

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Negotiating Group on Dispute Settlement

COMMUNICATION FROM JAPAN

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

Statement of Japan to the Second Meeting of the
Negotiating Group on Dispute Settlement on 25 June 1987

1. General

(1) My Delegation is of the view that the existing dispute settlement of the GATT has been functioning by and large well. Therefore, the task before us in the Uruguay Round is to materialise the collective political commitments on strengthening the dispute settlement mechanism. To be more concrete we need to work out an integrated rule on the subject by means of integrating relevant rules, including the understanding made as a result of the Tokyo Round, after necessary elaboration and supplementation. (As to the form of agreement including the appropriateness of codification, we are of the view that this matter should be studied after agreement is reached on the substance).

(2) It is essential that dispute settlement should be sought basically on the basis of the consultations of the parties concerned.

(3) We see that the following are the main reasons why panel proceedings tend to become excessively cumbersome and slow:

- (i) The regrettable tendency to resort to panel without sufficient prior bilateral consultations; and
- (ii) The deficiency of the relevant GATT Articles and/or the lack of uniform interpretation of such Articles.

The first point should be dealt with by clarifying the position of bilateral consultations in the existing procedure as well as strengthening the bilateral consultations (Article XXII:1 and Article XXIII:1) and the conciliatory procedures (Article XXIII:2 and good offices of the Director-General).

The second point should be duly addressed in other appropriate negotiating groups such as the Negotiating Group on GATT articles.

2. Specific improvements in the existing rules

(1) Procedures leading to recourse to a Panel:

- (i) Clarification is needed regarding the relationship between consultations under Article XXII and Article XXIII:1 or good offices of the Director-General on the one hand and the recourse to a Panel, on the other.

It is our view that the consultations under Article XXIII:1 should remain as a prerequisite for the recourse to a Panel, and exceptional cases to the rule should be clearly stipulated.

- (ii) Mechanism for using good offices of an appropriate body, individual or the Director-General for conciliation (paragraph 8 of the Understanding) must be improved.

Reasons why the good offices of the Director-General and others have not been properly used for conciliation should be analysed and specific improvements should be considered.

(2) The Panel process:

- (i) Selection of Panel members - The indicative list of qualified persons in the roster should be enlarged (paragraph 13 of the Understanding should be reviewed and the number of persons to be indicated by each contracting party should be increased to 3 or 4).

The non-governmental persons in the roster should be invited to serve as panelists more frequently.

- (ii) Expeditious procedures to set up a Panel - Procedures in the Council to decide upon the setting-up of a Panel should be improved in order to facilitate more expeditious decision. Nonetheless, the legal nature of the Panel ("to assist the CP") should not be altered, and the present procedure that the report of the Panel is adopted by the Council and thereby to become a recommendation of the Council, should also remain unchanged.

- (iii) More expeditious examination by the Panel - A guideline should be established as to the maximum period of the proceedings of the Panel (the period 9 months as indicated in the paragraph 6 (ix) of the Agreed Description of the

Customary Practice of the GATT can be a good yardstick. At the same time we must consider the possibility of agreeing on a specific period among parties concerned and the Panel members). With regard to the "cases of urgency" in the paragraph 20 of the Understanding, the meaning of the terms must be clarified.

- (iv) The procedures under paragraph 16 of the Understanding as to "adequate opportunity to be given by panels to develop a mutually satisfactory solution" should be further clarified.
- (3) Assurance of the implementation of Panel recommendation:
- (i) Improvements in the procedure to adopt Panel reports - The procedure to adopt Panel reports should be improved in general, however, if there is an idea of a decision by the CP without the participation of parties concerned, such an idea needs careful scrutiny.
 - (ii) Implementation of the recommendation - The reasonable period of the implementation of the panel recommendation should be explicitly indicated, taking account of the individual circumstances surrounding each panel case, and the Council should take necessary measures in case of non-compliance by the end of the said period.
 - (iii) Compensations or Retaliations - Compensation or retaliation measures must be reserved strictly to extreme cases. The existing provisions which stipulate the necessary prior authorisation by the Council (or the CONTRACTING PARTIES) should be maintained.

In connection with this point, it is essential that national legislation and the enforcement thereof be made consistent with the GATT. National review of domestic legislation and enforcement thereof may be, from this point of view, useful.