

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG13/8

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Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Dispute Settlement

MEETING OF 23 AND 24 JUNE 1988

Note by the Secretariat

1. The Group held its eighth meeting on 23 and 24 June 1988 under the Chairmanship of Ambassador Julio A. Lacarte-Muró (Uruguay). The Group adopted the agenda set out in GATT/AIR/2631.

Consideration of submission by Mexico on dispute settlement procedures

2. The representative of Mexico introduced the Mexican communication on dispute settlement (MTN.GNG/NG13/W/26), indicating that the aim of the document was to facilitate dialogue with a view to obtaining the objectives set down in the Punta del Este Declaration. The Mexican delegate emphasized that while in general terms the dispute settlement mechanisms of the GATT had worked satisfactorily, it was still possible to improve these mechanisms consistent with the Punta del Este Declaration. The paper from Mexico was submitted by that country individually, although other delegations were invited to join in sponsoring the proposals contained in the paper.

3. The Mexican paper contains proposals in the areas of consultation, mediation, arbitration, special sessions of the Council meeting in a dispute settlement mode, panel procedures, follow up and surveillance of implementation of the decisions of the CONTRACTING PARTIES, implications for third parties affected or having a substantial interest, and differential and more favourable treatment for developing countries. In introducing his country's paper, the representative of Mexico elaborated notably on the following proposals:

- The dispute settlement process should be centred around consultations. (Sec. I, para.2)
- The reasonable time period for consultations would normally be thirty days, unless the parties to the dispute were to agree otherwise. (Sec. I, paras.6 and 7)
- Even where consultations or the mediation process were to lead to a mutually acceptable solution, the developing contracting party could, if the solution were not wholly satisfactory in terms of the party's development needs, request the CONTRACTING PARTIES to review the solution

in light of Part IV of the General Agreement and the Enabling Clause. (Sec. I, para.8, Sec. II, para.10)

- Parties to a dispute could at any time during the mediation process exercise their right to the establishment of a panel, without this necessarily implying the suspension of the initial mediation process. (Sec. II, para.4)

- Proposals made in the course of mediation or conciliation could be based on considerations ex aequo et bono, but final settlement should be consistent with GATT rules. (Sec. II, para.7)

- In undertaking consultations, good offices, mediation or conciliation involving disputes between a developed contracting party and a developing contracting party, particular account should be taken of the finance, trade and development needs of the developing contracting party. (Sec. I, para.8; Sec. II, para.9) The solutions should be communicated to the Council for the information of the contracting parties. (Sec. II, para.8)

- Resort to arbitration should be by mutual agreement of the parties to a dispute. Arbitration decisions would be binding on the parties concerned but should not impair the rights of third parties to the GATT. The arbitration decision would be communicated to the GATT Council. (Sec. III, paras.2, 3 and 4)

- The Council of Representatives should meet in special session to carry out its dispute settlement functions, the chairman of such special Council session being appointed or elected by the CONTRACTING PARTIES. (Sec. IV)

- Time limits, allowing for necessary flexibility, should be provided with respect to the composition, terms of reference, establishment, and work of dispute settlement panels (Sec. V, paras.1, 2, 3 and 4). Longer time frames would be envisaged in the case of panels examining measures adopted by a developing contracting party. (Sec. V, para.4)

- Adoption of panel reports would be by consensus, consistent with present practice. To facilitate a consensus, parties to the dispute would be free to participate or not in the consensus. Such procedures would be without prejudice to the provisions of the General Agreement and established practice on the adoption of decisions. (Sec. V, para.5)

- Specialized legal assistance and special training courses should be provided by the secretariat to improve access to and efficacy of dispute settlement procedures for developing contracting parties. (Sec. V, paras. 7 and 8)

- Within sixty days of the CONTRACTING PARTIES' ruling on measures to be taken on the basis of a panel report, the contracting party to which a recommendation were addressed would be required to inform the Council of the measures taken to implement that ruling. (Sec. VI, para.1)

