

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Negotiating Group on
Dispute Settlement

COMMUNICATION FROM THE UNITED STATES

The following communication has been received from the Office of the United States Trade Representative in Geneva with the request that it be circulated to members of the Group.

Comments from the United States Delegation at the first meeting of the
Negotiating Group on Dispute Settlement, April 6, 1987

The United States delegation believes that an effective dispute settlement mechanism, which is seen to be both reliable and expeditious, is an essential element of a healthy, expanding international trading system. The present dispute settlement system of the GATT has performed reasonably well in a number of disputes; however, it has displayed conspicuous shortcomings in some cases, which have diminished its credibility and, with it, confidence in the larger institution -- the GATT.

The most obvious problem is that some disputes have not been resolved, perhaps partly because of inadequate panel reports or difficult rules in a few cases, but more often because one or more parties have been unwilling to allow a resolution. In addition, the process takes too much time. Partly this is again a problem of the attitude of parties; for example, a party whose measures are challenged will all too often claim the need for further consultations as a means of stalling. This occurs even when an issue has already been stalemated through lengthy informal and formal consultations, sometimes over a period of years. Delays also arise from the difficulty of finding willing, qualified panelists, haggling over terms of reference, and delaying tactics during a panel's work. The failure to resolve disputes expeditiously (or in some cases to act at all) leads to frustration, and diminishes respect not only for dispute settlement but for rights and obligations under the GATT.

Improvement of the GATT dispute mechanism, therefore, deserves high priority. But any attempt to improve the mechanism needs to be supported by a change in attitude of contracting parties. Too often, dispute settlement in the GATT is viewed as a zero-sum contest in which for every winner there must be a loser. Disputing parties focus on the narrow issue at stake rather

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than their broader interests in an effective trading system. In truth, the failure to resolve disputes satisfactorily can be costly, not only to the disputants, but to innocent third parties as well. Successful dispute settlement, on the other hand, can benefit both the complaining party and the party whose actions gave rise to the complaint.

Improvements in the system and the attitude of governments toward the process of dispute settlement are not independent variables. Any process for settling disputes among sovereign States, however well-designed, can be frustrated by a determined disputant. An effective process, however, can create an atmosphere of confidence leading to greater reliance by governments on that process in preference to situations in which problems fester or in which governments are led to unilateral actions.

The primary objective of dispute settlement should be to resolve disputes, and to do so expeditiously, fairly and in a manner that is consistent with the trade expansion objectives of the GATT. If we are all prepared genuinely to accept this objective, then we think we can move forward quickly in this area of negotiations. Reform will mean a better trading system for all contracting parties, not a trade-off among interests of different industries or countries. It is evident that many delegations have been giving considerable thought to the problems which have plagued the GATT dispute settlement process in recent years. For our part we will, prior to the next meeting of this Group, submit some proposals to improve the system. We hope other delegations will do so as well.

The U.S. delegation is aware that as these negotiations proceed there are concurrently a number of GATT panels at work from which Contracting Parties will draw further experience. We suggest that the Secretariat assist the Group by providing factual background that will aid us in assessing the functioning of the process. Such background could include a compilation of all GATT and Code provisions, rules and procedures currently in effect that relate to dispute settlement (since they are not codified in one place); copies of standard internal operating procedures customarily adopted by panels (since they are currently available only to the parties to a dispute); and an updated and expanded tabular list of GATT disputes similar to that which was prepared for the GATT Analytical Index.

We look forward to working closely with the Chairman and with other participants and the Secretariat to reach early, positive results in this Group.