

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Dispute Settlement

DRAFT TEXT ON DISPUTE SETTLEMENT

As instructed by the Negotiating Group on Dispute Settlement, the Secretariat has prepared the following draft text on improvements to the GATT dispute settlement rules and procedures.

General Provisions

1. Before adoption by the CONTRACTING PARTIES, this text will be worked into a single text including the Mid-Term text as revised.
2. Views would be taken by the Group at an appropriate time regarding the manner in which results in this Group could be communicated to the other Negotiating Groups for their consideration and any action that they might deem appropriate.
3. There shall be a review of GATT dispute settlement procedures at a GATT ministerial meeting within four years following entry into force of this Decision.
4. The GATT Secretariat is requested to prepare a consolidated text of GATT dispute settlement procedures.
5. The CONTRACTING PARTIES retain their authority to interpret the General Agreement pursuant to Article XXV.

Interim Review Stage

1. Within 10 days following the consideration of rebuttal submissions and oral arguments, the panel shall submit the descriptive (factual and argument) sections of its draft report to the parties. Within a period of [10/15] days thereafter, the parties shall submit their comments in writing.
2. Within [x] days following the deadline for receipt of comments from the parties, the Panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions [but not the recommendations]. Within 14 days, a party may

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submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Council. At the [request of a party] [joint request of the parties], the panel [may/shall] hold a further meeting with the parties on the issues identified in the written comments. [If no comments are received from the parties within the comment period, the interim report shall be considered the final report and circulated promptly to the contracting parties.]

3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall not extend beyond [x] days.

Consideration of Panel Reports

Option 1: Within 60 days of the issuance of a panel report to the contracting parties, the report shall be adopted at a Council meeting unless one of the parties formally notifies the Council of its decision to appeal or the Council decides otherwise. If a party has notified its intention to appeal, the report by the panel shall not be considered by the Council until after completion of the appeal. This adoption procedure is without prejudice to the right of contracting parties to express their views on a panel report.

Option 2: Within 60 days of the issuance of a panel report to the contracting parties, the report shall be accepted at a Council meeting unless one of the parties formally notifies the Council of its decision to appeal or the Council decides not to accept the report. This acceptance procedure is without prejudice to the right of contracting parties to express their views on a panel report.

Option 3: No less than 30 nor more than 45 days after the issuance of a panel report to the contracting parties, the report shall be discussed at a Council meeting. Within 10 days after that Council meeting, the parties to the dispute must notify the chairman of the appellate body and the Council whether they have decided to appeal, in accordance with the procedures set forth below. In the absence of a notice of appeal, the panel report shall be deemed to have been accepted.

Option 4: Panel reports shall continue to be considered and adopted¹ in accordance with the traditional consensus procedures of the Council.

¹The tradition of consensus decision-making is without prejudice to the decision-making procedures of Article XXV.

Appellate Review

1. Standing Appellate Body

(a) An independent standing appellate body shall be created within GATT. The body shall hear appeals from panel cases. The appellate body shall be composed of [3 or 5 members and 4 alternates who shall replace absent members in rotation, as required.] [a pool of 7 members, 3 of whom shall serve on any one case. Members of the pool shall serve in rotation.]

(b) Members [and alternates] shall be chosen by the Council to serve for a three-year term. Vacancies shall be filled by the Council as they arise.

(c) Members [and alternates] shall be persons of integrity, objectivity and recognized authority, with demonstrated expertise in GATT matters. They shall be unaffiliated with any government. The membership of the appellate body shall be representative of differing backgrounds in law and international trade. Members [and alternates] shall be available at all times and on short notice, and shall stay abreast of GATT activities through information provided by the Secretariat. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

(d) The proceedings shall not exceed [60] days from the date a party announces its decision to appeal to the date the appellate body issues its decision.

(e) Technical support shall be provided to the appellate body by a small independent team.

2. Procedures for Appellate Review

(a) Working procedures shall be drafted by the appellate body [and approved by the Council]. The proceedings of the appellate body shall be confidential. No ex parte communications are permitted between the appellate body and any person concerning matters under review.

(b) Only parties to the dispute, not third parties, may appeal a panel decision or participate in the appellate review.

(c) An appeal shall be limited to the legal issues raised [in the course of the panel proceedings or] in the panel report.

(d) [A party which has not previously raised objections to the panel's findings during the panel's interim review procedure shall not have recourse to an appeal.²]

(e) [The appealing party or parties shall commit in advance to accept the decision of an appellate review unconditionally.]

(f) The appellate body shall address each of the issues raised by the appealing party and may uphold, modify or reverse the legal findings of the panel.

3. [Adoption/Acceptance]

Option 1: An appellate decision shall be accepted as the final disposition of the case unless the Council decides otherwise within (x) days. This acceptance procedure is without prejudice to the right of contracting parties to express their views on an appellate report.

Option 2: An appellate decision shall be accepted as the final disposition of the case unless the Council decides not to accept the appellate decision within (x) days. This acceptance procedure is without prejudice to the right of contracting parties to express their views on an appellate report.