- Where immediate compliance with recommendations of a panel were not possible, and one or more of the parties to the dispute were a developing contracting party, preference should be given to the adoption of interim measures which tend to increase rather than restrict trade. (Sec. VI, para.3)

- When a dispute were to involve a developing contracting party, either as the party unable to immediately comply with a panel recommendation or as the party seeking relief, the developing country should be given the opportunity to choose the form of provisional compensatory measures (Sec. VI, paras.5 and 6). Additional measures could be considered by the contracting parties in the case of a matter raised by a developing contracting party. (Sec. VI, para.4)

- Whenever a developing contracting party were to accept a bilateral solution at any stage of the procedures available for dispute settlement, such contracting party could request the CONTRACTING PARTIES to review the solution. (Sec. VIII, para.2)

4. Following Mexico's introductory remarks, a number of delegations offered preliminary comments and observations on the paper, with the understanding that they would have the opportunity to make further comments after reviewing the paper more closely in capitals. Delegations welcomed the Mexican paper as a very useful contribution to the work of the Negotiating Group, providing both a good synthesis of proposals previously aired in the Group and several new and innovative proposals, especially in the area of differential and more favourable treatment for developing contracting parties in the dispute settlement context. Several delegations expressed the view that the time had now arrived for the Negotiating Group to move to the next stage of its work, possibly using the Mexican paper as the basis for developing a common text.

5. Many delegations commented favourably on the dispute settlement proposals contained in the Mexican paper and, in particular, the flexible nature of such proposals. However, several delegations also voiced the concern that some of the Mexican proposals, such as those providing for subsequent review by the Council of mutually acceptable solutions reached by the parties, could discourage the settlement of disputes and decrease the certainty of the functioning of the GATT dispute settlement mechanisms. A number of delegations indicated their concern that when two parties reached a mutually acceptable solution, it would thereafter be difficult to accept that one of those parties could then go to the Council and obtain review, and possible rejection, of that solution.

6. It was said by several delegations that dispute settlement procedures should be uniformly applicable to all parties; that the best way to ensure equality before the law and equal application of the law was to provide strong and effective dispute settlement mechanisms. Such a system could in fact operate to the advantage of economically weaker parties in the dispute settlement context. One delegation noted that the principles contained in Part IV of the General Agreement were applicable to the GATT dispute

settlement system, and that it may not, therefore, be necessary to take the concept of differential and more favourable treatment any further in the dispute settlement context. A representative of a number of countries noted that differential and more favourable treatment was only one of the principles enunciated in the Punta del Este Declaration and that the Punta del Este Declaration also referred to the principle that developing contracting parties should take on fuller obligations in the GATT as their level of development increased. This representative also questioned the nature of differential and more favourable treatment in the dispute settlement context. It was said that if the concern was with development needs of developing countries, that this might better be taken into account in the context of substantive rules in the GATT rather than through modified dispute settlement procedures; it was not seen how procedural rules could be devised to meet specific development objectives. If, on the other hand, the concern were over the balance of negotiating power, the representative expressed the view that this could best be dealt with through the adoption of strong and uniform dispute settlement procedures. Another delegation voiced the concern that the needs of smaller, developed contracting parties, especially those heavily dependent on trade and heavily in debt, should not be left out of the debate when focusing on differential and more favourable treatment. This delegation also indicated that it would not favour a dispute settlement system providing for less stringent substantive results where a dispute involved one or more developing contracting parties.

7. Delegations generally endorsed the Mexican paper's emphasis on bilateral consultations. Several representatives expressed reservations over the proposal for Council review of mutually acceptable solutions reached through consultation procedures. A few delegations considered that a thirty-day time limit on consultations may be too short in more complex cases. One delegation remarked that consultation procedures under Article XXIII:1 should not be used simply as a stepping stone to requesting the establishment of a panel under Article XXIII:2.

