

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on  
Dispute Settlement

MEETING OF 6 APRIL 1987

Note by the Secretariat

Appointment of a Chairman and Adoption of the Agenda

1. The Group held its first meeting on 6 April 1987.
2. Mr. Lacarte-Muró (Uruguay) and Mr. Katz (United States) were appointed Chairmen of the Negotiating Groups on Dispute Settlement and on Functioning of the GATT System for the initial phase. They were appointed on the understanding that Mr. Lacarte-Muró would have the primary responsibility for Dispute Settlement and Mr. Katz the primary responsibility for Functioning of the GATT System. Due to absence of Mr. Lacarte-Muró, this meeting was chaired by Mr. Katz.
3. The Group adopted the agenda set out in GATT/AIR/2390.

Submission by participants of their analyses of the functioning of the GATT dispute settlement process and of their views on the matters to be taken up in the negotiations

4. The Group had before it a proposal by Mexico (MTN.GNG/NG/13/W/1) containing a non-exhaustive presentation of elements to be considered by this Group with a view to identifying issues on which negotiations are appropriate.
5. Many delegations emphasized that the dispute settlement mechanism played a decisive rôle as a means of securing compliance with GATT obligations. The negotiations of new obligations meant little without an assurance that they would be implemented. Many delegations therefore attached particular importance to the negotiations in this Group. Prompt and effective resolution of disputes was of vital importance for the entire GATT system and to the benefit of all contracting parties. The present dispute settlement mechanism of the GATT had performed reasonably well in a number of disputes. However, it had displayed conspicuous shortcomings in some cases, which had diminished its credibility and the confidence in the larger institution of the GATT. It was recalled that, according to the 1982 Ministerial Declaration, no major change was required in the framework of procedures for the settlement of disputes among contracting parties, but there was scope for more effective use of the existing mechanism and for specific improvements in procedures to this end.

6. The representative of a group of countries expressed the view that agreement on the nature of the GATT dispute settlement process was important for reaching agreement on improvements in the dispute settlement procedures. Some delegations emphasized that GATT did not provide for judicial settlement of international trade disputes, that the GATT dispute settlement process was primarily of a conciliatory nature calling for negotiated settlements and compromises, and that new obligations could be accepted only as an outcome of negotiations conducted according to the special procedures provided for such negotiations. Other delegations pointed to the contractual nature of GATT law, to the ambiguous meaning of many general GATT provisions, and to the law-creating element in any interpretative choice of one among other possible interpretations of GATT rules by a competent GATT dispute settlement body. According to this latter view, a rule-oriented approach enabling legally binding interpretations should not be viewed as a hindrance to a conciliatory settlement, and it would be a mistake to view GATT as a multilateral agreement in which every contracting party could unilaterally determine for itself its contractual obligations. Still other delegations saw the main objective of the GATT dispute settlement system as being the avoidance or speedy resolution of disputes through a "sequential approach" making use of different techniques (including consultations, mediation, conciliation and arbitration) which were not mutually exclusive.

7. Some delegations recalled the pragmatic evolution of the GATT dispute settlement system and said that one outcome of the Uruguay Round negotiations in this field should be a consolidated and improved language of the various existing texts on dispute settlement (e.g. those adopted in 1966, 1979, 1982 and 1984). Such a re-worded instrument could also express a strengthened political commitment to apply and abide by the dispute settlement process. While all speakers agreed that there was scope for further improvements in the dispute settlement procedures, many speakers expressed the view that the main causes of the difficulties in recent years lay elsewhere, for instance in the existence of vague and unclear GATT provisions, in long-standing divergences of interpretation of some GATT provisions, in inadequate panel reports and undue delays caused by lack of political will to resolve the dispute, by the difficulty of finding willing qualified panelists, by haggling over terms of reference, or by other delaying tactics, non-observance or abuse of the procedures.

8. Several delegations asked for a factual background paper by the Secretariat in order to assist the Group in its analytical assessment of the functioning of the dispute settlement process. It was suggested that such a background paper should include, inter alia: a compilation of all GATT and Code provisions and procedures relating to dispute settlement; the standard internal operating procedures customarily adopted by panels; an updated and expanded tabular list of GATT disputes similar to that included in the GATT Analytical Index; a factual analysis of the various dispute cases brought before the GATT Council and MTN Committees (e.g. parties involved, area of dispute, GATT Articles invoked, terms of reference of panels, time passed

for the various phases of the dispute process); an assessment of the causes of unresolved disputes, especially after 1979. Several delegations declared their intention to submit reform proposals at a later stage.

