

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on Dispute Settlement

The following communication has been received on 7 October 1988 on behalf of a number of contracting parties with the request that it be circulated to the members of the Group.

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DISPUTE SETTLEMENT PROPOSAL

Introduction

. CONTRACTING PARTIES recognize that the dispute settlement system of GATT exists to reinforce the rights and obligations of Contracting Parties under the General Agreement. It is a central element in providing security and predictability to the multilateral trading system.

. CONTRACTING PARTIES agree that the aim of the GATT dispute settlement system is to secure positive solutions to disputes that are compatible with the GATT rules. An effective dispute settlement system requires equality of access of all Contracting Parties to the GATT dispute settlement system and efficient, reliable procedures for handling disputes.

. CONTRACTING PARTIES agree to strengthen their political commitment to abide by the dispute settlement rules and procedures in GATT. To this end, they shall abide by the recommendations, rulings and decisions of CONTRACTING PARTIES and shall refrain from unilateral measures inconsistent with these GATT rules.

. CONTRACTING PARTIES agree that the current practice of the GATT in the field of dispute settlement should be continued in the future with the improvements set out below, which aim to ensure prompt and effective resolution of disputes to the benefit of all Contracting Parties.

. CONTRACTING PARTIES agree to implement these improvements on a provisional basis as of January 1, 1989; to keep their implementation under review during the remainder of the Uruguay Round; and to continue negotiations with the aim of further improving and strengthening the GATT dispute settlement system.

.CONTRACTING PARTIES agree to elaborate a consolidated instrument integrating the various GATT dispute settlement procedures and any agreed improvements into one single text by the end of the Uruguay Round.

#### Notification

.Mutually agreed solutions to matters brought under the GATT dispute settlement system shall be notified to the Council where any Contracting Party may raise any point relating to such solutions.

#### Consultations

.If a request is made for consultations under Article XXII:1 or Article XXIII:I, the Contracting Party to which the request was made must reply to the request within 10 days and shall, unless mutually agreed, enter into consultations in good faith within a period of no more than 30 days from the date of the request, with a view to reaching a mutually satisfactory solution. If the Contracting Party does not respond within 10 days, or does not agree to enter into consultations within a period of no more than 30 days from the date of the request, then the Contracting Party that requested the holding of consultations may proceed directly to request the establishment of a panel.

. The Contracting Party that has requested consultations shall decide when no mutually satisfactory solution appears possible within a reasonable period of time and when to resort to Article XXIII:2.

. If consultations under Article XXII:1 do not result in a mutually satisfactory solution, then the Contracting Party that requested the holding of consultations may, if it so decides, proceed directly with a request for the establishment of a panel under Article XXIII:2.

#### Good Offices, Conciliation, Mediation

. Good Offices, Conciliation and Mediation are procedures that are undertaken voluntarily. They can be terminated at any time by any of the parties to a dispute who can then proceed with a request for the establishment of a panel under Article XXIII:2.

. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

### Arbitration

. Expeditious arbitration within GATT to augment the dispute settlement system could facilitate the solution of certain disputes that essentially concern issues that are clearly defined by both parties, and would primarily include issues of fact.

. Resort to arbitration would be subject to mutual agreement of the parties who would agree on the procedures to be followed.

. The arbitration decision would be binding for the parties concerned. Third parties would retain their rights under the General Agreement.

### Panel Procedures

#### 1) Establishment of a panel:

. A request for a panel shall be made in writing indicating whether consultations were held and providing a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. A panel shall be established, if the party complaining so requests, no later than the Council meeting following the one at which the request first appeared as an item on the Council agenda.

#### 2) Standard Terms of Reference:

. The following standard terms of reference shall apply unless the parties to the dispute agree otherwise within 10 days from the establishment of the panel:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of Contracting Party) in document L( ) and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2" or

. If other than standard Terms of Reference are agreed upon, they shall be circulated for information to Contracting Parties.

#### 3) Composition of Panels:

. Contracting Parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

. Panels shall be composed of well-qualified governmental and/or non-governmental individuals. Citizens of the parties to a dispute and of third Contracting Parties that have reserved their rights to make a submission to the panel may serve as panelists if the disputing parties agree.

. Contracting Parties may nominate individuals to serve on panels and shall provide relevant information on their nominee's knowledge of international trade and experience of the GATT.

. Panels shall be composed of three members unless the parties to the dispute agree within 10 days from the establishment of the panel to a panel composed of five members.

. If there is no agreement on the members within 20 days from the establishment of a panel, at the request of either party, the Director General, in consultation with the Chairman of Council, shall complete the panel by appointing the panelists, after consulting both parties. The Director General shall complete the panel and inform the Contracting Parties of the composition of the panel no later than 10 days from the date he receives such a request.

#### 4) Procedures for multiple complainants:

. Where more than one Contracting Party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints. The establishment of a single panel to examine such complaints should be encouraged.

. The single panel will organize its examination and present its findings to the Council so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. 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.

. If more than one panel is established to examine the complaints related to the same matter, the same persons shall serve as panelists on each of the separate panels.

5) Third Party Practice:

.The interests of the parties to a dispute and those of other Contracting Parties shall be fully taken into account during the panel process.