8. On the issue of mediation, one delegation expressed doubt over the practicality of Mexico's proposal which would require mediators to take particular account of the needs of one of the parties to a dispute when that party were a developing contracting party. Another delegation wondered how a contracting party accepting a mediated solution would then proceed to challenge it. However, this same delegation noted that the idea of subsequent review of mediated solutions was similar in many respects to the delegation's own proposal that bilateral settlements be communicated to the Council so that the Council could decide whether such settlements were in conformance with the GATT. This and other delegations concluded that the Mexican proposal for subsequent Council review of bilateral settlements was an important point which warranted further attention in the Group.

9. A number of delegations welcomed inclusion by Mexico in its paper of the proposal to convene special meetings of the Council operating in a dispute settlement mode. However, representatives of several other countries expressed reservations over this proposal, one representative

saying that the creation of a special Council for such purposes might politicize the dispute settlement process, and another saying that what was needed was for the Council to operate in a dispute settlement "mood", not a dispute settlement "mode". This latter representative indicated, however, that the idea of a designated chairman for dispute settlement purposes might be a good idea. Another representative, speaking for several contracting parties, commented that the GATT's dispute settlement procedures, which have been referred to as the most precious of all GATT mechanisms, should be reserved for the GATT Council sitting as such, and not relegated to some special meeting of the Council. It was said that the tension and interest relating to disputes in the GATT deserved to be dealt with in the GATT Council proper.

10. Regarding Mexico's proposals dealing with panel procedures, one delegation noted that contracting parties did not have an absolute right to the establishment of a panel. Requests for the establishment of panels must always be submitted to the Council for approval. Several delegations indicated their support for the proposal that panels be given standard terms of reference, with the ability of parties to agree otherwise within thirty days in exceptional cases. The representative of one contracting party indicated that the six-month time limit on the work-phase of panels may not be long enough in certain circumstances. However, another delegation said that six months would normally be too long a time period. A number of delegations also endorsed the proposal that panel reports be adopted in the Council by consensus, in accordance with established practice. A representative of a number of countries requested clarification of the further proposal that "parties to a dispute [would] be free to join in the consensus or not". This representative wondered whether such a proposal implied a "consensus minus two" procedure. Another delegation made the proposal, endorsed by several other delegations, that it would be useful at a later date to have a discussion within the Negotiating Group regarding the actual phases of the dispute settlement process, including discussion of the various time frames for those phases, the order of submissions by parties, and the like.

11. On the issues of implementation and follow-up of dispute settlement decisions, one delegation expressed the view that in more complicated cases, sixty days would be an insufficient period in which to implement measures consistent with the ruling of the CONTRACTING PARTIES. Many delegations endorsed the view that the fundamental objective in implementation of CONTRACTING PARTIES' decisions should be the removal of trade measures that are inconsistent with the GATT. There was also general agreement that when the adoption of temporary measures proved to be necessary, there should be a preference given to compensation rather than suspension of concessions or obligations. A number of delegations pointed out that this basic preference should be applicable to all contracting parties, not just in favour of developing contracting parties. Several representatives emphasized that the determination of appropriate interim measures must always be a mutual determination; the selection of appropriate compensation should not be placed in the hands of one party to a dispute. It was also said that if the particular impairment occurred in

one trade sector, it might be very difficult for the affected contracting party to accept compensation in an entirely different sector.

12. On the issue of third party rights, one delegation noted the importance to the dispute settlement process of safeguarding the interests of third parties. This delegation remarked that there may be a conflict between the objectives of safeguarding the interests of third parties and promoting the bilateral resolution of disputes.

13. Mexico thanked the delegations for their many helpful comments and indicated that it intended to hold further consultations within the Group and make appropriate revisions to the Mexican paper or otherwise update the various proposals. On the general question of differential and more favourable treatment, the Mexican representative emphasized that, in many instances, the problems of developing countries had worsened and that the principle of differential and more favourable treatment should continue to be applied and improved in the dispute settlement context. On the proposals relating to subsequent Council review of bilateral solutions, Mexico noted that the GATT dispute settlement process, although proceeding in a bilateral context at various stages, nevertheless culminated at a multilateral level. Accordingly, if the settlement were not entirely satisfactory, Mexico believed that it should be reviewed by the Council. Finally, with regard to the adequacy of the various time frames within the dispute settlement process, the Mexican delegation reiterated that the time limits proposed in its paper maintained necessary flexibility, but placed the burden on parties wishing to extend the procedures to provide sufficient justification for doing so.

