

GENERAL AGREEMENT ON TARIFFS AND TRADE

Preparatory Committee

DISPUTE SETTLEMENT PROCEDURES

Note by the Secretariat

1. This note is issued under the responsibility of the secretariat and is intended to facilitate further discussion in the Preparatory Committee. It seeks to identify, in the light of the discussions recorded in PREP.COM(86)SR/2 and earlier discussions, the main considerations which would appear to be relevant should the Committee decide to formulate recommendations on dispute settlement procedures. The note is not intended to be a summary of the discussions. It in no way prejudices the views delegations may have as to whether and how the question of dispute settlement procedures might figure in the Preparatory Committee's recommendations to Ministers, nor should the listing of points for further discussion be regarded as exhaustive.

Main points emerging from the discussion

2. There was general agreement that the dispute settlement procedures are a cornerstone of the GATT, underpinning the contractual framework of the General Agreement, and that they play a decisive rôle in securing reciprocity and a proper balance of rights and obligations between contracting parties. In particular, the proper functioning of the dispute settlement procedures is necessary to protect the rights of small and developing countries with limited retaliatory power.

3. It was noted that although the procedures have on the whole worked satisfactorily, there is still room for improvement. However, improving the procedures would serve no purpose if lack of political will continued to obstruct the process. It was also suggested that the negotiation of further obligations in a new round would mean little if there were no assurance that they would be implemented, and that there is a need to secure a higher level of commitment from all contracting parties to support the dispute settlement procedures and abide by their results.

4. It was suggested that the new round should include a full and serious review of the dispute settlement process, particularly with a view to removing inadequacies that have remained after the 1979 Understanding on Dispute Settlement and the 1982 Ministerial Declaration, such as delays in the procedures, unclear findings and recommendations and lack of compliance with panel recommendations. A number of specific proposals were made on these and other matters, and on the oversight and monitoring of the procedures. However, it was also pointed out that some recent problems had arisen from rules that are too vague to be meaningfully interpreted or that have been subject to longstanding and widespread divergence of interpretation. Removal of such uncertainties and ambiguities in the substantive rules of the GATT and the MTN Agreements would greatly facilitate the dispute settlement process.

5. It was also suggested that the procedures should be regarded primarily as a conciliation mechanism, in which arbitration, on the basis of obligations clearly laid down in the General Agreement, would take place only after the failure of conciliation.

Points for further discussion

6. Are governments ready to recognise that among the essential conditions for effective dispute settlement is a clearer definition of the rights and obligations deriving from GATT membership in certain areas?

7. Should a Ministerial Declaration include a statement stressing the importance of the dispute settlement process and making clear that the removal of ambiguities and disputed interpretations of the rules of the General Agreement and the Codes would be an important contribution to the resolution and avoidance of disputes?

8. Should the Declaration include specific recommendations for improvement of the procedures, for example in the matter of achieving consensus on the adoption of panel reports, in the context of the new round?

9. Are governments ready to accept a strengthened commitment to abide by the results of dispute settlement procedures?