

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

COMMUNICATION FROM THE DELEGATION OF JAMAICA

At the request of the Ambassador of Jamaica, the following exchange of letters between himself and the Chairman of the Group of Negotiations on Goods is circulated for the information of members of the Group.

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21 October 1988

Dear Director-General,

I would appreciate having the benefit of the views of the GATT Legal Advisers on the appropriate formulation to be used in delineating the jurisdiction of the CONTRACTING PARTIES and that of the Ministers Meeting in the Trade Negotiations Committee.

I have in mind making a distinction between the following:

- (1) CONTRACTING PARTIES taking "decisions" within the framework of the General Agreement and the MTN Codes; and
- (2) "Decisions" by the TNC which do not affect the contractual arrangements among Contracting Parties but which may give guidance or impetus to the negotiations in the Uruguay Round.

It may be that there are grey areas in between these two.

I believe that it would be useful for participants in the Uruguay Round to have the benefit of the secretariat's legal advice.

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3 November 1988

Dear Ambassador,

I have received your letter of 21 October 1988, in which you ask for a secretariat opinion on how to delineate the jurisdiction of the CONTRACTING PARTIES and that of the Ministers meeting in the Trade Negotiations Committee.

In reply, I wish to convey to you the following preliminary views of the secretariat on the matter raised by you. It is obviously possible that some aspects of the reply have to be reviewed in the light of the continued work in the Negotiating Groups.

The Punta del Este Declaration stipulates in paragraph F(b) that participation in negotiations "relating to the amendment or application of GATT provisions or the negotiations of new provisions" will only be open to contracting parties. The Statement by the Chairman, adopted at Punta del Este, clarified F(b) by explaining that "non-contracting parties shall only be precluded from participation in decisions of contracting parties relating to the results of these negotiations". The principle that only parties to an agreement can decide on amendments to it is an established principle in international law.

It seems thus clear that results of the negotiations "relating to the amendment or application of GATT provisions or the negotiation of new provisions" cannot be finally adopted by the TNC but have to be submitted for approval to a body representing the contracting parties to GATT (the CONTRACTING PARTIES or the Council). Results of negotiations that do not fall into this category (i.e. essentially decisions on the future work programme of the Groups) can be decided upon by the TNC.

Typical examples of negotiating results falling into the first category, i.e. requiring a GATT decision, are the proposed new procedures in the dispute settlement area and certain proposals made in the FOG Group (on a trade policy review mechanism). The results produced so far in other Negotiating Groups (i.e. Tariffs, Non-Tariff Measures, Natural Resource Based Products, Textiles and Clothing, MTN Agreements and Arrangements, Subsidies and Countervailing Measures, TRIMS) appear to fall into the second category, where the TNC can take the final decision.

There may be grey areas between the two main types of matters for decision as set out above but the results so far produced seem to fit neatly into one or the other of the two categories.

The fact that the final decision concerning a particular result would be taken by a GATT body does obviously not mean that the result could not form part of the package to be submitted for adoption by the TNC. The TNC would, however, have to make it clear that some results of the negotiations would have to be submitted to a GATT body for formal approval.