

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Negotiating Group on
Dispute Settlement

COMMUNICATION FROM JAMAICA

The following communication has been received from the Permanent Mission of Jamaica in Geneva with the request that it be circulated to members of the Group.

I. Objective - To ensure that dispute settlement in the GATT contributes to the maximum liberalization and expansion of trade and to ensure the credibility of the GATT.

II. Approaches

(i) The process should not be adversarial, rather it should be conciliatory, seeking to arrive at decisions by consensus and through this to the mutual benefit of the parties directly concerned.

(ii) Where the parties directly concerned have some difficulty in settling a dispute, other contracting parties should assist since they have an interest in avoiding contentious trade disputes and more particularly in avoiding damage to the credibility of the GATT.

III. General Principles

(i) In trade disputes there is a combination of economic or trade interest as well as issues of law. The GATT being a pragmatic framework does not impose rigid obligations in all instances. This is recognized from its Provisional Application and Exceptions.

(ii) There is the closest relationship between Notification, Consultation, Dispute Settlement and Surveillance and thus, the approach to dispute settlement requires coherence among these elements. It should be noted that the great majority of disputes are settled directly on a bilateral basis between the parties concerned.

(iii) The dispute settlement processes in the GATT should seek coherence to ensure overall balance of benefits to contracting parties. It should be noted that the system of dispute settlement is based on the General Agreement but not described therein. It has resulted from practice. There are three (3) regimes:

- (1) the general régime - Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (1979);
- (2) a special régime for complaints brought by less developed Contracting Parties (1966); and,
- (3) special régimes provided for in some of the Tokyo Round Agreements on Non-Tariff Measures.

(iv) Those measures which have a great impact on the GATT trading system but which are considered by the parties directly concerned to be in the "grey-area", particularly since they have an adverse effect on the liberalization and expansion of trade and where they undermine GATT law and practice, should be brought within the dispute settlement system. It is generally accepted that these "so-called outside GATT measures if left unchecked would lead to the weakening of the open multilateral trading system". At the same time, it was recognized "that there still existed important divergences of views as to the legal obligation to notify" and "thus the belief that 'grey area' measures gave comfort to a number of contracting parties".

IV. Preliminary Comments

(i) To ensure the coherence of the dispute settlement process, it will be necessary that any fundamental changes await the elaboration of new rules, the modification or rectification of existing rules and the agreement as to what new areas would be the subject of GATT disciplines.

(ii) As dispute settlement in GATT bodies is only a very small fraction of disputes among contracting parties, care should be taken to avoid rigid institutionalized procedures which could destroy the delicate balance between securing "settlements acceptable to the parties concerned and compliance with the law strictly speaking".

(iii) While there should be a comprehensive review of the dispute settlement system the case will have to be made that it requires comprehensive solutions. Every effort must be made to ensure that the GATT remains the pragmatic framework and institution it is.

(iv) Proposals for reform should recognize that all contracting parties should have both the right and the obligation to be members of panels and working parties. The practice of seeking to recruit panelists not drawn from delegations serving in Geneva could well be counter-productive as it may lead to the establishment of an approach based exclusively on law. This approach, "a tribunal approach" would pre-suppose a homogenous and coherent jurisprudence and a single dispute settlement regime. It could set in train an overly legalistic approach which would open up avenues for other legal action.

(v) The reforms should be taken logically only at the time at which agreement is reached on substantive rules and clarity as regards the obligations entered into by each contracting party.

In the course of the negotiations, the delegation of Jamaica will make specific comments and proposals. At this stage, however, the delegation is ready to accept that there should be:

- (1) a rationalization of the notification requirements;
- (2) an examination of the possibility for consolidating and improving the language of the various existing texts;
- (3) an examination of "third parties" initiating action where "grey area" measures are concerned.