

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG13/W/27/Rev.1  
22 August 1988  
Special Distribution

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

DIFFERENTIAL AND MORE FAVOURABLE  
TREATMENT OF DEVELOPING COUNTRIES  
IN THE GATT DISPUTE SETTLEMENT SYSTEM

Note by the Secretariat

Revision

1. At its meeting on 11 July 1988, the Group discussed the secretariat note entitled "Differential and More Favourable Treatment of Developing Countries in the GATT Dispute Settlement System" (MTN.GNG/NG13/W/27). Delegations noted that the secretariat had provided a succinct and comprehensive analysis of this important issue. Some delegations expressed criticism of certain portions of the secretariat note. See Meeting on 11 July 1988, Note by the Secretariat (MTN.GNG/NG13/9), paras. 6-14. Other delegations, however, did not share this criticism and expressed contrary views. See Meeting on 11 July 1988, Note by the Secretariat (MTN.GNG/NG13/W/27), paras. 4-5, 7-8, 10-11. No delegation took the view that any of the facts reported in the note were incorrect. One delegation, however, requested revision of the secretariat note. The secretariat has prepared this revision to MTN.GNG/NG13/W/29, taking into account the above-referenced discussions. Textual changes have been made in paragraphs 1, 4, 6, 7, 11, 13 and 17. Part I of the revised note lists those provisions in the existing GATT dispute settlement procedures which already include references to differential and more favourable treatment of developing countries. Part II briefly analyses past dispute settlement proceedings under GATT Article XXIII involving less-developed contracting parties. Part III lists proposals made so far in this Group for additional provisions on differential and more favourable treatment of developing countries in the GATT dispute settlement system. The secretariat bears sole responsibility for the preparation of this note.

I. Existing GATT Provisions on Differential and More Favourable Treatment of Developing Countries in the GATT Dispute Settlement System

2. The original text of the General Agreement, like the one of the Agreement establishing the International Monetary Fund, differentiated according to problem areas without using the terms "developed", "less-developed" or "developing contracting parties". The general dispute settlement provisions in GATT Articles XXII, XXIII continue to be drafted in a uniform manner establishing the same rights and obligations for "any contracting party" (Article XXIII). Certain other GATT Articles were

amended after 1948 (notably Articles XVIII and XXVIII bis), or were added to the General Agreement (Articles XXXVI to XXXVIII), so as to include explicit references to "the needs of less-developed countries" (Article XXVIII bis, para.3), or the needs of "the less-developed contracting parties" (Article XXXVI) or "a contracting party in the process of economic development" (Article XVIII:3). These Articles provide for special and differential treatment either by exempting less-developed contracting parties from certain general GATT obligations (e.g. in Article XVIII), or by setting out special commitments to further the development of these countries (e.g. in Articles XXXVI to XXXVIII).

3. Among the various procedures adopted by the GATT CONTRACTING PARTIES for the application of GATT Articles XXII and XXIII, the "Procedures under Article XXII on Questions Affecting the Interests of a Number of Contracting Parties", adopted on 10 November 1958 (B15D 7S/24), do not explicitly differentiate among developed and less-developed contracting parties.

4. The "Procedures under Article XXIII", adopted on 5 April 1966 (B15D 14S/18), introduced special procedures for Article XXIII disputes "between a less-developed contracting party and a developed contracting party". Paragraph 3 of the preambular provisions to the 5 April 1966 Decision states: "The CONTRACTING PARTIES ... [affirm] their resolve to facilitate the solution of such situations while taking fully into account the need for safeguarding both the present and potential trade of less-developed contracting parties affected by such measures". Paragraph 1 of the 1966 procedures sets forth the right of "the less-developed contracting party complaining of the measure" to "refer the matter which is the subject of consultations to the Director-General so that, acting in an ex officio capacity, he may use his good offices with a view to facilitating a solution". The special requirements for the conduct of such good offices and for subsequent GATT panel procedures do not explicitly differentiate between developed and less-developed contracting parties (paras. 2 to 9). But paragraph 10 provides that:

"In the event that a recommendation to a developed country by the CONTRACTING PARTIES is not applied within the time-limit prescribed in paragraph 8, the CONTRACTING PARTIES shall consider what measures, further to those undertaken under paragraph 9, should be taken to resolve the matter."