. Any third Contracting Party having a substantial interest in a matter before a panel, and having notified this to the Council prior to the first meeting of the panel, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

. At the request of the third Contracting Party, the panel may grant the third Contracting Party access to the written submissions to the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third Contracting Party.

6) Time devoted to various phases of a panel:

. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

. Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall fix the timetable for the panel process within one week after the panel has been set up.

. The parties to a dispute shall deposit written submissions with the Secretariat simultaneously for onward transmission to the members of the panel. The submissions shall be exchanged between the parties to the dispute at the same time as they are given to the Secretariat.

. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the timetable is fixed to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, the panel shall aim to provide its report to the parties within three months.

. When the panel considers that it cannot provide its report within six months, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will conclude its report. In no case should the period from the establishment of the panel to the submission of the report to the Contracting Parties exceed 12 months.

#### Technical Assistance

. The technical assistance services of the GATT secretariat shall, at the request of a party, assist it in respect of dispute settlement. There may be a need to provide legal advice in respect of dispute settlement to less developed Contracting Parties by qualified experts not members of the GATT Secretariat.

#### Adoption of Panel Reports

. In order to provide sufficient time to consider panel reports, the reports shall not be considered for adoption until 30 days after they have been issued.

. Contracting Parties having objections to panel reports shall give written reasons to explain their difficulties for circulation at least 10 days prior to the Council meeting or Contracting Parties session at which the panel report will be considered.

. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the CONTRACTING PARTIES, and their views shall be fully recorded. Panel reports should be adopted by consensus. The parties to a dispute shall not block a consensus to adopt a panel report, but may either join or abstain from the consensus.

### Surveillance of Implementation of Panel Reports

. The prompt removal of a measure or measures found to be inconsistent with the GATT and/or to nullify or impair any benefit accruing to a Contracting Party under the General Agreement is essential in order to ensure prompt and effective resolution of disputes to the benefit of all Contracting Parties.

. A Contracting Party whose measure has been found to be inconsistent with the General Agreement and/or to nullify or impair any benefit accruing to a Contracting Party under the General Agreement shall inform the Council of its intentions in respect of implementation of the panel report and shall have a reasonable period of time in which to implement the recommendations of a panel report. In cases where a panel finds a measure to be inconsistent with GATT obligations and/or to nullify or impair benefits under the GATT, the panel may make recommendations on the reasonable period of time in which that measure would be removed. The reasonable period of time in which to implement the recommendations of a panel report will vary according to the circumstances of the Contracting Party concerned, in particular in cases involving less developed contracting parties.

. Council shall monitor the implementation of panel reports. Unless the Council decides otherwise, the issue of implementation of a panel report shall automatically be on the agenda of the third Council meeting following the adoption of the panel report and remain on Council's agenda until the issue is resolved. At least 10 days prior to each such Council meeting, the Contracting Party that must remove a measure found to be inconsistent with the General Agreement and/or to nullify or impair benefits shall provide the Council with a status report in writing of its proposed implementation of the panel report.

. Failure to remove a measure found to be inconsistent with the GATT and/or to nullify or impair benefits under the GATT within a reasonable time shall give rise to compensation or the suspension of concessions or other obligations under the General Agreement. Compensation or the suspension of concessions or other obligations under the General Agreement shall be temporary measures pending the withdrawal of the measure found to be inconsistent with the General Agreement and/or to nullify or impair benefits under the General Agreement.

. The suspension of concessions or other obligations under the General Agreement must be authorized in advance by the CONTRACTING PARTIES and shall be applied on a discriminatory basis vis-a-vis the Contracting Party that has not yet removed an inconsistent measure and/or one that nullifies or

impairs benefits under the General Agreement.

. After the expiry of a reasonable period of time in which to implement the recommendations of a panel report and upon the request of a Contracting Party to the dispute, a technical group shall be established to determine the amount of impairment. The Contracting Parties involved in the dispute shall be guided by the amount so determined to negotiate compensation. The Contracting Party that requested the establishment of the procedures may use the amount as a basis for the suspension of concessions or other obligations for approval by the Contracting Parties.

. Where applied, compensation shall be on a most-favoured nation basis and shall be aimed at the restoration of the proper balance between the rights and obligations of all Contracting Parties. To this end, the Contracting Party that has not yet removed an inconsistent measure and/or one that nullifies or impairs benefits under the General Agreement shall aim, in proposing compensatory measures, to restore the balance of rights and obligations for all Contracting Parties affected by the measure.

.As an interim measure pending the withdrawal of the measure found to be inconsistent with the GATT and/or to nullify or impair benefits under the GATT, compensation shall be preferred over the suspension of concessions or other obligations under the General Agreement. In negotiating compensation in disputes involving less developed Contracting Parties, account shall be taken of the trade, finance and development needs of the less developed Contracting Parties.

. In disputes involving less developed contracting parties, the Contracting Parties shall consider what further action they might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding on Dispute Settlement.

. In cases where a Contracting Party, after a reasonable period of time, does not comply with the Panel's recommendation, the date from which calculation of the amount of impairment for which compensation shall be negotiated or the suspension of concessions or other obligations under the General Agreement authorized shall be determined as from when the panel report was adopted by the Council.

.There may be instances, especially for less developed contracting parties, in which the date from which the calculation should be made may be the date of the introduction of the measure found to be inconsistent with the General Agreement and/or to nullify or impair benefits under the General Agreement.