

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG13/W/26/Rev.1
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Special Distribution

Group of Negotiations on Goods (GATT)

Original: Spanish

Negotiating Group on Dispute Settlement

COMMUNICATION FROM MEXICO

Revision

The following communication has been received on 7 October from the delegation of Mexico with the request that it be circulated to the members of the Group.

As stated at the Group's tenth meeting, Mexico submits herewith a revised version of its proposal contained in document MTN.GNG/NG13/W/26 of 23 June 1988.

This version is an integral supplement to the original proposal, and therefore the two texts should be considered as single document. The aim has been to cover the basic elements of the negotiations, taking into account the positions and arguments advanced so far.

This version has two aspects: amendments to the original proposal and inclusion of additional elements. In each case it is clearly indicated whether it is a question of a change or of new ideas. It is understood that the aspects not explicitly mentioned in this version stand unchanged.

The Government of Mexico reserves the right to amend its proposal or to submit further proposals in the light of the future course taken by the negotiations.

NOTIFICATION

The notification procedures under the General Agreement as regards dispute settlement will have to be improved. In this context, contracting parties will notify to the Council all bilateral settlements of disputes referred to the CONTRACTING PARTIES under Articles XXII and XXIII. (NEW).

CONSULTATIONS

Where a contracting party has received a request for consultations pursuant to Article XXII or Article XXIII, that contracting party shall afford adequate opportunity for consultations within a period of thirty days from receipt of the request for consultations, unless the parties concerned decide by mutual agreement to extend the period, or unless the

party receiving the request is a developing contracting party, in which case there shall be greater flexibility. If the contracting party does not agree to begin consultations within the established period, the consultation procedure shall be considered exhausted, and the contracting party which requested consultations may therefore proceed to request directly the establishment of a panel.

The contracting party which requested the consultations shall decide on the most appropriate moment to invoke Article XXIII:2 on the grounds that a mutually satisfactory adjustment has not been reached within a reasonable period.

If the consultations pursuant to Article XXII:1 do not lead to a mutually satisfactory outcome, the contracting party which requested the consultations may, if it so decides, proceed to request directly the establishment of a panel under Article XXIII:2.

(These three paragraphs replace paragraphs 6 and 7 of Section I of the original proposal.)

COUNCIL OF REPRESENTATIVES MEETING IN DISPUTE SETTLEMENT MODE

If there is no consensus for all aspects relating to the settlement of disputes to be addressed in special Council meetings, these aspects will have to be dealt with by the Council as has been done hitherto.

(This paragraph replaces the entire Section IV of the original proposal, on the understanding that the functions mentioned in the proposal would be maintained within the Council.)

PANEL PROCEDURES

- Establishment of panels

The request for the establishment of a panel shall be submitted in writing, together with a mention of whether consultations have been held and a brief statement of the factual and legal grounds for the complaint setting out the problem as clearly as possible.

If the complainant so requests, the panel shall be established at latest at the Council meeting following that at which the complaint was submitted, unless at that meeting the Council decides otherwise.

(These paragraphs replace Section V, point 1, of the original proposal.)

- Terms of reference of panels

The following standard terms of reference shall be used, unless the parties to the dispute agree to different terms of reference within a period of ten 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 the contracting party) in document (document reference), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations and rulings, as provided for in Article XXIII, paragraph 2."

Where the parties agree on terms of reference other than the standard ones, those terms of reference shall be circulated immediately to the other contracting parties.

(These paragraphs replace Section V, point 3, of the original proposal).

- Composition of panels

The contracting parties shall undertake, as a general rule, to allow their representatives to serve as panel members.

The panels shall be composed preferably of governmental officials and, less frequently, non-governmental experts, who shall act impartially and without instructions from their governments. The roster of officials and/or experts who may be panel members shall be drawn up with the names proposed by governments and accepted by the contracting parties.

Panels shall be composed of three members unless the parties to the dispute agree, within a period of ten days after the establishment of the panel, that the panel shall be composed of five members.

Where agreement on membership is not reached within twenty days after the establishment of the panel, at the request of any of the parties to the dispute the Director-General, in consultation with the Chairman of the Council and having heard the parties, shall form the panel by appointing the members whom he considers appropriate from the roster of officials and/or experts. The Director-General shall appoint the panel and inform the contracting parties of its membership within ten days of having received the request.

(These four paragraphs replace Section V, point 2, of the original proposal.)

- Procedures for multiple complaints

Where two or more contracting parties request the establishment of panels concerning the same matter, a single panel may be established to examine the complaints. The contracting parties agree that when such situations arise the establishment of single panels to examine the complaints should be encouraged.

The single panel shall organize its examination and present its findings to the Council in such a way that the procedural rights which 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 single panel will present a separate report on that party's complaint. 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 complaints relating to the same matter, the contracting parties agree that the panels shall, as far as is possible and appropriate, be composed of the same persons.

(New paragraphs).

- Third parties affected or having a substantial interest

The contracting parties recognize the need to ensure that the interests of the parties to a dispute and those of other contracting parties are duly taken into account in panel proceedings.

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. Those submissions shall be provided to the parties to the dispute and be reflected in the panel's report.

At the request of a third contracting party, the panel may make available to that contracting party the written submissions made to the panel by the parties to the dispute which agree to make their submissions available to the third party.

(These three paragraphs replace Section VII of the original proposal.)

- Notification of mutually agreed settlements

Solutions that are mutually agreed during the proceedings of a panel shall be notified to the Council.

(This paragraph is new.)

- Time devoted to the various work-phases of panels

In urgent cases, and in the case of perishable products, it shall be the objective of the panel to submit its report to the parties within a period of three months from the date when the panel was established.

(This is a new paragraph which would be inserted immediately after the second paragraph in Section V, point 4, of the original proposal.)

- Legal assistance

To this end, GATT shall have a legal expert to assist developing contracting parties which so request. This expert will assist developing

contracting parties in a personal capacity in such a way as to ensure the impartiality of the GATT secretariat legal division, and therefore the expert's opinions or activities cannot in any way implicate the institution or the parties to the dispute as such. The contracting parties agree that this expert may be present in all cases of a dispute involving a developing contracting party and that he shall have the material support of the GATT secretariat in discharging his functions.

(This is a new paragraph to be inserted immediately following Section V, point 7, of the original proposal.)

FOLLOW-UP AND SURVEILLANCE OF IMPLEMENTATION OF THE DECISIONS OF THE CONTRACTING PARTIES

All bilateral settlements of matters relating to GATT dispute-settlement proceedings shall be notified to the Council. The Council may examine such settlements and determine whether they are consistent with the provisions and objectives of the General Agreement and of the instruments negotiated in GATT or under its auspices.

(This is a new paragraph to be inserted as Paragraph 7 of Section VI of the original proposal.)

DIFFERENTIAL AND MORE FAVOURABLE TREATMENT FOR DEVELOPING COUNTRIES

The panel's report shall explicitly indicate the form in which account has been taken of the provisions on differential and more-favourable treatment for developing countries that form part of the General Agreement and of the instruments negotiated in GATT or under its auspices.

(This is a new paragraph.)

- The proposals listed in Part III of the note by the secretariat contained in document MTN.GNG/NG13/W/27/Rev.1 and not already contained in the original proposal by Mexico should be added immediately following the second paragraph of Section VIII of the original proposal.