Paragraph 11 adds:

"If consultations, held under paragraph 2 of Article XXXVII, relate to restrictions for which there is no authority under any provisions of the General Agreement, any of the parties to the consultations may, in the absence of a satisfactory solution, request that consultations be carried out by the CONTRACTING PARTIES pursuant to paragraph 2 of Article XXIII and in accordance with the procedures set out in the present decision, it being understood that a consultation held under

paragraph 2 of Article XXXVII in respect of such restrictions will be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII if the parties to the consultations so agree."

5. The "Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance", adopted on 28 November 1979 (BISD 26S/210), explicitly differentiates between developed and less-developed contracting parties in paragraphs 5,7,8,21,23,24 and 25, as well as in the Annex paragraph 3, as follows:

"5. During consultations, contracting parties should give special attention to the particular problems and interests of less-developed contracting parties."

"7. The CONTRACTING PARTIES agree that the customary practice of the GATT in the field of dispute settlement, described in the Annex, should be continued in the future, with the improvements set out below. They recognize that the efficient functioning of the system depends on their will to abide by the present understanding. The CONTRACTING PARTIES reaffirm that the customary practice includes the procedures for the settlement of disputes between developed and less-developed countries adopted by the CONTRACTING PARTIES in 1966 and that these remain available to less-developed contracting parties wishing to use them."

"8. If a dispute is not resolved through consultations the contracting parties concerned may request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences between the parties. If the unresolved dispute is one in which a less-developed contracting party has brought a complaint against a developed contracting party, the less-developed contracting party may request the good offices of the Director-General who, in carrying out his tasks, may consult with the Chairman of the CONTRACTING PARTIES and the Chairman of the Council."

"21. Reports of panels and working parties should be given prompt consideration by the CONTRACTING PARTIES. The CONTRACTING PARTIES should take appropriate action on reports of panels and working parties within a reasonable period of time. If the case is one brought by a less-developed contracting party, such action should be taken in a specially convened meeting, if necessary. In such cases, in considering what appropriate action might be taken the CONTRACTING PARTIES shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of less-developed contracting parties concerned."

"23. If the matter is one which has been raised by a less-developed contracting party, the CONTRACTING PARTIES shall consider what further action they might take which would be appropriate to the circumstances."

"24. The CONTRACTING PARTIES agree to conduct a regular and systematic review of developments in the trading system. Particular attention would be paid to developments which affect rights and obligations under the GATT, to matters affecting the interests of less-developed contracting parties, to trade measures notified in accordance with this understanding and to measures which have been subject to consultation, conciliation or dispute settlement procedures laid down in this understanding."

"25. The technical assistance services of the GATT secretariat shall, at the request of a less-developed contracting party, assist it in connection with matters dealt with in this understanding."

The "Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement (Article XXIII:2)" in the Annex to the Understanding contains the following explicit references to developing countries in paragraphs 3 and 6 (ii):

"3. The function of a panel has normally been to review the facts of a case and the applicability of GATT provisions and to arrive at an objective assessment of these matters.... Panels have taken appropriate account of the particular interests of developing countries."

"6. .... (ii) .... Members of the panel are usually selected from permanent delegations or, less frequently, from the national administrations in the capitals amongst delegates who participate in GATT activities on a regular basis. The practice has been to appoint a member or members from developing countries when a dispute is between a developing and a developed country."

6. The Ministerial Declaration adopted on 29 November 1982 (BISD 29S/9) refers generally to Part IV of the General Agreement and to the 1979 Understanding, but does not specifically differentiate between developed and less-developed contracting parties. Paragraph 2 of the section entitled "GATT Rules and Activities Relating to Developing Countries" states: "The CONTRACTING PARTIES ... Urge contracting parties to implement more effectively Part IV and the Decision of 28 November 1979 regarding 'differential and more favourable treatment, reciprocity and fuller participation of developing countries'" (BISD 29S/13). The section of the Declaration on "Dispute Settlement Procedures" recognizes the right of "any party to a dispute" to seek, "with the agreement of the other party, ... the good offices of the Director-General or of an individual or group of persons nominated by the Director-General". This section also states: "The CONTRACTING PARTIES agree that the Understanding on Notification, Consultation, Surveillance and Dispute Settlement negotiated during the Tokyo Round ... provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end". (BISD 29S/13-14)

7. The dispute settlement procedures adopted on 30 November 1984 (BISD 31S/9) do not differentiate between developed and less-developed contracting parties.

