

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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

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COMMUNICATION FROM THE DELEGATIONS OF ARGENTINA, CANADA,
HONG KONG, HUNGARY, MEXICO AND URUGUAY

The following communication has been received on 9 November 1987 from the above-mentioned delegations with the request that it be circulated to members of the Group.

Paper on Dispute Settlement

The attached proposal from the delegations of Argentina, Canada, Hong Kong, Hungary, Mexico and Uruguay is submitted as a contribution to the deliberations of the Negotiating Group on Dispute Settlement. This proposal is without prejudice to any other proposals which have been or may be submitted to the Negotiating Group by the delegations concerned.

Introduction

This negotiating group has before it a number of proposals which offer practical solutions to practical problems that have emerged from the operation of the dispute settlement mechanism. These suggestions, if they can be agreed upon, with perhaps some refinement, will no doubt improve the efficiency and efficacy of the existing DS procedures. In this regard, it is encouraging to note that a certain convergence of views is emerging on some such possible procedural improvements.

2. However, while procedural improvements would be desirable, they need to be complemented by adequate arrangements to oversee and monitor the whole dispute settlement process as well as to enhance compliance with the adopted recommendations. Arrangements on this latter aspect, however, have not been addressed in depth in this group so far. Regular multilateral surveillance is essential because it can ensure progress in the process by putting any delay, obstruction and non-compliance under the spotlight. Indeed this is specifically called for in the negotiating objective set by the Ministers for this subject which provides, inter alia, that "Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations".

Proposal

A. Council meeting in Dispute Settlement Mode

3. At present, the handling, monitoring and surveillance of disputes are carried out by the GATT Council (and Special Council), but given the wide range of business normally dealt with in the Council, it is difficult for the Council to give its full attention and focus to disputes. It is proposed, therefore, that the Council would meet in a special Dispute Settlement Mode, to carry out all the functions relating to disputes. These functions include all those which are spelt out in the procedures adopted on 10 November 1958 in respect of Article XXII (BISD 7S/24), the decision of 5 April 1966 on procedures under Article XXIII (BISD 14S/18), the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted on 28 November 1979 (L/4907), the Ministerial Declaration adopted on 29 November 1982 (BISD 29S/9 and BISD 29S/13), and the Action taken on 30 November 1984 at the 40th Session of the CONTRACTING PARTIES on Dispute Settlement Procedures (BISD 31S/9) as well as any new ones that would emerge as a result of the negotiations under the Uruguay Round. The present proposal would not alter the rights and obligations of contracting parties under the General Agreement.

4. The advantage of having the Council meeting in Dispute Settlement Mode is that greater and more systematic attention can be given to the dispute settlement process. It will set its own pace and agenda. More specifically, it is envisaged that the Council meeting in Dispute Settlement Mode shall carry out the following functions:-

- (a) as soon as a dispute is brought to the attention of the CONTRACTING PARTIES, the Chairman of the Dispute Settlement Council is authorised to take appropriate action with the agreement of the parties concerned, including convening consultations and to explore the possibilities through conciliation for a satisfactory solution to individual disputes;
- (b) if the dispute is not resolved through either consultation or conciliation, the Dispute Settlement Council will promptly consider the request by the complainant party for the establishment of a panel (or a working party) to assist the CONTRACTING PARTIES to deal with the matter and shall establish the panel in accordance with the agreed procedures;
- (c) to monitor observance of the procedures and, where applicable, the time limits set out for different phases of the dispute settlement process such as the drawing up of the terms of reference for the panel (or working party), selection of panel members, deliberations of the panel proceedings and the adoption of the panel reports;
- (d) to keep under surveillance any matters arising from the operation of the dispute settlement mechanism on which the CP's have made recommendations or given rulings, with a view to securing full compliance by the contracting parties to whom the CP's recommendations and rulings are directed;

- (e) to conduct periodic/annual reviews of the operation of the dispute settlement mechanism, with a view to identifying problems and making recommendations for improvements; and
- (f) to meet as frequently as necessary, preferably about once a month, so as to discharge promptly its functions.

B. Role of the Chairman

5. The Council, when meeting in its Dispute Settlement Mode, shall be chaired by a Chairman appointed or elected for that purpose by the CONTRACTING PARTIES (see paragraph 7). More specifically, it is envisaged that the Chairman will carry out the following functions:-

- (a) as soon as a dispute is brought to the attention of the Dispute Settlement Council, the Chairman shall offer his good offices to the disputing parties. With the agreement of the parties concerned, he will help to convene consultations and wherever appropriate, try to mediate a bilateral solution to the dispute.
- (b) if the dispute is not resolved through consultation and/or mediation and if the disputing parties agree to seek binding arbitration, the Chairman, if necessary assisted by experts, could be available to provide such arbitration.

- (c) if the dispute is not resolved through consultation or mediation and a request is made for the establishment of a panel, the Chairman will help to facilitate and expedite the setting-up of the panel and the subsequent operation of the dispute settlement procedures, but he would have no role in the actual deliberations of the panel or in respect of the functions of its Chairman;
- (d) to keep the Dispute Settlement Council informed of developments of the disputes; and
- (e) to advise and assist the Council in the latter's discharge of its functions particularly with regard to those spelt out in paragraph 4(d) and 4(e).

6. In short, as appropriate, at different stages of the dispute settlement process, the Chairman may assume the role of a conciliator/mediator, adjudicator or overseer. It is essential, therefore, that he shall be given sufficient latitude for independent action.

7. Given the key role of the Chairman in the Dispute Settlement System which will no doubt be a heavy burden in view of the increasing number of disputes that have been or are expected to be brought before the CONTRACTING PARTIES, the position should be best filled by a neutral and competent individual appointed or elected by the CONTRACTING PARTIES. A Chairman dedicated to dispute settlement matters should be able to develop an expertise that would enable him to discharge his functions effectively and expeditiously. The Chairman should be appointed or elected initially for a term of [] years, renewable thereafter every [] years.