

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG13/14

2 June 1989

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Dispute Settlement

MEETING OF 12 MAY 1989

Note by the Secretariat

1. The Group held its fourteenth meeting on 12 May 1989 under the Chairmanship of Ambassador Julio A. Lacarte-Muró (Uruguay). The Group adopted the agenda set out in GATT/AIR/2771.

A. Discussion of the Group's Future Work, including the Issues Listed in Paragraph 2 of the TNC Decision on Dispute Settlement (MTN.TNC/11, p.24)

2. The Chairman recalled that the Decision adopted by the TNC at its mid-term review meeting in respect of Dispute Settlement also contained an outline of the future work programme of Negotiating Group 13. Paragraph 2 requested the Group to -

"continue its work for the full achievement of the negotiating objective, taking into account proposals which have been presented and without prejudice to positions taken by participants. Such work would include, inter alia, further examination of improved and strengthened procedures concerning the implementation of recommendations or rulings of the CONTRACTING PARTIES, as well as of the definition, determination and modalities of compensation, and the issues raised in paragraphs A.2 and G.3 of the Dispute Settlement text in Section III of MTN.GNG/13."

3. The Chairman emphasized that the work programme following from paragraph 2 of the TNC Decision on Dispute Settlement reserved the right of all participants to come back to the proposals they had presented in the past, as well as to present new proposals. He then mentioned a few additional subjects which needed to be considered in the future work of Negotiating Group 13:

First, the TNC Decision as well as the Council Decision of 12 April 1989 (L/6489), by which the GATT CONTRACTING PARTIES had approved the improvements to the dispute settlement rules and procedures, stated in their paragraph A.3, inter alia:

"it is also agreed to keep the application of these improvements under review during the remainder of the Round"

and

"to continue negotiations with the aim of further improving and strengthening the GATT dispute settlement system taking into account the experience gained in the application of these improvements".

Since the period of trial application had begun only on 1 May 1989 and no new complaints had been brought to the GATT Council since 1 May 1989 to which the improved procedures would appear to apply, the Chairman suggested that the Group come back to this question before the end of this year. The Group could then request the Secretariat to prepare a background note on this matter and decide to review the experience gained, at one of the meetings in 1990.

A second subject requiring attention related to the Uruguay Round and the least-developed countries. The Group of Negotiations on Goods, at its meeting on 25 April, had agreed to bring to the attention of all Negotiating Groups the proposals made on this subject contained in the communication from Bangladesh on behalf of least-developed countries (MTN.GNG/W/14/Rev.1). This communication proposed, inter alia, "to incorporate provisions to facilitate effective utilization by least-developed countries of remedial measures or actions available in the GATT system, e.g. dispute settlement" (page 1). The Chairman thanked the representative of Bangladesh for his willingness to present these proposals in more detail at the next meeting of the Group.

A third subject, to which the Chairman drew attention, related to the agreed objective of elaborating a consolidated instrument integrating the various GATT dispute settlement procedures and agreed improvements into one single, transparent text. He suggested that this subject be taken up early next year on the basis of a draft to be prepared by the Secretariat.

Finally, the Chairman mentioned that he had asked the Secretariat to prepare a short non-paper listing the various subjects which the TNC and the GNG had requested Negotiating Group 13 to consider in the context of its future work. This list (reproduced in the annex) was not exhaustive and also outlined a possibility of how Negotiating Group 13 could give more focus to the work at its next meeting.

4. During the discussion of the Group's future work programme, it was said that the subjects were often inter-related and linked. Also other subjects should be explored in the future work of the Group, such as: improvements in the quality of panel reports; rights of third parties; procedures to overcome blockage of consensus; procedures for the authorization under Article XXIII:2 to suspend concessions; and arbitration procedures. Several delegations expressed agreement with the agenda, as proposed in the non-paper, for the next meeting of the Group in July 1989. There was also agreement that the Secretariat prepare background papers for this meeting on the two agenda items "compensation in the context of GATT dispute settlement rules and procedures" as well as "non-violation complaints under GATT Article XXIII". The Secretariat was further requested to update, in the course of 1989, its background note MTN.GNG/NG13/W/4.

5. As regards the future work of the Group after the summer recess, one delegation proposed discussing the subjects of (1) withdrawal of concessions pursuant to Article XXIII:2 and (2) unilateral measures inconsistent with Article XXIII:2 at the autumn meeting of the Group. Another participant suggested discussing also the subject of adoption of panel reports, which was closely linked to the issue of retaliatory measures. Several delegations expressed their agreement with the proposals by the Chairman as regards the review of the trial application of the improved dispute settlement procedures and the elaboration of a consolidated instrument integrating the various GATT dispute settlement procedures into one single, transparent text.

B. Other business

6. The Group agreed to hold its next meeting on 20-21 July 1989 and to convene two additional meetings of the Group in September and November-December 1989, respectively.

ANNEX

12 May 1989

WORK PROGRAMME OF NEGOTIATING GROUP 13

Non-Paper

I, The TNC Decision on Dispute Settlement (MTN.TNC/11, p.24, paragraphs 2 and A.3) instructs Negotiating Group 13 to:

- (1) "continue its work for the full achievement of the negotiating objective, taking into account proposals which have been presented and without prejudice to positions taken by participants";
- (2) further examine "improved and strengthened procedures concerning the implementation of recommendations or rulings of the CONTRACTING PARTIES";
- (3) "as well as the ... definition, determination and modalities of compensation";
- (4) and the issues raised in MTN.GNG/13, at page 55, paragraph A.2:

"The CONTRACTING PARTIES agree to strengthen their [political] commitment to abide by the dispute settlement rules and procedures in GATT. They shall abide by the recommendations, rulings and decisions of the CONTRACTING PARTIES and shall refrain from unilateral measures inconsistent with these GATT rules and procedures. [Contracting parties undertake to [adjust/administer] their domestic trade legislation and enforcement procedures in a manner ensuring the conformity of all measures with GATT dispute settlement procedures.]";

- (5) as well as the issues raised in MTN.GNG/13, at page 65, paragraph G.3:

"The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided [and, to this end, the parties to a dispute shall not impede a consensus to adopt a panel report, but may either join in or abstain from the consensus.]";

- (6) "to keep the application of these improvements under review during the remainder of the Round"; and
- (7) prepare a decision "on their adoption before the end of the Round ... taking into account the experience gained in the application of these improvements".

II. The GNG has requested all Negotiating Groups to consider the proposals made on behalf of least-developed countries (MTN.GNG/W/14/Rev.1, MTN.GNG/W/15).

III. The Negotiating Group might wish to decide at its meeting on 12 May on which subjects it will focus its discussions at a next meeting in July 1989. One possible agenda for a July meeting could be:

- (1) Implementation of rulings, decisions and recommendations under Article XXIII:2;
- (2) Compensation in the context of GATT dispute settlement rules and procedures;
- (3) Non-violation complaints under GATT Article XXIII;
- (4) Proposals by least-developed countries for special provisions facilitating their effective use of the GATT dispute settlement mechanism;
- (5) Other business, including subjects to be discussed at a September and November meeting of Negotiating Group 13.