

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Negotiating Group on Dispute Settlement

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COMMUNICATION FROM BRAZIL

The following statement has been made by the delegation of Brazil in the meeting of the Group on 2 March 1988 with the request that it be circulated to members of the Group.

URUGUAY ROUND NEGOTIATING GROUP ON DISPUTE SETTLEMENT

STATEMENT BY THE BRAZILIAN DELEGATION

In the first meeting of 1988 of the Negotiating Group on Dispute Settlement the Brazilian Delegation wishes to present its general views on the matters under consideration in this negotiating group. In doing so, my delegation bears in mind the fact that the work of the Negotiating Group on Dispute Settlement must be considered in close relationship specially with the work of the negotiating groups on GATT articles, on the Functioning of the GATT system and on MTN Agreements and Arrangements.

In the context of the negotiating objective of the Group, that is to say, to improve and strengthen the rules and procedures of the dispute settlement process, my delegation has been insisting that particular attention should be given to differential and more favourable treatment for developing countries.

Our stance in this regard corresponds to the historical commitment of the Brazilian Government in the negotiating process, which led to the Decisions of November 28, 1979, concerning the "Differential and More Favourable Treatment" and the "Understanding regarding Notification, Consultation and Dispute Settlement". Consideration of the Articles XXII and XXIII of the General Agreement must viewed in the light of the above decisions of the CONTRACTING PARTIES.

We also have to stress the important role endowed to the Director-General - the good offices - as enacted in the Paragraph 8 of the "Understanding" of 1979, reaffirmed and extended to all Contracting Parties by the Ministerial Declaration of 1982.

The Brazilian delegation is of the view that the dispute settlement procedures are a very important and integral part of the GATT and that they play a decisive rôle in securing reciprocity and a proper balance of rights and obligations between contracting parties.

Special consideration must be ascribed to the difficulties faced by developing contracting parties seeking equitable solution in disputes with more powerful contracting parties. Taking such point into account and in the light of letter B, roman IV, of the Punta del Este Declaration, we believe that the present dispute settlement mechanism could be improved with a view to introducing a higher level of equity and thereby protecting contracting parties which can only count upon limited power of retaliation.

We believe that is essential that any attempt in the Uruguay Round to improve the existing GATT dispute settlement procedures should always contemplate the differential and more favourable treatment to which less-developed contracting parties are entitled to in Part IV as well as the Provisions of Article XXXVI.8 of the General Agreement. If necessary, more specific clauses should be included with a view to preserving in the long run the interests of the less-developed contracting parties.

In this connection and having always in mind the Punta del Este Ministerial Declaration as the basis for our work, we would also like to mention the fact that the Director-General, at the GNG Meeting of February 18, recalled that the differential treatment in favour of the less-developed contracting parties applies to all areas of negotiation.

It is widely recognized that the GATT constitutes a cornerstone of legal rights and obligations. Consequently, it should offer to its contracting parties adequate consultation and dispute settlement procedures as well as create conditions

to the improvement of trade in the most transparent and safest environment. Such an environment has been suffering from direct and dissimulated violations of the GATT rules in the field of the so-called "Grey Areas", where there are rare possibilities of resorting to dispute settlement procedures.

Therefore, we are of the view that the contracting parties should examine carefully whether the persisting deficiencies lay in the procedures themselves or in their implementation by contracting parties. Possible shortcomings of the dispute settlement mechanism perhaps arose more from the divergent understanding of its nature than from specific deficiencies of the rules for the settlement of disputes.

Thus, in accordance with previous statements of my delegation I would like to reaffirm the following points of outstanding interest for my Government:

a) The dispute settlement procedures should be seen as a way to ensure the effective application of existing substantive GATT rules to specific cases where controversy about interpretation may arise between contracting parties.

b) The dispute settlement procedures should be used essentially as a conciliation mechanism whose final stage, if conciliation fails, should not be of a judicial nature.

c) The dispute settlement procedures should thus not be used to create, by constructive interpretation, obligations which are not clearly established in the text of the General Agreement.

d) The dispute settlement procedures should not be used as a supra-national jurisdiction, as a means to internationalize conflicts of a private nature, the solution of which should be sought within the domestic jurisdiction of the individual contracting parties.

We take this opportunity to express our appreciation for the presentation of the background paper "Concept, Forms and Effects of Arbitration" that we have asked for in our last meeting. Due to the importance of the matter, the Brazilian authorities will be proceeding to a detailed study of this document.

We also be examining the revised version of the "Summary and Comparative Analysis of the Proposals for Negotiations (MTN.GNG/NG13/W/14/Rev.1). Therefore, we reserve our right to present our comments on these documents in a future meeting.