9. Many delegations made proposals of a preliminary nature for specific subjects to be taken up in the negotiations, including the following topics and questions:

(a) The nature of dispute settlement in the GATT. For instance: How to secure most effectively reciprocity and a proper balance of rights and obligations between contracting parties? Is it desirable or inevitable that panel interpretations lead to a consistent "case law"?

(b) The establishment of panels: Does the complaining party have a right to the establishment of a panel? Should panels be established "automatically" if a contracting party so requests after consultations and appropriate discussions in the Council? How to speed up the determination of the terms of reference and the designation of the chairman and members of panels (e.g. use of standard terms of reference)? Should the roster of available panelists be modified (e.g. a shorter permanent roster, panelists specializing in certain fields, only non-governmental panelists)? Is the number of available qualified panelists insufficient? Would it be appropriate to authorize panels to suggest conciliation proposals even if not necessarily based on GATT provisions? Is it possible to classify GATT rules according to their degree of precision and "justiciability"? Is it advisable to specify the maximum period of time for the work of each panel in its respective terms of reference?

(c) The work of panels: How to promote the quality of panel reports? How to shorten the length of panel proceedings? Is there a need for tightening and specifying the time-limit for the various stages of the panel process (e.g. maximum periods of three months for urgent complaints and twelve months for ordinary complaints)? Can, or should, panels avoid "constructive interpretations" when requested to apply imprecise GATT rules to specific cases?

(d) The rôle of the GATT Council in the dispute settlement process: Establishment of panels and adoption of panel reports by "consensus minus one or two"? What are the legal effects of the adoption of panel findings by the Council? Should the Council establish a standing body to assist the Council (e.g. in the modification of inappropriate panel findings, in reviewing and promoting compliance with Council rulings)?

(e) Questions pertaining to the implementation of panel reports, such as: Should time-limits be laid down, either in general or specifically for each adopted panel report, for the implementation of panel reports? What should be the rights of the complaining party if the offending measure cannot be withdrawn? Could dispute settlement be linked more closely to an improved mechanism for Ministerial oversight and surveillance? Could the

implementation of panel findings be promoted by anchoring GATT obligations more strongly within the domestic trade rules and decision-making procedures of contracting parties?

(f) Equal access to the GATT dispute settlement system for small trading countries which, because of their lack of retaliatory power, depend more on the protection offered by GATT law and GATT dispute settlement procedures: Is there a need for improving the GATT procedures adopted on 5 April 1966 for the use of less-developed contracting parties? How should the principle of differential and more favourable treatment of developing countries be applied in the field of dispute settlement?

(g) Strengthening of the GATT dispute settlement system through the involvement of third interested parties. For instance: Should the invocation of Articles XXII and XXIII of GATT by third contracting parties be promoted? Could bilateral agreements among GATT contracting parties on cooperative conduct during the GATT dispute settlement process be extended to other contracting parties? Is there scope for giving affected private trade interests a greater rôle in the domestic enforcement of GATT obligations?

10. In concluding the discussion on this agenda item, the Chairman said that the political will necessary for a stricter fulfilment of GATT obligations was unlikely to come about by mere exhortation. There was a need for developing additional incentives and institutional mechanisms encouraging compliance by contracting parties with their GATT obligations which they had voluntarily undertaken in their own national self-interest.

#### Observer organizations

11. The Chairman recalled that a number of international organizations had sought observer status in the bodies set up under the new round. Consultations had taken place on this subject. The question of observer status would appear on the agenda of the next meeting of the Group of Negotiations on Goods which would aim at a co-ordinated approach towards the requests. He suggested that the Group consider which international organizations were likely to be in a position to contribute to its work. No suggestions were made in response to the Chairman's statement.

#### Other business

##### (a) Recording of discussions

12. It was agreed that the secretariat would prepare a short factual note after each meeting.

##### (b) Date of next meeting

13. It was agreed that the next meeting would take place in the week beginning 22 June 1987.