8. None of the dispute settlement procedures set out in the 1979 Tokyo Round Agreements explicitly differentiates among developed and less-developed contracting parties, see: Article 14 and Annexes 2 and 3 of the 1979 Agreement on Technical Barriers to Trade (BISD 26S/22,31); Article VII:6 to 14 of the 1979 Agreement on Government Procurement (BISD 26S/49); Articles 12, 13, 17 and 18 of the 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement (BISD 26S/71, 72, 75, 76); Article IV:5 and 6 of the 1979 International Dairy Arrangement (BISD 26S/94); Article IV:6 of the 1979 Arrangement Regarding Bovine Meat (BISD 26 S/88); Articles 19, 20 and Annex III of the 1979 Agreement on Implementation of Article VII of the General Agreement (BISD 26S/128, 149); Article 4 of the 1979 Agreement on Import Licensing Procedures (BISD 26S/159); Article 8 of the 1979 Agreement on Trade in Civil Aircraft (BISD 26S/166); Article 15 of the 1979 Agreement on Implementation of Article VI of the General Agreement (BISD 26S/185). Nor do Articles 1:6 and 11: 4 to 10 of the 1973 Arrangement Regarding International Trade in Textiles (BISD 21S/5, 14) explicitly differentiate among developed and less-developed contracting parties.

9. The internal working procedures customarily adopted by panels established under Article XXIII:2 of the General Agreement (see the text in document MTN.GNG/NG13/W/4, p.48-49) also refrain from differentiating among developed and less-developed contracting parties.

10. In the Ministerial Declaration on the Uruguay Round, the "CONTRACTING PARTIES agree that the principle of differential and more favourable treatment embodied in Part IV and other relevant provisions of the General Agreement and in the Decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries applies to the negotiations" (BISD 33S/21).

## II. Past Dispute Settlement Proceedings under GATT Article XXIII Involving Less-Developed Contracting Parties

11. The special 1966 dispute settlement procedures for less-developed contracting parties have been invoked so far on four occasions:

- by Chile in a 1977 complaint concerning export subsidies of the EEC on malted barley (the complaint was withdrawn following consultations between the two parties with the participation of secretariat representatives, see document L/5623, para.38);

- by India in a 1980 complaint concerning Japanese restrictions on imports of leather (the complaint was withdrawn after a settlement had been agreed in bilateral consultations initiated by the GATT secretariat);
- by Mexico in a 1986 complaint against taxes by the United States on petroleum (Mexico and the United States agreed that this matter be pursued in the panel established at the request of Canada, the EEC and Mexico; however, Mexico did not thereby waive its rights to proceed under the Decision of 5 April 1966. See document L/6175, para.1.3);
- by Brazil in a 1987 complaint concerning the announcement by the United States of intended restrictions on imports from Brazil (see document L/6274/Add.1).

The special procedures set out in paragraphs 4 to 11 of the 1966 dispute settlement procedures appear to have never been used so far.

12. Out of a total of 107 formal invocations of GATT Article XXIII during the period 1948 to 1987, (see the list of Article XXIII disputes in document MTN.GNG/NG13/W/14, pp.51-79), 20 complaints were instituted by less-developed contracting parties. Fourteen of these complaints led to the establishment of working parties or panels under GATT Article XXIII:2. Five other complaints were not pursued, and one recent 1987 complaint by Brazil against the announcement by the United States of intended import restrictions continues to be pending. Eleven working party or panel reports found, at least in part, in favour of the complaining less-developed contracting parties (see Nos. 4, 28, 29, 51, 54, 55, 60, 67, 78, 82, 97 of the above-mentioned list), two recorded a bilaterally agreed settlement of the dispute (see Nos. 38 and 63), and one panel report (no.89) noted that the limited terms of reference had prevented the panel from making a finding on whether the trade restrictions concerned were justified under Article XXI or had nullified or impaired benefits in terms of Article XXIII. A considerable number of less-developed contracting parties have also intervened and submitted their views in panel proceedings instituted by developed contracting parties.