Continuation of consideration of the non-paper by the secretariat containing a check list of main issues for discussion

14. The Group agreed to continue discussion of the "Check List of Main Issues for Discussion", contained in the secretariat's non-paper of 18 April 1988. In considering these points, the Group also had before it the secretariat's informal note, bearing the number 1291, entitled "Informal Meeting on 27 and 28 April 1988, Summary of Comments Made in the Informal Discussion on the 'Checklist of Main Issues for Discussion'". In addition, the Group had before it the Note by the secretariat of 22 June 1988, entitled "Summary and Comparative Analysis of Proposals for Negotiations" (MTN.GNG/NG13/W/14/Rev.2). The Chairman suggested that the Negotiating Group might begin to narrow its focus and to concentrate on those issues where most work still needed to be done. He further suggested that the Group should strive to close the gap on diverging positions and begin to evaluate what kind of consensus might emerge from the deliberations.

15. It was generally agreed that the issues covered in the secretariat's non-paper should be read as a whole, rather than having the Group consider the sections on points of convergence and points of divergence separately. It was also agreed that, in a future update of the non-paper, the secretariat should combine the sections outlining points of convergence and

divergence into one integrated text. During the discussion of these documents, delegations repeatedly expressed concern that documents put before the Group should at all times be made available in the three working languages of the GATT. The discussion proceeded on the understanding that previously stated, well-known positions of the contracting parties would not need to be restated at this meeting.

16. Regarding objectives of the GATT dispute settlement system (paragraphs I.1 to I.3 of the non-paper), a representative for a group of countries parties said that the main objective contained several sub-parts, including the objectives of providing mechanisms leading to the satisfactory resolution of bilateral disputes, re-establishing the balance of contracting parties' rights which may have been nullified or impaired, and clarifying obligations under the General Agreement. It was emphasized, however, that dispute settlement mechanisms should not replace the negotiating process or create new obligations under the General Agreement.

17. On the subject of differential and more favourable treatment for developing countries (paragraph I.3 of the non-paper), in addition to the extensive discussion which took place regarding the Communication from Mexico (MTN.GNG/NG13/W/26), one delegation proposed that the Group consider the special problems faced by developing countries when countries failed to implement panel recommendations.

18. On issues of consultation, good offices, mediation and conciliation (paragraph I.5 of the non-paper), it was said by one delegation that where parties to a dispute privately settled their dispute, the terms of such settlement should be communicated to the Council. The delegation pointed out that the requirement of public disclosure of settlements would make parties think twice before bringing inappropriate matters to the GATT for resolution and, moreover, was the least that the contracting parties should expect of a multilateral dispute settlement system. Several delegations supported the proposal to enhance the role to be played by the Director-General in assisting developing contracting parties avail themselves of the dispute settlement system. However, one delegation indicated that such an enhanced role should probably not be reserved for the Director-General in his personal capacity, but should be delegated by him in appropriate circumstances. This same delegation said that where a party to a dispute had not responded to a request for consultations, such party should not be able to stall forever, thereby preventing the complaining party from moving on to Article XXIII:2; at some point, a non-response to a request for consultations should be treated as a negative response. A number of delegations endorsed the principle that mediation and conciliation procedures should not be mandatory, but should remain available as useful options to parties to a dispute; contracting parties should not be locked in to mandatory procedures even where they might be convinced that such procedures would prove to be futile.

19. Concerning requests for the establishment of a panel (paragraph I.6 of the non-paper), one delegation stated that requests should be detailed and carefully drafted, but that it should be up to the Council to decide which

GATT Articles were implicated in the dispute. Another delegation noted that problems could arise under present procedures where a complaining contracting party could choose to request the establishment of two separate panels on the same matter, one through the Council and the other through an MTN Committee. Such a practice could produce confusion and contradictory results, and should therefore be prevented through appropriate changes in the rules on dispute settlement.

