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Negotiating Group on Dispute Settlement

STATEMENT BY THE SPOKESMAN OF THE EUROPEAN COMMUNITY

The attached statement is not a formal contribution to the Negotiating Group, but, at a time when reflections in the Community on this issue are still in progress, is meant to provide an input into the discussions of the Group.

The European Community will define its position in the light of the discussions and subsequent negotiating process.

Statement by the Spokesman of the European Community

1. During the Mid-Term Review at Montreal a number of improvements to the dispute settlement procedure were agreed. These are now being applied. That agreement, however, covered largely questions of organization and procedure and the major issues of a political character remain outstanding.
2. I would like to set out in very broad terms how we see, at this moment, the evolution of our thinking, which at this stage is not final, on these major issues.
3. The basic hypothesis for our ideas is that our previously stated conditions (in particular, a satisfactory agreement on all sectors of the Uruguay Round, with clear rules and disciplines) would be met. Without such an agreement, which should also include the abandonment¹ of unilateral measures, no improved dispute settlement system could be considered.

It is on these conditions that, when subscribing to the final results of the negotiations, it would be possible to adopt a stronger Dispute Settlement system.

On this basis:

- First, the work of panels
4. We should agree to any further procedures which might improve the quality of panellists and thus of their reports.

In order to reduce the frequency of disagreements on panel reports, the panel should in all cases submit the factual part of its report, including the presentation of the arguments of both sides, to the parties prior to the last oral hearing with them. This would ensure that there would be a full opportunity to correct facts, discuss the perceptions of the panel before they draw conclusions and react to presentations of the material which seem incorrect or unfair.

¹ This means an unequivocal commitment to adapt domestic trade legislation and enforcement procedures in a manner assuring the conformity of all measures with GATT Dispute Settlement procedures.

- Second, the procedure to deal with Panel Reports

5. Panel reports which cause no problems, or only minor problems, would as now be adopted by consensus in the GATT Council. Either party involved could as now express comments, objections or reservations, which would be duly recorded. A similar right would exist for third parties.

Where one or other party involved has a major difficulty and adoption is not possible, the matter would have to be referred to an appeal body. In such a case the Council would not proceed to any discussion of the report in substance, but would simply refer the matter on.

It would be understood that appeals would be limited to legal issues and questions of interpretation arising out of panel reports.² A written submission on the issues would be required. The appeal body (but not the Council) would have the right to reject the request for an appeal if it judged that no issue of substance was being raised.

- Third, the Appeal Body

6. Appropriate arrangements would have to be worked out for the composition and functioning of the appeal body.

The most important consideration is that those selected should be of sufficient standing and experience that their ruling on the issues put to them would carry the necessary weight and authority to be accepted as final.

As far as the conclusions of the appeal body are concerned, we suggest that these could be reported back to the GATT Council, and accepted as a final disposition of the case unless the Council decided otherwise.³⁴

- Fourth, Implementation

7. It would be desirable for the panel or appeal body to recommend a reasonable period for implementation. The two parties would agree on this by bilateral discussion; if there was no agreement within three months, the matter would be put to binding arbitration.

If, at the end of this period, there is disagreement as to the existence of implementation, this dispute would then have to be decided through recourse to normal GATT dispute settlement procedures.

If, on the other hand, implementation has not taken place, and if in discussion between the parties no satisfactory compensation had been offered and agreed, the injured party would then be able to propose retaliation measures commensurate to the damage suffered.

When retaliation measures are challenged by the other party the question would be referred to a rapid and binding arbitration procedure within 30-60 days.

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² There might be one exception to this rule, where a Panel - despite the review process in paragraph 4 - has maintained in its report a factual account which one party considers to be inaccurate and misleading.

³ A deadline for this decision has to be further discussed.

⁴ The intention is that the Council would not reopen the legal issues settled by the appeal. As in the earlier stages (paragraph 5) the two parties and any other party would, however, have the right to comment on the appeal conclusions if they wish and to record any objections or reservations to them. The decision to introduce such measures will be taken by the Council: it would be understood that neither the two parties nor any individual third party would be able to block this decision. If, however, the retaliation measures are considered by the other party to be excessive in their trade effects they would be referred to arbitration before their application.

These procedures would apply to violation cases. The Community reserves the right to discuss further non-violation cases and will present its position on this at a later stage.