13. Past GATT practice under Article XXIII seems to suggest that, on average, panel proceedings initiated by less-developed contracting parties have been no less expeditious and successful (for the complainant) than panel proceedings initiated by developed contracting parties. An assessment of the dispute settlement practice under GATT Article XXIII must further take into account that rulings and recommendations under Article XXIII:2 are to be implemented in accordance with the non-discrimination requirements of the General Agreement (e.g. Articles I, III, XIII). Thus, even if dispute settlement proceedings under GATT Article XXIII have been initiated by developed contracting parties, the dispute settlement results (e.g. legal interpretations in panel reports adopted by the CONTRACTING PARTIES) and implementing measures (e.g. removal of GATT-inconsistent trade restrictions) are to be applied in a non-discriminatory manner for the benefit of all GATT contracting parties.

The comparatively smaller number of Article XXIII complaints by less-developed contracting parties (e.g. only one complaint in the period 1948-1960) also might be due to the fact that developed countries formed the majority of GATT contracting parties until 1960 and continue to account for almost 70 per cent of world trade. In addition, developing countries have tended to adopt a relatively cautious approach towards bringing trade complaints against developed country contracting parties.

14. Compared with the dispute settlement procedures of other worldwide international organizations - for instance, the Procedures of the International Court of Justice or of the International Centre for Settlement of Investment Disputes established under the 1965 World Bank Convention on the Settlement of Investment Disputes - the differentiations among developed and less-developed contracting parties in the GATT dispute settlement procedures appear to be without precedent.

III. Proposals made in the Negotiating Group for Additional Provisions on Differential and more Favourable Treatment of Developing Countries in the GATT Dispute Settlement System

15. The written proposals and communications received so far from participants in the Negotiating Group on Dispute Settlement (see documents MTN.GNG/NG13/W/1-26) include the following proposals for additional provisions on differential and more favourable treatment of developing countries in the GATT dispute settlement system:

- (a) "In the case of a matter raised by a less-developed contracting party, the recommendations of the CONTRACTING PARTIES may include measures of compensation for injury caused if the circumstances are serious enough to justify such measures." (MTN.GNG/NG13/W/15, p.8, para.11)
- (b) "In the case of a matter raised by a less-developed contracting party, the time-limit for implementation of the recommendations of the CONTRACTING PARTIES shall not exceed ninety days." (MTN.GNG/NG13/W/15, p.9, para.12)
- (c) "In the event that a recommendation of the CONTRACTING PARTIES is not implemented within the prescribed period (of ninety days), the CONTRACTING PARTIES shall consider what measures, further to suspension of concessions by the party affected, should be taken to resolve the matter. In the case of a matter raised by a less-developed contracting party, those measures may be of a collective nature." (MTN.GNG/NG13/W/15, p.9, para.13)
- (d) "In cases where the Council establishes a panel upon the receipt of the report of the Director-General, whose good offices, initiated at the request of a complaining less developed contracting party, failed to produce a mutually satisfactory

solution, the panel shall endeavour to complete its work within a period of 60 days from the date the matter was referred to it in accordance with the 1966 Decision on Procedures under Article XXIII. If the panel is unable to meet the above-time-limit, it shall report to the Council the reasons for the delay and the Council would grant extension as appropriate." (MTN.GNG/NG13/W/19, p.5, para.2,d).

- (e) "At the request of a less-developed contracting party which has only limited retaliatory power vis-à-vis major trading partners, panel reports may include an appropriate recommendation on the amount of compensation due in case the main panel findings are not implemented by a developed contracting party within such time-limit." (MTN.GNG/NG13/W/19, p.6, para.3,b). The proponent of this suggestion "agreed that also developed contracting parties could request a GATT panel to include into the panel report a recommendation on the amount of compensation due in case the main panel findings were not implemented." (MTN.GNG/NG13/5, para.11)
- (f) "The developing countries are included in the international trading system on a weakened footing and therefore should be granted advantages, especially in the form of preferential and more favourable treatment. Consequently, whatever the improved dispute settlement machinery that may emerge from these negotiations, this fact must be taken into account with a view, among other things, to enhancing and speeding up procedures such as those contained in the Decision adopted on 5 April 1966, in the case of disputes submitted by developing countries. In addition, this improved machinery should provide for special measures to make up for the limited retaliatory capacity of developing countries vis-à-vis major trading partners, in view of their lesser weight in international trade." (MTN.GNG/NG13/W/23, p.4, paras.22,23)
- (g) "It 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." (MTN.GNG/NG13/W/24, p.3)
- (h) "During the process of consultations between a developed contracting party and a developing contracting party, regardless of which of the two is the affected party, the developed contracting party shall take account of the finance, trade and development needs of the developing contracting party." (MTN.GNG/NG13/W/26, p.2, para.8)

