MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

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

MEETING OF 20 NOVEMBER 1987

Note by the Secretariat

Addendum

With regard to paragraph 7 of MTN.GNG/NG13/5 and paragraph 6 of MTN.GNG/NG13/2, which summarize proposals made by the representative of Chile, the secretariat has received, on 27 April 1988, the following text from the delegation of Chile with the request that it be circulated as a document.

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14. Chile made a number of statements during the two meetings, which may be summarized as follows:

(a) Basically, the proposals have not resolved the problem that the non-complying party is currently both judge and party in decisions.

(b) There should be emergency measures for cases where non-compliance with GATT rules affects perishable goods. (A country covered this problem by suggesting "retroactive compensation").

(c) The Director-General should be more able to appoint members of panels when the parties involved cannot reach agreement within a reasonable period.

(d) The panel itself should define its terms of reference.

(f) A political commitment should be adopted to comply with the present rules governing the dispute settlement system, as well as whatever rules are agreed on under the present Round.

(g) The proposal sponsored by Hong Kong seemed sound to us as it envisaged a comprehensive system of supervision and control. However, it should be improved as follows:

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(1) The Contracting Parties should actually adopt reports and recommendations.

(2) The possibility for Contracting Parties to postpone indefinitely the establishment of panels or the implementation of their reports should be removed.

(3) Broadly speaking, the Hong Kong proposal continues to grant considerable powers to the Contracting Parties involved. In a multilateral system such as that of the GATT, a conflict between two parties is not only a bilateral problem but also a multilateral one which jeopardizes the success of the entire system. Hence there should be no delay in the settlement of disputes.

(4) The desire of one Contracting Party should suffice for the Chairman of the Council proposed by Hong Kong to participate in bilateral consultations.

(h) Various proposals refer to "arbitration", but what is this supposed to mean? In fact, an arbitrator is nothing other than a judge normally designated by the parties to a conflict (or designated according to pre-established procedures) who reaches judgements, decisions or findings in which rights and obligations are recognized or applied for the parties concerned. But is this binding character of arbitration what contracting parties who have made these proposals really want? Or would they rather prefer a mediator?

(i) Under "sanctions" that could be provided for breaches of GATT rules, the possibility of retaliation should be considered. Nevertheless, when a conflict arises between "a big country and a little country", if consultations and negotiations are conducted "bilaterally", it is most likely that "the bigger fish will eat the smaller". On the other hand, if the negotiations are "multilateralized", the retaliatory power of the more developed country will be reduced not only because there will be "more witnesses" but also because the latter can - in the system we are seeking to strengthen - exercise multilateral retaliation.

(j) We agreed with the need for compulsory processes of conciliation (first) and arbitration (subsequently).

(k) In view of the foregoing, we consider pertinent the contents of pages 4, 5, 6 and 7 of document MTN.GNG/NG13/W/15. However, we found unacceptable the introduction and the extremely politicized framework of the document, as well the lack of any reference to Article XXI of the General Agreement, which is fully valid.

(m) We requested an "organigram" version of the excellent secretariat document MTN.GNG/NG13/W/14.

(n) We also suggested that, as is the case in the ordinary judicial system of every country, there should be machinery to defend the weakest parties, so that when a conflict breaks out between developed and less-developed members mechanisms can be found to "improve" the defence of the latter. This would be a means of encouraging such countries to "dare" to use the dispute settlement system, which today for the most part they obviously shun either because they do not believe in the system, or because the opposing party is a powerful country or is more skilled at putting its case in the forums, or simply because they do not know how to do so. Recourse of this kind calls above all for "defenders", technical know-how and statistics as well as a whole set of background factors not always available to developing countries.