

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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

COMMUNICATION FROM HUNGARY

The following communication has been received on 9 November 1987 from the delegation of Hungary with the request that it be circulated to members of the Group.

Hungary's Proposal on Dispute Settlement

Hungary considers dispute settlement as one of the priority issues for the Uruguay Round of multilateral trade negotiations. A well-functioning dispute settlement mechanism serves not only the interests of the parties to a dispute but at the same time contributes to a large degree to the strengthening of the whole GATT system. Hungary's view is that weakening of the GATT system is partly due to the fact that the present dispute settlement mechanism does not sufficiently deter contracting parties from contravening or circumventing the provisions of the GATT. In our view the integrity of the GATT system and thereby the interests of all contracting parties require that disputes be settled in full compliance with the letter and spirit of the General Agreement. Therefore the rules should guarantee the availability of the dispute settlement mechanism regarding all contentious issues and to all parties independently from the size of their trade or retaliatory power.

In the following, the Hungarian delegation submits some proposals on how the GATT dispute settlement system may be improved so as to make it more responsive to the needs of all contracting parties.

1. Conciliation

If a dispute is not resolved through bilateral consultations, the parties to the dispute may request conciliation with a view to find a satisfactory solution to the dispute. The conciliator should promote solutions which are consistent with the General Agreement and not prejudicial to the interests of third parties. The consultations should be terminated as soon as possible. In case of a mutually satisfactory solution the conciliator should inform the Council about the terms and conditions of the solution. If the conciliation was not successful or the conciliation period has expired, either party to the dispute may refer the matter to the Council.

2. Establishment of panels

If a party requests the establishment of a panel, it should be automatically established.

3. Bilateral settlements of a dispute before a panel

If the parties to a dispute reach a mutually satisfactory solution in a dispute which is before a panel, the Council should be informed about the terms and conditions of the settlement. The case cannot be regarded as terminated if the Council finds that the settlement is not in accordance with the General Agreement. In such cases the Council may ask the panel to submit its report. If the parties to the dispute object to the continuation of the proceeding, the Council should restrict its ruling on the legal aspects of the case.

4. Third parties

All interested contracting parties are entitled to have a legal status in any panel proceeding the outcome of which might have a direct or indirect impact on their rights and obligations. Third parties should be given access to the documentation and to make written and oral representations. If the third party is of the view that the mutually satisfactory bilateral solution of a dispute is not in accordance with the General Agreement, it may refer the legal questions involved in the dispute to the Council.

5. Adoption of panel reports

According to the present rules, adoption of panel reports and making of recommendations is subject to consensus among all contracting parties, including parties to the dispute.

Hungary agrees with the concern that in the last years the blocking of adoption of panel reports has become a serious problem which has shaken confidence in the GATT system as a whole. In our view one of the possible solutions could be, if the Council separated the adoption of the panel report relating to the interpretation and application of relevant GATT provisions from the adoption of the recommendations to be made. It is in the interest of all contracting parties to have a clear-cut ruling on how to interpret and apply a specific GATT provision. This would improve the transparency and integrity of the GATT system. The interpretation and the application of a GATT provision is not a private issue of the parties to the dispute, therefore the system itself requires that the adoption of the conclusion of the panel in these questions should not be blocked by either party to the dispute. As the adoption of the recommendation part of the panel's findings is concerned, one of the parties to the dispute may not always be in a position to adopt the recommendations. In these cases the report should be considered as adopted, with the exception of the recommendation part of the panel's report. In these cases the adoption of the recommendations may be postponed for a period to be determined. After this period the Council may adopt the whole report disregarding the opposition of a party to the dispute.