

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG14/W/43
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Group of Negotiations on Goods (GATT)
Negotiating Group on the Functioning
of the GATT System

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COMMUNICATION FROM SWITZERLAND

The following communication regarding GATT Obligations with Respect to Rules and Procedural Rights in Domestic Law has been submitted by the delegation of Switzerland in order to set forth, in the form of a draft legal proposal, the proposals submitted in MTN.GNG/NG14/W/38 of 31 January 1990.

DRAFT PROPOSAL ON GATT OBLIGATIONS WITH RESPECT TO RULES AND
PROCEDURAL RIGHTS IN DOMESTIC LAW

INTRODUCTION

The functioning of the GATT system depends both on well structured international interactions between governments and on effective implementation of its rules and disciplines in domestic law. Without the latter, it remains largely ineffective for operators, i.e. the legal and business community. Without effective application of GATT rules within the jurisdiction of contracting parties, the GATT system is bound to remain of minor interest. It is therefore essential that the Group equally focuses on the internal branch of the functioning of the system.

Internal functioning is primarily provided and assured by a well operating legal system in the field of international trade. The Swiss delegation therefore strongly believes that existing obligations with respect to minimal procedural rights of private actors should and could be improved in order to render the domestic branch of the functioning of GATT more effective in reality. Similarly, the quality of the law and business security could be improved if national laws and regulations would, in effect, be not more discretionary than and at least as precise as respective rules and disciplines in GATT.

The following legal draft proposal reiterates the reasoning and proposals submitted in MTN.GNG/NG14/W/38 of 31 January 1990, in particular paragraphs 3 and 4, and responds to the request of the Chairman. The draft includes proposed amendments to the General Agreement on Tariffs and Trade.

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Amendment to the General Agreement

Annex I

Ad Article X

Paragraph 3(a)

For the purpose of achieving the goals of this provision, the contracting parties shall:

(i) provide for a fair hearing to all parties substantially affected by administrative or judicial action. In case of urgent determination, the right to a hearing may be granted upon complaint only;

(ii) provide, at least upon complaint, a reasoned decision without undue delay;

(iii) provide for prompt and effective provisional measures in case of pending, irreversible damage;

(iv) not grant more discretionary power than, and be at least as precise as, corresponding rules of the General Agreement.

Paragraph 3(b)

The term inter alia is understood to relate prompt review and correction of administrative action to all measures under the jurisdiction of the General Agreement, including those of a non-tariff nature. Measures other than customs matters may be either subject to administrative or judicial review. In such cases, the scope of judicial review may be limited to issues of law, excluding questions of fact and of discretionary exercise of authority within the law.