

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG13/W/2  
22 April 1987

Special Distribution

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group  
on Dispute Settlement

COMMUNICATION FROM NEW ZEALAND

The following communication has been received from the delegation of New Zealand with the request that it be circulated to members of the Group.

New Zealand Statement to Group on Dispute Settlement on 6 April 1987

New Zealand supports strongly the aim of negotiations in this Group to improve and strengthen the rules and the procedures of the dispute settlement process, recognising the contribution that would be made by more effective and enforceable GATT rules and disciplines. If the principles behind existing procedures had been adhered to strictly the need to improve and strengthen those procedures might have been less. Finding a "satisfactory solution" to disputes, i.e. a solution that does not, by its nature, prejudice the rights of third parties, is part of the pragmatism with which contracting parties are supposed to conduct their relations with each other.

A number of delegations have identified the problems that have occurred in respect to the settlement of some disputes. These include difficulties in agreeing upon terms of reference and panel members, and slow, or incomplete, implementation of panel findings.

What specific measures can be taken to alleviate this situation? The following are some preliminary ideas for consideration.

(a) Mention has been made of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance. We would focus in particular on the Annex to this Understanding, i.e. the Agreed Description of Customary Practice. In paragraph (ix) of this it is stated:

"Although the CONTRACTING PARTIES have never established precise deadlines for the different phases of the procedure, probably because the matters submitted to panels differ as to their complexity and their urgency, in most cases the proceedings of the panels have been completed within a reasonable period of time, extending from three to nine months".

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We know, however, that the proceedings of some panels have not been completed in this period. We suggest an outside deadline of no more than 12 months should be set in this context.

(b) Secondly, the reluctance of third parties to take action under Articles XXII and XXIII (as they are clearly entitled to) is one of the deficiencies noted in the Leutwiler Report. This has impaired the functioning of the GATT system by encouraging the proliferation of certain bilateral arrangements "escaping the control of the GATT" as the Report puts it. Such arrangements, even if they do not cause direct trade injury may well cause indirect trade injury to third parties. We would support any understanding which actively encouraged the use of procedures enabling third country actions.

(c) Thirdly, some cases are very much less complex than others. In the view of at least one of the parties they may well be of such an "open and shut" nature that they should never have developed to the dispute settlement stage. But they do. Where straightforward cases are brought before CPs they should be encouraged to make a determination in the GATT Council rather than refer the matter to a panel or working party. Some have suggested the concept of removing the CPs party to a dispute from such a determination (and similarly, when the Council considers recommendations on disputes that have gone to a panel). We support this idea in principle and believe it worthy of discussion by this Group.

(d) Fourthly, difficulties have occurred with the effective vetoing of certain panelists by parties to the dispute. We believe that the procedures should be improved to avoid this. The roster of panelists was one step in the right direction. Yet the qualifications and experience of those on this roster are not gone into in any great detail. A shorter list of panelists whose qualifications and experience cannot be questioned by any, perhaps with specialist skills in certain areas (e.g. subsidies), might be the answer. Consideration could then be given to a procedure whereby panelists cannot be vetoed by a contracting party to a dispute.

(e) Finally, a major difficulty has been the lack of implementation, or slow or half-hearted implementation, of panel decisions. We propose that this Group consider recommending that at the next TNC contracting parties undertake to accept as binding all decisions emerging from the dispute settlement process (i.e. those adopted by Council). Such an undertaking would be an obvious candidate for inclusion in an "early harvest" package, as a demonstration of the political commitment to the process we are now in.