Option 3: Decisions of the appellate body shall be final and unconditionally accepted. This acceptance procedure is without prejudice to the right of contracting parties to express their views on an appellate report.

Option 4: Appellate decisions shall be considered and adopted in accordance with the traditional consensus procedures of the Council.

Implementation

1. The primary objective of the GATT dispute settlement process is to bring into compliance with the General Agreement measures found to be inconsistent therewith [and to find a satisfactory adjustment to measures] [eliminate nullification and impairment caused by measures] not inconsistent with the General Agreement].

2. The contracting party concerned shall inform the Council of its intentions in respect of implementation of the recommendations and rulings. Parties shall have a reasonable period of time in which to comply with recommendations and rulings of the CONTRACTING PARTIES. The reasonable period of time shall be:

²[If the panel's findings in the final report have substantially changed, this limitation shall not apply.]

(a) a period of time mutually agreed by the parties within [30/90] days following the recommendations and rulings of the CONTRACTING PARTIES; or, in the absence of such agreement,

(b) a period of time determined through arbitration within [60/120] days following the recommendations and rulings of the CONTRACTING PARTIES.

[Notwithstanding subparagraphs (a) and (b) above, the reasonable period of time shall in no event extend beyond 12 months following the recommendations and rulings of the CONTRACTING PARTIES.]

3. In cases of urgency, including those involving perishable goods, parties shall endeavour to comply immediately with the recommendations and rulings of the CONTRACTING PARTIES.

4. Where there is disagreement as to the existence of or GATT consistency of measures taken to comply with the recommendations and rulings of the CONTRACTING PARTIES, such dispute shall be decided through recourse to GATT dispute settlement procedures, involving resort to the original panel wherever possible. The panel shall issue its decision within [90] days of referral of the matter to it.

Compensation and Retaliation

1. Compensation and the suspension of concessions or other obligations are measures available to encourage the prompt implementation of recommendations or rulings of the CONTRACTING PARTIES.

2. Option 1. Compensation within GATT is voluntary and subject to negotiations between the parties to the dispute.

Option 2. After the expiry of the reasonable period of time for implementation, parties to a dispute shall enter into negotiations with a view to developing a mutually acceptable compensation package. If no satisfactory compensation has been mutually agreed within [x] days, the party seeking implementation may propose the suspension of concessions or other obligations.

3. Suspension of Concessions or Other Obligations

Option 1. If there is no implementation within the reasonable period of time and if no satisfactory compensation has been mutually agreed upon, the party seeking implementation may propose the suspension of measures or other obligations [commensurate to the damage suffered] [appropriate in the circumstances]. The authorization of such suspension shall be given by the Council, it being understood that neither of the two parties nor any [individual] third party shall block such a decision. However, if the party required to implement the recommendations and rulings of the CONTRACTING PARTIES considers the proposed retaliatory measures to be excessive in their trade effects, such a dispute shall be referred to binding arbitration within [30/60] days.

Option 2. If the respondent fails to eliminate the measures found inconsistent with the General Agreement or otherwise comply with the panel rulings within the reasonable period, the circumstances shall be considered serious enough to justify the suspension of concessions or other obligations under the General Agreement, and the complaining parties may suspend such concessions or other obligations, in accordance with the following procedures:

- (a) The complaining party suspending concessions or other obligations shall notify the respondent party and the Council immediately upon implementing any such suspension.
- (b) If the respondent notifies the Director-General within ten days of such suspension that it believes the amount of trade covered by the suspension is not substantially equivalent to the nullification or impairment, the matter shall immediately be referred [back to the original panel] [to an arbitrator appointed by the Director-General] to determine a substantially equivalent amount. [If any member of the original panel is unable to serve, he or she shall be replaced by a member of the appellate body designated by the Director-General.]
- (c) The parties shall provide written submissions to the [panel] [arbitrator] within ten days, and within ten days thereafter shall present oral argument to the [panel] [arbitrator]. The [panel] [arbitrator] shall not examine the nature of the concessions or other obligations to be suspended, but shall determine what amount of trade is substantially equivalent to the amount of nullification or impairment.
- (d) The [panel] [arbitrator] shall complete its work and issue its determination within x days, unless the parties, in consultation with the panel, agree to a longer period. The parties must accept the [panel's] [arbitrator's] determination as final.
- (e) If the [panel] [arbitrator] determines that the amount of the suspension of concessions or other obligations is not substantially equivalent to the amount of nullification or impairment, the suspending party shall immediately adjust the amount of the suspension to comply with the [panel's] [arbitrator's] determination.

Option 3. A contracting party to a dispute requesting authority to suspend concessions or other obligations under Article XXIII:2 shall advise the Council of its intentions. The Council shall grant authority to suspend concessions or other obligations upon request unless the Council takes a positive decision to reject the request.

