

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Negotiating Group on Dispute Settlement

COMMUNICATION FROM JAPAN

The following communication has been received on 18 September 1987 from the delegation of Japan with the request that it be circulated to members of the Group.

**JAPAN'S PROPOSAL
ON DISPUTE SETTLEMENT**

Japan hereby submits a proposal on dispute settlement with a view to facilitating discussions in the negotiating group on dispute settlement. The proposal includes those suggestions further developed on the basis of our previous statement (MTN. GNG/NG13/W/6), and we reserve the rights to suggest new or alternative ideas.

1. Relationship between Consultations under Article XXIII: 1 and the recourse to the CONTRACTING PARTIES

It is essential that dispute settlement should be sought basically on the basis of the consultations of the parties concerned and that the CONTRACTING PARTIES, when a matter is referred to it, should seek an appropriate solution in light of the nature of the dispute. From this viewpoint, the following points should be examined in the group.

With the exceptions spelt out below, the CONTRACTING PARTIES should not accept the request of a complaining party to refer a matter to it, unless the parties concerned go through bilateral consultations under Article XXIII: 1.

The exceptions are as follows:

(a) The difficulty is of the type described in Article XXIII: 1 (c).

(b) The parties concerned, which have gone through consultations under Article XXII: 1, agree that such consultations have in fact met the conditions of Article XXIII: 1.

(c) A complaining party whose representations or proposal made under Article XXIII: 1 is given no sympathetic consideration by the other party concerned within a reasonable period of time (normally not later than 40 days) may request the CONTRACTING PARTIES to exhort the other party to enter into bilateral consultations. The CONTRACTING PARTIES should accept such a request unless any compelling reason should dictate otherwise. If the party does not enter into bilateral consultations despite the exhortation of the CONTRACTING PARTIES, the other party may refer the matter to the CONTRACTING PARTIES.

(d) The other cases that the CONTRACTING PARTIES agree as exceptions.

Either party to a dispute may request the mediation of the Director-General or his designee during bilateral consultations or after bilateral consultations lead to no satisfactory solution.

The CONTRACTING PARTIES should give due consideration to the following points in deciding whether or not to accept the request to refer a matter to it.

(a) When the disputing party against which a complaint is lodged is opposed to the recourse to the CONTRACTING PARTIES on the ground that the complaint lacks the GATT relevancy (nullification or impairment of benefit under GATT, or the attainment of any objective of GATT being impeded), the CONTRACTING PARTIES should examine the complaint in terms of the GATT relevancy.

(b) Desirability or appropriateness of recommending parties to a dispute to continue or resume bilateral consultations in the light of the circumstances.

(c) Appropriateness of the form of dispute settlement requested by the parties to a dispute (panel, working party, or rulings by the Council). If there is a difference of view between the disputing parties as to which form is appropriate, priority should be accorded to the request of the complaining party if the disputing parties do not reach an agreement within a reasonable time.

2. Establishment of a Panel

In view of occasional delay in establishing a panel or in deciding the terms of reference or panelists, the following improvements are suggested.

In cases where the CONTRACTING PARTIES may accept the request to establish a panel as indicated in 1. above, the CONTRACTING PARTIES (the Council) should, after giving due consideration to the points also stipulated therein, establish a panel normally within a period of two months from the time so requested.

The chairman of the Council would be mandated by the CONTRACTING PARTIES (the Council) to decide upon the terms of reference and panelists in consultation with the disputing parties.

(i) Terms of Reference

Unless the disputing parties reach an agreement on terms of reference within 30 days from the Council decision to establish a panel, the standard form (as indicated in a Note by the Secretariat, p. 102) should be adopted.

The disputing parties should not oppose the adoption of the standard form except for such a compelling reason that impartial judgement could not be anticipated from the standard form.

(ii) Nomination of Panelists

Panelists should be nominated in the following way, in case where the disputing parties do not reach an agreement on the nomination within 30 days from the Council decision to establish a panel.