20. Regarding Council decisions on the establishment of a panel (paragraph I.7 of the non-paper), a representative speaking for a number of delegations reminded the Group of his comments at the seventh meeting to the effect that a contracting party's right to a panel is subject to the understanding that the Council should examine requests for the establishment of a panel and, in "manifestly unjust cases", should reject such requests. This representative further suggested that a Council decision on establishment be taken normally at the first meeting following the Council meeting where the request was made, or at the latest in the second meeting.

21. One delegation proposed that special procedures needed to be devised to deal with disputes affecting perishable goods en route, especially where such disputes involved developing countries. It was noted that particular prejudice could be caused to countries shipping perishable goods if it were necessary to wait for the outcome of the normal deliberations of a panel. It was proposed that the Director-General could assume a more direct rôle, possibly as a special arbitrator, in dealing with disputes of this type. The delegation noted that it had previously raised the issue of perishable goods in 1985 as a subject affecting developing countries, and one that would be appropriate for negotiation in the Uruguay Round. Several delegations concurred that perishable goods was an issue possibly requiring particularized rules in the dispute settlement context, but some delegations emphasized that this was an issue of interest to all contracting parties, not just developing contracting parties. A representative speaking for a number of countries questioned what "urgency procedures" might be contemplated with regard to perishable goods en route. It was asked whether such procedures would include expedited establishment of a panel, or whether they would include some type of expedited interim relief measures. If the latter were contemplated, this representative held the view that the CONTRACTING PARTIES had no power to act in providing interim relief. However, the delegation making the proposal on perishable goods stated its view that the GATT was the appropriate forum for deciding upon and applying interim measures.

22. With respect to terms of reference for dispute settlement panels (paragraph I.8 of the non-paper), one delegation proposed that the Council should avoid defining too narrowly the nature of the disputes to be put before GATT panels. It was said that a broader definition of the matter under dispute, achieved through the adoption of appropriate standard terms of reference, could help to secure the rights of interested third parties. This delegation also reiterated its proposal, made in the previous meeting, that standard terms of reference should normally be adopted, but that

special terms of reference could be established on the basis of Council deliberation and decision. Another delegation reiterated its earlier proposal that the Council should consider special terms of reference, but that it should recommend standard terms where appropriate. A representative speaking for a number of countries stated his opposition to a proposal made during the seventh meeting, that the Council needed to approve special terms of reference. The representative stated that he preferred continuation of the present practice whereby the Council may take note of special terms of reference.

23. With respect to the composition of panels (paragraph I.9 of the non-paper), it was generally agreed that the most important consideration should be the selection of the best qualified individuals in each case. One delegation, in recognition of the lack of support for its proposal to have the composition of GATT panels restricted to non-governmental panelists, indicated that it would not continue to press this idea in the negotiations. The same delegation proposed that the size of panels should be limited to three individuals, whether governmental or non-governmental, but with the possibility that the parties could agree to a five-member panel within a certain number of days following a Council decision to establish a panel. It was said by this delegation that there were few if any situations where a five-member panel would be preferable. Other delegations stated, however, that while the size of panels should normally be restricted to three members, there were instances in more complex cases where there was a need for particularized expertise or more diverse representation of backgrounds. It was also said that for a panel to proceed in an efficacious manner, the members of the panel should be able to function together as a team. A panel selection process whereby only one of the three members assumed the posture of an impartial judge was seen as unacceptable in the context of a GATT dispute settlement system. While one delegation reacted against the idea of a preference for panels composed of Geneva-based governmental representatives, another delegation expressed the view that at least one member of each panel should have a strong practical experience in the GATT. It was also said that geographical origin of the panelists was a relevant consideration in some cases, especially where the country from which a panelist might be selected had a commercial interest in the matter in dispute. Other delegations noted that, in addition to ensuring geographical diversity, it was useful to strive for panel membership representing a diversity of legal traditions. Another delegation noted that there was a general need to upgrade the quality of the panelists maintained on the roster. It was also said that panel selection procedures should continue to encourage agreement on composition by the parties to the dispute, in order to promote confidence in the panel once it were established. However, in the absence of agreement, the Director-General should be free to exercise his discretion in determining the panel composition. To avoid delays where parties could not agree on the composition of a panel, one proposal called for a procedure whereby panelists would be selected from a permanent rotational list or by the simple drawing of names from a hat. Regarding the time period for deciding on the composition and terms of reference of a panel, some delegations expressed the view that thirty days was too long a time period and that a

fifteen-day period would normally be long enough. Other delegations said that fifteen days would be too short in most cases, and that the thirty-day proposal was reasonable.

