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THE URUGUAY ROUND**

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Negotiating Group on Dispute Settlement

COMMUNICATION FROM AUSTRIA

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

Statement by the Austrian Delegation

Many useful suggestions have been made in this negotiating group for improving the dispute settlement procedure of the GATT. We would wish to provide preliminary comments on a number of these proposals. We were not able to study the proposals made today, therefore these new proposals are not commented on in my following remarks.

Like other delegations Austria believes that prompt and effective resolution of GATT disputes is of vital importance for the effectiveness and implementation of both existing and new GATT rules deriving from the Uruguay-Round.

The Austrian Delegation supports the suggestion of the Nordic Countries, that the parties to a dispute should have the choice between a number of alternative and/or complementary techniques and mechanisms for the settlement of disputes.

Mediation/Conciliation

In this respect the Austrian Delegation is in favour of an enhanced mediation role of the Director-General or his designee. We would not, however, consider mediation a mandatory step in the dispute settlement process. Recourse to mediation through the good offices of the Director-General or his designee should be an option that could be used voluntarily by mutual agreement. We think further that the mediation function should be clearly separated from the function of GATT panels.

Consultations

Austria believes that the question put by the Canadian Delegation whether the procedures for Article XXII consultations adopted in 1958 may require streamlining as regards the forty-five day notification time frame and the requirement of a "substantial trade-interest in the matter" for interested third parties desiring to be joined in the consultations, merits consideration.

Arbitration

Austria supports proposals to supplement the existing means of dispute settlement by an explicit recognition of mutually agreed arbitration. Parties to a dispute should have the possibility, instead of requesting the establishment of a panel, to submit the dispute to a binding arbitration on the basis of mutually agreed terms and conditions. An arbitration procedure could also be agreed upon by the Contracting Parties. The arbitrators decision should be binding without approval by the Council.

In order to safeguard the interests of third parties and to ensure compatibility with the General Agreement the arbitration award could be considered to stand unless the Council disapproves it.

As to the nomination of arbitrators we propose to use the procedure normally applied for selecting arbitrators: Each party to a dispute appoints one or two arbitrators and these agree on the Chairman of the arbitral body. If agreement can not be achieved, the Chairman of the arbitral body should be appointed by the Director-General in consultation with the Chairman of the Council. Thereby use could be made of the panelist roster.

Panel Procedures

Establishment of Panels

Austria favours the proposal made by Switzerland that the Council should decide on the constitution of a panel at the latest at the second meeting following submission of the complaint.

Austria supports the idea that standard terms of reference should be established. These standard terms of reference should be used unless the parties to a dispute agree within a period of a month on special terms of reference.

Composition of Panels

Austria is in favour of the proposal, that the Director-General should be authorised to decide in consultation with the Chairman of the Council on the composition of panels if the parties to the dispute cannot agree on the panel membership within a specified period (e.g. one month). The "roster of non-governmental panelists" should be made permanent and expanded.

Working procedures for Panels

Austria supports the proposal that the traditional "standard working procedures" for the work of panels should be formally adopted and their regular use recommended by the Contracting Parties.

We also favour the proposal that the time-limits for each phase of the panel proceedings, as well as for the dispute settlement process as a whole, be fixed more precisely and stricter. We consider that a panel should aim at delivering its report to the Contracting Parties normally within a period of nine months, and in cases of urgency within three months, from the establishment of a panel.

Adoption of Panel Reports

Austria holds that the practice of consensus should be maintained in the Council's decision-making process with regard to the adoption of reports and the making of recommendations, but the Austrian Delegation is willing to consider other proposals made on this question, too. Parties raising objections to panel findings should make a written submission to the Contracting Parties giving the grounds for their objections. We support the suggestion that the Council should decide on panel reports within a period of normally 80 days, and in cases of urgency 30 days, from the time they are delivered.

Follow-up, Implementation

We favour the proposal made by the Australian Delegation that, if the Contracting Parties recommend that a party take action to rectify a matter or provide compensation, the contracting party concerned should advise the Contracting Parties in writing as soon as possible, and in no case later than three months after the adoption of the recommendations, of the action it has taken or proposes to take in accordance with those recommendations. The defending contracting party should submit a follow-up report six months after its initial advice.

These are some preliminary comments the Austrian Delegation wanted to make at this stage of the work of our group.