The number of panelists should be three, unless otherwise agreed upon. Each disputing party unilaterally nominates one panelist, and the Director-General would then nominate the other panelist (who would be the chairman) from a roster adopted by the CONTRACTING PARTIES. Disputing parties should not oppose the nomination by the Director-General, unless they are convinced with a cogent reason that impartial judgement could not be anticipated from a person proposed. In the light of paragraph 12. of Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (hereinafter referred to as "Understanding"), the parties to the dispute would respond to nomination of panel members within seven working days.

3. Qualifications of a Panelist

Review is needed as to paragraph 11. of Understanding, which stipulates that the members of a panel would preferably be governmental. The present roster should be expanded in such a way as to accommodate governmental as well as more non-governmental persons. For this purpose, the number of panelists to be indicated by each contracting party should be increased to 3 or 4.

4. Time Period for Panel Proceedings

In cases where a specific time period for panel proceedings is agreed upon among disputing parties and panelists, the panel shall respect such a deadline.

Unless otherwise agreed, a panel should aim to deliver its reports and findings to the CONTRACTING PARTIES normally within a period of nine months from the establishment of the panel. In cases of urgency, however, the panel should aim to deliver their reports and findings to the CONTRACTING PARTIES normally within a period of three months from the time the panel was established in line with paragraph 20. of Understanding. Cases of urgency foreseen here are the cases where a complaining party could establish or disputing parties agree that delay of the panel proceedings would cause serious injury to the benefit accruing to the complaining party under GATT.

A panel report should be delivered to the CONTRACTING PARTIES after a reasonable period of time with a view to obtaining the comments of the disputing parties.

(Paragraph 18. of Understanding)

5. Adoption of Panel Report or Findings

The Council should make a decision on a panel report or findings within a period normally of 80 days from the time they are delivered. In cases of urgency, the decision should be made within a period normally of 30 days.

Parties to a dispute shall not unduly obstruct the process of dispute settlement including the adoption of panel report or findings.

6 Follow-up of Recommendations

In cases where there is no time period specified in a panel report within which recommendations would be reasonably implemented, the Council should specify the time period in accordance with the normal GATT practice, taking account of the circumstances relating to the dispute.

In the light of paragraph 22. of Understanding, if recommendations are not implemented within the reasonable period of time specified, the Council should make suitable efforts at the request of a complaining party with a view to finding an appropriate solution. In case where there arises a discord between the parties to a dispute as to the way to implement the recommendations, the Council should, at the request of either party, be empowered to reconvene the panel and request its advisory opinion relating to the points at issue, if bilateral consultations lead to no satisfactory solution within a reasonable time.

7. Compensations and Countermeasures

Any disputing party should make compensations, if it fails to observe the recommendations addressed to it within a reasonable time.

If a disputing party neither observe the recommendations nor make compensations, the CONTRACTING PARTIES (the Council) may authorize the other party to

resort to countermeasures. The party which fails to observe the recommendations and to make compensations would not oppose the authorization of the countermeasures. In examining the authorization, the CONTRACTING PARTIES (the Council) should give due consideration to what measures are appropriate in the light of the circumstances (i.e. the degree of the nullification or impairment of the benefit accruing to the party under GATT).

After authorizing the countermeasures, the CONTRACTING PARTIES should periodically review the status of the countermeasures or the implementation of recommendation. The Council shall withdraw the authorization immediately if it considers that the countermeasures are no longer needed in the light of the circumstances.

It should be reaffirmed that any contracting party shall not resort to countermeasures without the authorization of the CONTRACTING PARTIES. The party to which the countermeasures are applied may ask the Council to find an appropriate solution, if the countermeasures are invoked without the authorization of the CONTRACTING PARTIES.

Each contracting party should undertake to make their domestic legislation and the enforcement thereof relating to countermeasures conform to Article XXIII: 2.