24. On the issue of panel working procedures (paragraph I.10 of the non-paper), it was proposed that the Group should first decide on an appropriate overall time frame for the resolution of disputes (e.g. one year); once this were decided upon, it would be easier for the Group to consider the appropriateness of individual time frames within the dispute settlement procedures. One delegation noted that the average overall time period for the resolution of disputes by GATT panels during the past few years had been approximately fourteen months. Another delegation noted that the time period for the settlement of disputes under the specialized GATT Codes tended to be somewhat shorter than twelve months. There was also considerable discussion on the subject of how to further safeguard the rights of interested third parties in the working procedures of GATT panels. (See paragraph 32)

25. Regarding the quality of panel reports (paragraph I.11 of the non-paper), one delegation expressed the view that legal considerations were not given sufficient consideration. It was proposed that more emphasis should be given to finding panelists with a legal background, and that at least one member of each panel should be a jurist. This delegation felt that, together with the backing of the secretariat's Office of Legal Affairs, such a procedure would provide the necessary legal underpinning for GATT panel reports.

26. On the subject of objections to panel findings (paragraph I.12 of the non-paper), one delegation noted that while, as a general rule, parties to disputes had carefully studied panel reports prior to their submission to the Council, third parties often did not have an opportunity to study the panel reports prior to submission. Accordingly, it was proposed that parties to a dispute should be required to present their written objections at the first Council meeting when the report were considered, but that third parties should have an additional thirty days in which to submit their written objections. Another delegation indicated that while this proposal might seem fair in equity, in practical terms it would mean that the Council would adjourn for thirty days after submission of the parties' objections and that parties would still only know where the matter stood as of the second Council meeting. Another delegation reiterated the view that written submissions objecting to a panel report should be considered no later than the second month after presentation of the report.

27. Concerning Council decisions on panel reports and recommendations (paragraph I.13 of the non-paper), several delegations expressed the view that the procedure for reaching Council decisions by consensus, as stated in paragraph 10 of the dispute settlement section of the 1982 Ministerial Declaration, be retained. One delegation referred to the footnote to paragraph 10 and emphasized that the language of the 1982 Ministerial Declaration regarding consensus was without prejudice to the right of

contracting parties to invoke the voting procedures under Article XXV in cases of great difficulty or urgency. Another delegation proposed that non-adopted panel reports should be considered at every succeeding Council meeting in order to apply appropriate pressure on the parties objecting to adoption. This same delegation also questioned the tradition of treating panel reports as lacking precedential value. It was said that this tradition, which may be in part attributable to the practice of narrowly defining the matters in dispute, did not permit the contracting parties to fully benefit from the work of panels.

28. On the question of implementation of panel recommendations (paragraph I.14 of the non-paper), it was said that implementation should occur within a reasonable "period", not within a reasonable "delay" as currently specified in the non-paper. It was further said that emphasis should be placed on implementation without delay and that it would be helpful to have discussions in the Group as to what was meant by a reasonable time for implementation and what should be done in cases of non-compliance. Another delegation noted the importance of the rôle of the GATT secretariat's spokesman in making the results of dispute settlement procedures at the GATT known to the general public.

29. On the issue of arbitration (paragraphs I.15 and I.16 of the non-paper), one delegation noted the multilateral context of disputes brought to the GATT. It was proposed that in light of this multilateral context, and also out of respect for the other contracting parties, the substance of private settlements should be communicated to the Council for the information of the contracting parties.

