

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on Dispute Settlement

MULTI-COMPLAINANTS PROCEDURES AND INTERVENTION BY THIRD PARTIES  
IN GATT DISPUTE SETTLEMENT PROCEEDINGS

Note by the Secretariat

At its meeting of 23-24 June 1988 the Group requested the secretariat to prepare a note on "Multi-complainants Procedures and Intervention by Third Parties in GATT Dispute Settlement Proceedings" (MTN.GNG/NG13/8).

I. Disputes involving more than two disputants

1. Article XXIII of GATT foresees that more than two contracting parties may be parties to a dispute:

"... the contracting party may ... make written representations or proposals to the other contracting party or parties which it considers to be concerned" (Article XXIII:1).

"The CONTRACTING PARTIES shall ... make appropriate recommendations to the contracting parties which they consider to be concerned ..." (Article XXIII:1).

"The CONTRACTING PARTIES may ... authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions ..." (Article XXIII:2).

2. The first dispute in GATT where more than two parties were involved was a joint complaint in March 1951 by Denmark and Norway against Belgium's family allowance legislation. A common panel was established. (Case No.7 in the Tabular List of GATT Article XXIII Complaints in document MTN.GNG/NG13/W/4).

3. The next dispute where more than two parties were involved was a complaint in September 1951 by Denmark and the Netherlands against the United States' import restrictions on dairy products. As the examination under Article XXIII:2 took place at a Session of the CONTRACTING PARTIES, it is difficult to draw a line between the complaining contracting parties and third parties that took part in the discussion (Case No.8).

4. In October 1954 the Benelux countries lodged a joint complaint against Germany's import duties on starch and potato flour and a single panel examined the complaint (Case No.16).

5. In November 1961 Uruguay complained against trade measures on temperate primary agricultural products maintained by fifteen contracting parties. It should be noted that the single Panel included three members nationals of contracting parties complained against; these members did not participate in the consideration of the parts of the complaint concerning their countries (Case No.28). In May 1963 Uruguay requested that the Panel be reconvened in order to consider replies by seven of the fifteen contracting parties as to measures taken by them to implement the recommendations by the Panel (also covered by Case No.28).

6. In May 1973 the European Economic Community complained against the United States' tax legislation (DISC). The United States complained at the same time against income tax practices maintained by Belgium, France and the Netherlands. The United States suggested that the four complaints should be considered in a general working party on the impact of tax practices on exports. This was not accepted by the European Economic Community and the three countries concerned. The Council established four panels to examine the complaints. The United States requested in the Council that the Panels should have identical composition and meet simultaneously. The Council did not take any decision concerning these arrangements but the United States' requests were met in practice through agreements in the panels (Case No.40).

7. In September and November 1978, respectively, Australia and Brazil complained against the European Economic Community's refunds on exports of sugar. Two Panels with the same composition were established to examine the two complaints, but they were set up at different dates, had somewhat different terms of reference and did not meet simultaneously (Cases Nos.53 and 54).

8. In April 1982 ten contracting parties requested joint consultations with the European Economic Community concerning the Community's sugar régime under Article XXIII:1. The matter was not pursued under Article XXIII:2 (Case No.70).

9. In January 1987 Canada, the European Economic Community and Mexico made a common complaint against the United States' tax on imported petroleum and petroleum products (the Superfund case). Mexico had originally invoked the 1966 Procedures under Article XXIII in cases of disputes between less-developed and developed contracting parties but suspended its recourse to these procedures and joined Canada and the Community in their request for a panel. The Council set up a common panel in February 1987 and adopted the following understanding:

"1. The Panel will organize its examination and present its findings to the Council in such a way that the procedural rights which the parties to the dispute would have enjoyed if separate panels had examined the complaints are in no way impaired. If one of the complainants so requests the panel will submit a separate report on the complaint of that party.

"2. The written submissions by each of the complainants will be made available to the other complainants and each complainant will have the right to be present when one of the other complainants presents its views to the Panel."

(Case No. 97).