In the event the party required to implement a panel's decision objects to the level of suspension proposed by the party requesting authority to suspend concessions or other obligations, the request shall be referred to binding arbitration. This body shall be empowered to examine

the amount of trade likely to be affected by the proposed suspensions and its relation to the amount of nullification or impairment caused by the offending measure. The amount of nullification and impairment would be calculated as from the date that the panel report was first circulated to the contracting parties. The arbitration body shall complete its work within [three] months.

Option 4. After expiry of the reasonable period of time and if the Council considers that the circumstances are serious enough to justify such action, it may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations as the Council determines to be appropriate in the circumstances.

4. The suspension of concessions or other obligations would be temporary and would only be applied until such time as the measure found to be inconsistent with the General Agreement has been removed, or agreement has been reached on its phasing out, or the contracting party that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits.

5. In advance of the expiry of the reasonable period of time, the Council may grant authority to suspend concessions or other obligations, if requested. However, the party requesting this authority shall not exercise it until the reasonable period of time has elapsed.

Non-Violation Complaints

[A specific proposal will be made shortly.]

Strengthening of Multilateral System

1. [The CONTRACTING PARTIES agree to: (i) strengthen their commitment to abide by GATT dispute settlement rules and procedures; (ii) abide by the recommendations, rulings and decisions of the CONTRACTING PARTIES; (iii) refrain from unilateral measures or the threat of unilateral measures inconsistent with the GATT rules and procedures; and (iv) undertake to adapt their domestic trade legislation and enforcement procedures in a manner ensuring the conformity of all measures with GATT dispute settlement procedures.]

2. [Unilateral measures include procedural unilateralism employed with respect to dispute settlement, such as blocking at any stage of the process. Unilateralism can be addressed only where there are clear rules, enforceable through dispute settlement procedures that eliminate opportunities for delay and blockage.]

Selection of Panelists

1. [Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who previously have served on or presented a case to a GATT panel, served as a representative to the GATT or on the GATT Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a contracting party.]
2. [The roster of [non-governmental] panelists shall be expanded and improved. To this end, contracting parties may suggest names of individuals possessing the qualifications outlined in paragraph 1 above to serve on panels and shall provide relevant information on their knowledge of international trade and of the GATT.]

Third Party Rights

1. [There shall be a right of third parties to receive submissions of the parties for the first meeting of the panel and to be present at that meeting.]
2. [If a third party considers a measure already the subject of a panel nullifies or impairs benefits accruing to it under the General Agreement, that party may have recourse to normal GATT dispute settlement procedures. Such a dispute shall be referred to the original panel wherever possible, and shall be carried out under expeditious procedures.]

Right to a Panel

Option 1. If the complaining party so requests, a panel shall be established at the latest at the Council meeting following that at which the request first appears as an item on the Council's regular agenda.

Option 2. A panel shall be established by the Director-General immediately upon receipt of a timely request by the complaining party.

Option 3. If the complaining party so requests, a decision to establish a panel shall be taken at the latest at the Council meeting following that at which the request first appears as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise.

Special Procedures involving Least-Developed Contracting Parties

1. At all stages of dispute settlement procedures involving a least-developed contracting party, particular consideration shall be given to the special situation of least-developed countries.
2. In dispute settlement cases involving a least-developed contracting party where a satisfactory solution has not been found in the course of consultations under Article XXII:1 or XXIII:1, the Director-General shall,

upon request by a least-developed contracting party, offer his good offices with the view to assisting the parties to settle the dispute, before a request for a panel is made.

3. [Establishment of a separate body (e.g. Group of Five), comprised of the Chairmen of the CONTRACTING PARTIES, Council, Committee on Trade and Development, Sub-Committee on the Trade of the Least-Developed Countries and the Director-General of GATT, should be explored with the objective of settling disputes involving the least-developed countries.]

Special and More Favourable Treatment for Developing Countries

1. [Where at least one of the parties is a developing country, 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 under its auspices.]

Arbitration within GATT

[1. The arbitration body shall follow standard panel procedures unless it otherwise decides.

2. The Council shall take note of the agreement to resort to arbitration and, eventually, of the award rendered by the arbitration. It may discuss the agreement to resort to arbitration and shall make decisions with respect to financing. Upon completion of proceedings, it may discuss the award and shall decide upon the application of surveillance and implementation procedures.

3. The costs of arbitration proceedings shall be assumed by the General Agreement on Tariffs and Trade provided that the proceedings take place at GATT headquarters, that they are serviced by the GATT Secretariat and that the agreement to resort to arbitration is consistent with international law, the General Agreement on Tariffs and Trade, including related instruments, and does not nullify and impair benefits accruing to any contracting party under these agreements.

4. The award shall be subject to surveillance and implementation similar to decisions by the Council taken on the basis of panel reports, provided that it is consistent with international law, the General Agreement on Tariffs and Trade, including related instruments, and does not nullify and impair benefits accruing to any contracting party under these agreements.

5. The award is without prejudice to the rights of third contracting parties under the General Agreement on Tariffs and Trade and related instruments.]