATT Council - can often encourage or achieve that. But sometimes it does not and then the Council may set up a dispute panel.

A panel usually consists of three experts from countries without an interest in the matter in question. Throughout their work, the panelists seek to bring about a solution through conciliation. They meet as a kind of court hearing the case on both sides and the views of interested parties. They form a judgement based upon an interpretation of the General Agreement itself and upon previous cases. It is largely a question of whether the rules are being broken or not and trade interests being damaged.

The report, which is submitted to the Council, contains conclusions on the rights and wrongs of the case and, in its final paragraphs, usually a recommendation which offers a practical and sensible means of giving justice if contravention of the rules has been established.

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If the Council adopts the report of the panel - which it does by consensus - then there is a duty on the part of the contracting parties concerned to act in accordance with its findings.

If the "violating" party does not implement the recommendations, the injured party may seek authority from the other members of GATT to take retaliatory action. In fact, in only one case has it been found necessary to authorize such retaliation. Pressure stemming from the need of GATT members for negotiating credibility within the multilateral system has proved to be the most effective means of bringing about effective settlements.

Of course, the system is not perfect and there have been some celebrated failures. But, in 40 years, over 100 cases have been pursued and 90 per cent of them have resulted in successful settlements, either by the adoption of the report or by the withdrawal of the complaint or the adoption by the parties to the dispute of a mutually satisfactory solution. About 60 reports have been adopted by the Council, but a large number of other disputes have been settled bilaterally on the basis of GATT rules. Conciliation is an integral part of the dispute settlement system; it is possible at every stage of the process, and a virtually essential preliminary.

The rare cases which it has proved impossible to settle satisfactorily generally concern complaints relating to agricultural subsidies, an area in which diverging interpretations of the GATT rules continue to exist among GATT members. Equally, the GATT has been unable to solve some disputes which are related to non-trade - for instance, foreign policy - issues.

The United States, the EEC and Japan have been the most frequent targets and users of the dispute settlement system. Some 15 complaints have so far been submitted by developing countries.

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