- (i) "Even where consultations lead to a mutually acceptable solution, the developing contracting party may, if the solution is not wholly satisfactory in terms of its development needs, request the CONTRACTING PARTIES to review the solution. Such review shall be conducted in the light of the principles, objectives and commitments of Part IV of the General Agreement and of the spirit and letter of the Enabling Clause and with a view, inter alia, and if necessary, to determining specific measures under Articles XXV and XXXVIII of the General Agreement" (MTN.GNG/NG13/W/26, p.2, para.9)
- (j) "In the case of disputes between a developed contracting party and a developing contracting party, regardless of which of the two is the affected party, the persons undertaking the good offices, mediation or conciliation shall take particularly into account the finance, trade and development needs of the developing contracting party". (MTN.GNG/NG13/W/26, p.3, para.9)
- (k) "Even where the mediation process leads to a mutually acceptable solution, the developing contracting party may, if the solution is not wholly satisfactory in terms of its development needs, request the CONTRACTING PARTIES to review the solution. Such review shall be conducted in the light of the principles, objectives and commitments of Part IV of the General Agreement and of the spirit and letter of the Enabling Clause, and with a view, inter alia, and if necessary, to determining specific measures under Articles XXV and XXXVIII of the General Agreement." (MTN.GNG/NG13/W/26, p.4, para.10)
- (l) "When the establishment of a panel is requested to examine any measure adopted by a developing contracting party, longer time-limits than those provided for the normal situation shall be established in order that developing contracting parties may have the necessary time-frame flexibility to prepare and present their arguments." (MTN.GNG/NG13/W/26, p.7, para.4)
- (m) "When a dispute involves a developing contracting party and a developed contracting party, regardless of which of the two is the affected party, the panel shall take account of the finance, trade and development needs of the developing contracting party." (MTN.GNG/NG13/W/26, p.7, para.6)
- (n) "Bearing in mind the lack of economic, material and human resources of developing contracting parties, it would be desirable that in addition to the technical assistance currently available there should be established specialized legal assistance for problems and provisions relating to differential and more favourable treatment for developing countries." (MTN.GNG/NG13/W/26, p.7, para.7)

- (o) "In addition to such specialized legal assistance, special training courses could be conducted on the GATT rules for developing countries and dispute settlement procedures, so that the developing countries' experts may be better informed in this regard." (MTN.GNG/NG13/W/26, p.7, para.8)
- (p) "If for any compelling reason one of the contracting parties to a dispute cannot immediately comply with the recommendations of a panel (for example, elimination of measures that are incompatible with the General Agreement), and the dispute involves one or more developing contracting parties, either as complainant(s) or as defendant(s), the CONTRACTING PARTIES shall give priority to ensuring, and do their utmost to ensure, that the interim solution adopted increases trade (compensatory adjustment) rather than restricting it (withdrawal of concessions and/or obligations)." (MTN.GNG/NG13/W/26, p.8, para.3)
- (q) When adopting an interim solution as indicated in the previous paragraph, the CONTRACTING PARTIES shall take into account not only the trade coverage of measures complained of but also their impact on the matter raised by a developing contracting party, shall consider what further action they might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 respectively, of the 1979 Understanding." (MTN.GNG/NG13/W/26, p.8, para.4)
- (r) "When a developing contracting party cannot comply with the recommendations of a panel, the interim solution adopted shall be based on the compensation offered by the developing contracting party to the affected party, and not on the suspension of concessions and/or obligations by the latter. The aim is that the developing contracting party should be able itself to choose the form and products by which it can grant compensation restoring the balance of benefits for the affected party, taking into account its own trade, finance and development needs." (MTN.GNG/NG13/W/26, p.8, para.5)
- (s) "When a developed contracting party cannot immediately comply with the recommendation of a panel in a dispute in which the affected party is a developing contracting party, the interim solution adopted should be based as far as possible on the compensation sought by the developing contracting party. Furthermore, such compensation should be calculated retroactively from the time when the measure that is the subject of the dispute began to be applied." (MTN.GNG/NG13/W/26, p.8, para.6)

