

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)  
Negotiating Group on Dispute Settlement

COMMUNICATION FROM SWITZERLAND

The following communication dated 17 September 1987 has been received from the Swiss delegation to EFTA and GATT with the request that it be circulated to members of the Group.

IMPROVEMENT OF DISPUTE SETTLEMENT

Communication from Switzerland

In accordance with the Punta del Este Declaration and the Negotiating Plan adopted for the "dispute settlement" subject for negotiation, the Swiss delegation wishes at this stage to submit some suggestions aimed at improving and strengthening the dispute settlement rules and procedures. For the Swiss delegation, these efforts are set in the general context of the strengthening of the GATT, which comprises the following three elements: improvement and elaboration of provisions of the General Agreement and its instruments, prevention of disputes by greater transparency and surveillance, and settlement of disputes and compliance with the ensuing decisions. The scope of the terms of reference of the Negotiating Group on Dispute Settlement goes beyond the mere amendment of the existing rules of procedure. The Swiss delegation submits the following proposals and reserves the right to submit further proposals, if necessary.

1. Conciliation procedure

The aim is to clarify and supplement this procedure so as to make further means available to parties to a dispute.

If a dispute is not resolved through consultations the contracting parties concerned may request a contracting party, the Chairman of the CONTRACTING PARTIES or the Director-General to use their good offices with a view to the conciliation of the parties to a dispute.

2. Panel procedures

Although on the whole panel procedures are adequate, a number of amendments would help to enhance their effectiveness.

## 2.1 Procedure for the establishment of a panel

The aim is to introduce specific improvements so as to avoid delay and enable the Council to reach a decision rapidly and with full knowledge of the facts.

2.1.1 A request by a contracting party for the establishment of a panel should be accompanied by a brief summary of the facts and draft terms of reference.

2.1.2 The reply of the party concerned should be submitted before the Council at the latest at the meeting following the submission of the complaint. The Council shall decide on the constitution of a panel at the latest at the second meeting following submission of the complaint.

2.1.3 Standard terms of reference should be established for all panels. The complaint would be considered under the standard terms of reference if specific terms of reference could not be agreed upon by the parties to the dispute within a specified period.

## 2.2 Composition of panels

Here again, the aim is to avoid delay.

2.2.1 If within a specified period the parties to a dispute have not given their opinion on the nomination of panel members, or if one or more parties to a dispute oppose the nominations for compelling reasons and their opposition cannot be withdrawn through consultations within a specified period, the Chairman of the Council shall decide on the membership of the panel on the basis of a list of eminent persons (governmental or not) established in advance and approved by the CONTRACTING PARTIES:

## 2.3 Working procedures of panels

The procedures must be strengthened:

2.3.1 The panel should invite parties to a dispute to present their views within a specified period, and would be free to go on to the next stage of its work once that period has expired, even if one of the parties has failed to present its views; it would also be free to leave out of its report views not presented within that period.

2.3.2 Modalities should be established for consolidating two or more cases concerning the same measure taken by a contracting party before the same panel. A party to a dispute could only oppose such a consolidation on the ground that the cases were different: a definition of such ground would have to be established.

The position of "third parties" should be improved:

2.3.3 The position of a contracting party which, without being a party to the dispute, has a substantial interest in an issue before a panel, should be examined. In panel proceedings, such a party should have other possibilities than the present one of being heard by the panel.

It would be desirable to avoid panels having to consider disputes which would first require the framing of new provisions of the General Agreement:

2.3.4 A panel should hand back its terms of reference to the Council if it turns out that the dispute first requires the framing of new provisions of the General Agreement. The CONTRACTING PARTIES would decide what should be done next in the circumstances.

#### 2.4 Bilateral settlement of a dispute before a panel

A mutually satisfactory settlement of this kind should be firmly set within the GATT:

2.4.1 If a mutually satisfactory settlement is worked out by the parties to a dispute which is before a panel, the contents of such settlement should be communicated to the CONTRACTING PARTIES by the parties to the dispute. The panel would submit its report immediately after such communication.

2.4.2 The parties to the dispute could apply that settlement unless within a specified period running from the date when it was communicated to the CONTRACTING PARTIES the Council finds that provisions of the General Agreement are violated or advantages nullified or impaired. In the latter case, the panel should resume its consideration of the issue.

#### 3. Non-mandatory recourse to arbitration

It would be worth studying whether it might not be desirable to make available to parties to a dispute, within GATT, not only the panel (and working party) procedure, but also an arbitration procedure.

3.1 If a dispute is not settled through consultations or even conciliation, a party to the dispute may, instead of requesting the establishment of a panel or working party, come to a compromise by arbitration with the other party within a specified period, or within the same period invoke a previously agreed arbitration clause. This possibility would also be open to it if the Council fails to follow up a report submitted by a panel.

3.2 The compromise or arbitration clause should be submitted to the Council. The CONTRACTING PARTIES could thus exercise supervision over the

subject of the arbitration, as well as over the arbitration procedure adopted by the parties to the dispute. The latter could settle their dispute on the basis of the compromise or arbitration clause, unless it is rejected by the Council on grounds to be defined.

3.3 An arbitration procedure could be agreed upon by the CONTRACTING PARTIES. The parties to the dispute should apply it. Issues not settled by it would be settled by the arbitral compromise or arbitration clause.

3.4 The CONTRACTING PARTIES would see to the implementation of the arbitral decision, which would be binding and final for the parties to the dispute.