10. In February 1987 Canada and the European Economic Community lodged a complaint against the United States' Customs User Fee. The Council in March 1987 set up a common panel to examine the two complaints. The three parties to the dispute agreed on the following understanding on the organization of the Panel's work:

" (i) The Panel will organize its examination and present its findings to the Council in such a way that the procedural rights which the parties to the dispute would have enjoyed if separate panels had examined the complaints are in no way impaired. If one of the complainants so requests the Panel will submit a separate report on the complaint of that party.

" (ii) The written submission by each of the complainants will be made available to the other complainant and each complainant will have the right to be present when the other complainant presents its views to the Panel.

"(iii) The Panel will invite contracting parties having expressed an interest in this matter at the Council to present their views to the Panel".

11. In March and April 1988 Australia and the United States complained against Japanese import restrictions on beef and citrus products and beef, respectively. The Council at a meeting in May 1988 examined the two requests for panels and decided at the demand of Japan to appoint two separate panels to examine the complaints. The Council also decided that its Chairman would consult with the parties and the secretariat concerning "appropriate administrative arrangements" for the two Panels. It appears from press reports that both the United States and Australia have reached satisfactory bilateral agreements with Japan and although no formal withdrawal of the requests for panels have yet been received, consultations on administrative arrangements have been suspended.

12. In March and April 1988 the United States and Australia complained against Korean restrictions on imports of beef. The Council, at its meeting in May 1988, examined the requests for panels and at the request of Korea decided to appoint two separate panels to examine the complaints by the United States and Australia. The Council also authorized its Chairman to consult with the parties to the two Panels and with the secretariat concerning appropriate administrative arrangements. These consultations are going on.

II. Intervention by third parties in GATT dispute settlement procedures

13. In the "Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement (Article XXIII:2)" (BISD 26S/215) annexed to the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance of 28 November 1979 (BISD 26S/210), it is stated in paragraph 6(iv) that panels "have also heard the views of any contracting party having a substantial interest in the matter, which is not directly party to the dispute, but which has expressed in the Council a desire to present its views". This practice was formalized in the 1979 Understanding, paragraph 15 of which stipulates that "any contracting party having a substantial interest in the matter before a panel, and having notified to the Council, should have an opportunity to be heard by the panel".

14. In recent panel cases, one or more third contracting parties have regularly been heard by dispute settlement panels. They have appeared before the panel, made a statement and answered questions put by panel members or parties, but have not further participated in the activities of the panel.

15. In the Customs User Fee Panel (see paragraph 10 above) a third party requested the panel to consider whether certain exemptions in the relevant United States' legislation were consistent with the m.f.n. obligations of the United States under Article I:1 of the GATT. The Panel concluded that it would not be appropriate to make a formal finding on this issue which had not been raised by the parties to the dispute. The Panel noted that GATT practice had been for panels to make findings only on those issues raised by the parties to the dispute. The Panel believed that this was sound legal practice. It noted that it was open to any contracting party who so wished to raise such an issue and to commence dispute settlement proceedings in its own right under the General Agreement (paragraphs 121 to 124 of document L/6264).

16. In a couple of cases of dispute settlement under Article XXIII:2, the Council has found that contracting parties which were not parties to a dispute nevertheless had such an interest in the matter being examined by a panel that they should have a stronger position than third parties would normally have.

17. In a complaint by the United States against European Economic Community treatment of imports of citrus products from certain Mediterranean countries, the Council agreed that:

"Given the special nature of this matter, in that the tariff treatment which is to be examined by the Panel is an element of Agreements entered into by the European Community with certain Mediterranean countries, it is expected that the Panel will take due account, inter alia, ... and, in setting up its own working procedures, will provide adequate opportunities for these countries to participate in the work of the Panel as necessary and appropriate."

(Case No. 71).

18. In the case of the European Economic Community complaint against Japan concerning trade in semi-conductors, the Council established a panel on the basis of the following understanding:

"Given the special nature of the matter to be examined by the Panel, which is related to certain aspects of the arrangement between Japan and the United States concerning trade in semi-conductor products (L/6076), it is understood that in setting up its own working procedures, the Panel will provide adequate opportunity for the United States to participate in the work of the Panel as necessary and appropriate."

(Case No. 99).