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GENERAL AGREEMENT ON TARIFFS AND TRADE

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DISPUTE SETTLEMENT

Note by the Secretariat

In order to facilitate the discussion of the problem of dispute settlement in the Group, the secretariat has outlined a number of headings under which the matter might be discussed including certain specific issues that could be examined in more detail. The secretariat has taken into account, inter alia, various suggestions relating to the question of dispute settlement which have been made in the past in different contexts including points made by delegations in Group "Safeguards" when discussing a factual study by the secretariat entitled "Dispute Settlement in International Economic Agreements" (MTN/SG/W/8). The outline tries to present the various questions in the order in which the dispute settlement process would normally be undertaken. It has been prepared bearing in mind certain aspects of the matter that may become relevant as a result of negotiations in specific areas of the MTN's.

DISPUTE SETTLEMENT

I. Notification and Surveillance

What improvements, if any, are needed in this area, e.g. should governments undertake the commitment to notify each other of all decisions which affect or are likely to affect adversely the trade interests of other countries, irrespective of whether an obligation to do so exists at the present time under the General Agreement?

If so, should notifications be made in advance in all cases or should exceptions be permitted (notification ex post facto in critical circumstances)?

Under normal circumstances, the notification would be made by the country which envisages taking a measure. Third countries affected by the measure might also take the initiative in this respect. Should in addition the Director-General of GATT be authorized to seek information in cases which he considers important enough?

Is there a need for a standing surveillance body to which notifications would be addressed?

Countries adversely affected by a trade measure normally request consideration of individual cases by the appropriate GATT bodies. In the absence of such a request, should the Director-General have the right to transmit important matters to the appropriate GATT bodies for their consideration?

II. Consultation and Conciliation

Articles XXII and XXIII:1 provide for the conduct of consultations. Specialized bodies such as the TSB or the Anti-Dumping Committee have in addition been used for consultations. Is there a case for increased utilization of such specialized bodies and for insertion of appropriate provisions to this end in new arrangements that might be negotiated in specific areas of the multilateral trade negotiations? How far would it be helpful to reaffirm and make wider use of the procedures under Article XXII on Questions Affecting the Interests of a Number of Contracting Parties, adopted by the CONTRACTING PARTIES in 1958 (BISD 7 S.24)?

What may be the rôle of secretariat assistance in the process of consultation, bearing in mind any special needs of developing countries?

Is it possible to strengthen the role of conciliation? Should an effort at conciliation be provided for in all cases where consultations have failed to result in agreement and before resort is had to adjudication? Should the secretariat have a rôle in initiating the conciliation process?

How may the process of conciliation be facilitated, particularly when it is not being undertaken by special GATT surveillance bodies? Would it be helpful to provide a broader rôle to the Director-General in initiating the process of conciliation? (See procedures under Article XXIII adopted by the CONTRACTING PARTIES in 1966 (BISD 14 S.18).) Could some other mechanism such as a standing conciliation body be contemplated?

III. Adjudication

Would it be in the interest of avoiding fragmentation and inefficiency if all disputes, whether arising under the GATT itself, under various non-tariff measure codes, the MFA or under any other arrangements negotiated in the framework of GATT were adjudicated according to uniform procedures and conditions (centralization of the dispute adjudication process)? Or should each legal instrument provide for its own dispute adjudication machinery?

If it is considered that more uniform procedures would be helpful, would there be advantage if instead of following the present practice of establishing ad hoc panels for each individual case, a standing dispute settlement panel were created to deal with all cases arising under the General Agreement and other relevant instruments?

In the interests of expediting dispute settlement, could agreement be reached on the broad composition of the panel and its working methods, including steps towards consultation and adjudication?

IV. Type of decision

Should the panel in its decision limit itself to a statement of facts together with a finding whether an obligation under the GATT (or related legal instrument) has been violated, or should it also contain recommendations concerning remedial action?

If the panel's decision were to be limited to a finding of fact and law, should the right to make formal recommendations be concentrated with the CONTRACTING PARTIES (Council) or should the authority to make recommendation also be made part of the functions of any special surveillance bodies?

V. Enforcement: Compensation, Adjustment and Retaliation

To what extent can greater emphasis be given to the rôle of compensation and adjustment in preference to retaliation where it is not found possible to secure removal of the offending measure? What is the precise meaning of the language in Article XXIII:2 that the circumstances must be "serious enough" to authorize the suspension of obligations? Should retaliation be possible in cases other than nullification or impairment cases (see Uruguayan case, 1962, BISD 11 S.99)?

Are there alternatives to retaliation other than withdrawal of the measure causing the damage and substitution of other concessions (compensation); see 1955 Review Working Party (BISD 3 S.250)?

To what extent are the conclusions reached in the 1955 Report of the Review Working Party on Organizational and Functional Questions (BISD 3 S.251) still valid that the primary obligation of a government concerned is to withdraw a measure which was found to be inconsistent with the General Agreement, and that the alternative to provide compensation for damage suffered should only be resorted to if the immediate withdrawal of the measure is impracticable and only as a temporary measure?

VI. Review Procedure

Is there a need for keeping a matter under review after a dispute has been adjudicated?

If a review procedure is considered necessary, what provisions would be appropriate for this purpose and to assist in securing final implementation of recommendations? (See BISD 14 S, page 18, paragraphs 8-10.)