

**MULTILATERAL TRADE
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Negotiating Group on Dispute Settlement

COMMUNICATION FROM KOREA

The following communication has been received on 19 November 1987 from the delegation of Korea with the request that it be circulated to members of the Group.

The attached proposal is submitted by the delegation of the Republic of Korea as a contribution to the deliberation of the Negotiating Group on Dispute Settlement. Since this proposal contains preliminary views on matters to be taken up in the negotiations, the Korean delegation reserves its right to revert to it at a later stage.

I. Introduction

The proposal consists of three parts and each part reflects the area where the Korean delegation wishes to suggest improvements.

- i) The objective of the first part is to widen channel conducive to the settlement of disputes through an enhanced role of mediation and introduction of non-compulsory arbitration procedure ,
- ii) The second part aims at establishing a binding but not rigid time-table for each stage of panel procedures to avoid undue delay.
- iii) The third part deals with appropriate procedural arrangement for facilitating compliance with adopted recommendations including compensation and regular surveillance mechanism.

II. Proposal

1. Mediation/Arbitration

a) Mediation

The Korean delegation supports an enhanced mediation role of the Director-General or his designee since it believes that such mediation would provide opportunities for an early and mutually satisfactory solution to disputes.

In case where consultation stops short of settlement, any disputant may request the Director-General or his designee to use his good offices with a view to finding a solution within 60 days from the date when the matter was referred to him. Concomitantly with this process, any disputant may refer the matter to the Council to avoid

a possible delay. In this case, the mediation process shall proceed in parallel with the deliberations of the Council on the matter and with the proceedings of a panel established by the Council.

b) Arbitration

The Korean delegation believes that the introduction of a non-compulsory arbitration procedure in the GATT dispute settlement system might facilitate resolution of certain disputes basically of a factual nature. However, it would not be very easy to pre-determine what sort of disputes shall be subjected to a binding arbitration procedure. Therefore, disputants may resort to a binding arbitration on the basis of mutually agreed terms and conditions as an alternative to panel proceedings.

At the same time, in order to safeguard the interest of third parties, the agreed arbitration clause between the disputants shall be referred to and approved by the Council. Furthermore, the result of arbitration shall be submitted to the Council. The Council would take note of the report and allow third parties to express their views on the report.

2. Panel procedures

a) Establishment of a panel

To avoid delay in establishing a panel, the Council shall decide on the establishment of a panel not later than at the second Council meeting (normally 60 days) after the matter was first referred to the Council meeting.

In case of a dispute between a developed and a less developed contracting party where the latter, as a complainant, had sought the good offices of the Director-General and such good offices had failed to produce a mutually satisfactory solution, the Council shall decide on the establishment of a panel not later than upon the receipt of the Director-General's report on the action taken by him in accordance with the 1966 Decision on Procedures under Article XXIII.

b) Standard terms of reference

If the Council, in consultation with the disputants, fails to adopt specific terms of reference within 30 days from the date of the Council decision to establish a panel, standard terms of reference shall be adopted automatically.

c) Composition of a panel

Unless the parties to a dispute reach an agreement on the composition of a panel within 30 days from the date of the Council decision to establish a panel, the Director-General, in consultation with disputants and in line with Annex 6(ii) of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance, would propose panelists from government representatives and/or the roster of panelists. In this case, the parties shall retain the ability to respond to the Director-General's proposal but shall not oppose nominations except for compelling reasons. After 60 days from the date of the Council decision to establish a panel, the final decision on its composition shall be taken by the Director-General without delay.

d) Time-limit for panel proceedings

The panel shall submit its findings and recommendations to the Council within a period of 9 months from the date of its composition.

In urgent cases where delay would cause serious injury difficult to repair, the panel shall complete its work within 3 months.

In cases where the Council establishes a panel upon the receipt of the report of the Director-General, whose good offices, initiated at the request of a complaining less developed contracting party, failed to produce a mutually satisfactory solution, the panel shall endeavour to complete its work within a period of 60 days from the date the matter was referred to it in accordance with the 1966 Decision on Procedures under Article XXIII.

If the panel is unable to meet the above time-limit, it shall report to the Council the reasons for the delay and the Council would grant extension as appropriate.

e) Adoption of panel report

The Council shall make a decision on the adoption of the panel report by the second Council meeting (normally 60 days) or by the next Council meeting (normally 30 days) in urgent cases, after the report was first submitted to and discussed at the Council meeting.

Any party to a dispute objecting to the adoption of the report shall submit its position in writing during this period and provide the opportunity to the Contracting Parties to consider the objections before making a decision.

3. Compliance with the adopted recommendations

a) Time-limit for implementation

The Council shall define a reasonable time-limit for implementation of the panel recommendations when it adopts the panel report. The time-limit may be extended once by the Council if the contracting party, to which a recommendation is directed, requests it.

b) Compensation and retaliation

In case of non-compliance with the recommendations within the time-limit, extended or not as the case may be, the contracting party concerned shall grant appropriate compensation. At the request of the complaining contracting party, the Council shall give a ruling or make a recommendation on the amount of compensation. Retaliation shall be authorised by the Council only exceptionally. At the request of a less developed contracting party which has only limited retaliatory power vis-à-vis major trading partners, panel reports may include an appropriate recommendation on the amount of compensation due in case the main panel findings are not implemented by a developed contracting party within such time-limit.

c) Surveillance

The Council shall oversee and monitor all the on-going dispute settlement proceedings and conduct a comprehensive review of the implementation of panel recommendations four times a year on a regular basis.