30. Regarding the strengthened rôle and surveillance of the Council (paragraph I.17 of the non-paper), one delegation expressed the view that the Council should develop further the concept set forth in the 1966 Decision regarding "further measures" to be taken in cases where adopted recommendations in favour of developing countries were not complied with. The point was also made that the Group should hold discussions on actions that the CONTRACTING PARTIES could take in cases of non-compliance with adopted panel recommendations.

31. On the issue of strengthened commitments and integrated procedures for dispute settlement (paragraph I.18 of the non-paper), the view was expressed that any decision on strengthened procedures should be achieved through agreement of the CONTRACTING PARTIES acting jointly.

Discussion concerning multi-party and third-party procedures

32. A long discussion was held on the related subjects of multi-party GATT disputes and intervention of interested third parties in GATT disputes. The Legal Adviser to the Director-General explained the various existing procedures and practices relating to third-party participation in the GATT dispute settlement system. He noted in this regard that the basic provision concerning third-party rights was contained in paragraph 15 of the 1979 Understanding (BISD 26S/210), and that third-party practice had

sometimes varied, depending on the relative importance of the third-party interests at stake. The secretariat was requested to prepare a background note on multi-party and third-party practice (MTN.GNG/NG13/W/28) to facilitate further consideration of these subjects at the next meeting of the Negotiating Group.

33. For both multi-party cases and third-party interventions, it was said that there was a need to develop a set of procedures to ensure uniformity and efficiency, also taking into account budgetary and time considerations. There was general agreement that the GATT dispute settlement system could be advanced by improvements in third-party practice. Several delegations noted that some contracting parties had very limited financial resources, thus requiring that alternatives to directly invoking Article XXIII procedures be found. In this regard, it was also said that the improved safeguarding of third-party rights in the dispute settlement process could prevent unwanted proliferation of panels and could help promote compliance with adopted panel recommendations. One delegation proposed that the rights of interested third parties could be ensured by avoiding too narrow a definition of the subject matter of a dispute, providing third-party access to panel submissions, and allowing third parties reasonable opportunity to make their positions known to panels and to participate in relevant portions of panel proceedings. At the same time, however, there was general agreement that interested third parties could not expect to be accorded the full rights of the original parties to a dispute and that at some point, when a third party's interest became sufficiently important, consideration should be given to directly invoking Article XXIII. One representative, speaking for a number of countries, noted that adequate provision should be made for third-party participation in panels, but that there was also a need to avoid turning virtually every panel into a working party. Several delegations noted that dispute settlement procedures existed primarily for the purpose of resolving bilateral disputes and that fundamental fairness to the original parties to disputes needed to be safeguarded as well. It was said in this regard that current procedures already allowed third parties the opportunity to bring issues to the attention of panels, that to infinitely expand the subject matter of what was put before panels would be unfair to the original parties to disputes, and that providing third parties with full access to panel materials could discourage parties to disputes from making full use of panel procedures. Another delegation noted that, depending on the case, two different kinds of third-party interests were at stake: in some cases, third parties had a particular commercial interest in the matter in dispute, whereas in others third parties desired to intervene where they felt that some general principle of the GATT trading system were implicated. The delegation made the point that it was easier to accommodate the former of these two kinds of third-party interests. It was also said that, because different complaining parties often had very different interests at stake, it would be difficult to promulgate a set of uniform procedures for multi-party participation.

Agreement on a date for the next meeting of the Negotiating Group

34. It was agreed that the next meeting of the Negotiating Group would be held on 11 and 12 July 1988. It was further agreed that the following documents would be made available to delegations prior to the meeting:

- An updated version of the secretariat's non-paper, entitled "Check List of Main Issues for Discussion" (document dated 6 July 1988).
- A factual background note by the secretariat on differential and more favourable treatment for developing countries in the dispute settlement context (MTN.GNG/NG13/W/27).
- A factual background note by the secretariat on dispute settlement procedures in the GATT involving multiple parties and interested third parties (MTN.GNG/NG13/W/28).
- A revised paper from Mexico, taking into account the points raised in the discussion of the Communication from Mexico during the eighth meeting of the Group.