- (t) "All the points set out above shall be applied without prejudice to the fact that when a developing contracting party sees fit it may invoke and make use of the procedures provided for in Article XXIII in accordance with the CONTRACTING PARTIES' decision of 5 April 1966 (BISD 14S/18) and/or any other provision contained in other instruments relating to GATT dispute settlement mechanisms." (MTN.GNG/NG13/W/26, p.9, para.1)
- (u) "When a developing contracting party has had to accept a bilateral solution at any stage of the mechanisms available for the settlement of disputes, including consultations, such contracting party may request the CONTRACTING PARTIES to review the solution. Such review shall be conducted in the light of the principles, objectives and commitments adopted in the field of differential and more favourable treatment for developing countries and with a view, inter alia, and if necessary, to determining specific measures under Articles XXV and XXXVIII of the General Agreement." (MTN.GNG/NG13/W/26, p.9, para.2)

16. The notes on the past meetings of the Negotiating Group on Dispute Settlement (see documents MTN.GNG/NG13/1-7) mention the following orally submitted proposals for differential and more favourable treatment of developing countries in the GATT dispute settlement system:

- (a) "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." (MTN.GNG/NG13/5/Add.1, p.3, para. (n))
- (b) "The 'retroactive compensation' could cover also the prejudice originating from a threat of retaliation, especially against a less-developed contracting party .... the compensation for a less-developed contracting party might be even greater than the injury suffered." (MTN.GNG/NG13/6, p.5, para.10).

The notes also mention that several participants emphasized "the importance of preserving and strengthening the special and differential treatment of less-developed contracting parties in the context of GATT dispute settlement procedures" (see, for example, MTN.GNG/NG13/5, para.7). But it was also said that "not only developing countries but also other small

contracting parties could be disadvantaged by a lack of retaliatory power." (MTN.GNG/NG13/5, para.10). Referring to the principle of special and differential treatment, "it was said that the main interest of developing countries and others of limited economic strength was in certainty and efficiency in a dispute settlement system. Rule-based systems favoured those with limited power of retaliation, and improvements in the system itself could thus be seen as special and differential treatment because the smaller and weaker parties had most to benefit." (MTN.GNG/NG13/6, p.7, para.14)

17. The unofficial summary of comments made in the informal discussion on 27 and 28 April 1988 on the "Checklist of Main Issues for Discussion" notes in paragraph 5:

"There seemed to be general agreement that the principle of special and differential treatment of developing countries forms part of the GATT dispute settlement procedures. Several delegations expressed doubts as to what extent differences in economic development could actually justify differences in GATT dispute settlement procedures and whether a 'two-tier system' of GATT dispute settlement procedures, differentiating between developed and less-developed contracting parties, would serve the interests of less-developed countries more than uniform dispute settlement procedures. Some of these delegations requested more information as to what specific procedural differentiations were proposed. Other delegations said that the principle of differential and more favourable treatment of developing countries was part of GATT law as well as of the Punta del Este Declaration and could be applied in dispute settlement proceedings involving developing countries in various ways; for instance, by additional provisions for the good offices by the Director-General, for technical assistance by the GATT secretariat, for the adoption of standard terms of reference after a certain period of time (e.g. 30 days), for a quicker adoption and implementation of panel reports involving less-developed contracting parties, for more specific time limits in order to ensure quick dispute settlements, and by a right of less-developed contracting parties to retroactive compensation. One country expressed its interest in having informal consultations on this subject in order to prepare further proposals on special and differential treatment in dispute settlement procedures. It was said that the foreign indebtedness and frequent dependence of less-developed contracting parties on a limited number of export products illustrated the structural differences among developed and less-developed contracting parties, which justified special and differential treatment also in the area of dispute settlement procedures. But it was also said that the special and differential treatment could be extended to other contracting parties if they faced similar special problems (e.g. need for delays in the implementation of panel findings, disparity in economic strength). Other countries took the view that the proposed improvements in dispute settlement procedures, for instance as regards adoption of panel reports and

compensation, should apply to all contracting parties. It was also said that the 1966 dispute settlement procedures, which provide for special and differential treatment of developing countries, had been used very rarely. Paragraphs 21 and 23 of the 1979 Understanding constituted another existing legal basis for special and differential treatment of less-developed contracting parties in GATT dispute settlement procedures."

18. The pertinent discussions at the last meeting of the Negotiating Group on 23 and 24 June 1988 will be summarized in the forthcoming note on this meeting (MTN.GNG/NG13/8).