AUSTRALIAN PROPOSAL ON DISPUTE SETTLEMENT

The following proposal has been received from the delegation of Australia.

Australia regards dispute settlement as a priority issue for the Ministerial session. The GATT's record for resolving disputes in recent years has been far from impressive. The GATT has failed to satisfactorily resolve a number of important disputes and to achieve equitable settlements between contracting parties of different economic strengths. Australia therefore considers that any reaffirmation of the rules of the General Agreement should include a commitment to a more effective and expeditious dispute settlement framework.

In Australia's view the main shortcomings in the functioning of the dispute settlement procedures are:

(i) The undue time it takes to pursue a complaint through the General Agreement's dispute settlement procedures under Articles XXII and XXIII, including:

- the scope for a contracting party to delay the referral to a panel of a complaint against it;

- the undue time it can take to establish a panel and for a panel to report to the CONTRACTING PARTIES;

- the undue time it can take for the CONTRACTING PARTIES to take decisions on panel reports.

(ii) The fact that most panels are not reaching conclusions or recommendations of a kind which would assist the CONTRACTING PARTIES to make findings or give rulings, as is provided for under Article XXIII:2. In particular, most panels neither deal effectively with the question of nullification or impairment nor go beyond concluding \textit{prima facie} nullification or impairment, hence leaving open the basis for rectification of the matter.

(iii) The fact that in many cases the CONTRACTING PARTIES do not provide a definitive ruling on a dispute and do not face up to the need for effective rectification in accordance with a contracting party's rights under the General Agreement.
(iv) The scope for a party to a dispute to block the consensus adoption, by the CONTRACTING PARTIES, of a definitive decision with which they may not agree.

(v) The refusal, in some cases, of contracting parties to take early action to rectify matters on which the CONTRACTING PARTIES have made early findings.

Proposals

Accordingly, Australia proposes that the CONTRACTING PARTIES agree at the Ministerial session on the following ten-points plan to improve the effectiveness of the GATT in these areas:

(i) The CONTRACTING PARTIES shall agree to establish a panel on request of a party to a complaint under either Article XXII or XXIII:1 if, having formally advised the other party and the CONTRACTING PARTIES of the reasons for its complaint, it decides that the dispute cannot be resolved through further consultation and advises the CONTRACTING PARTIES accordingly.

(ii) The time-frame provided for under the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (known as the "Framework Agreement") should be strictly adhered to, i.e.:

- parties to the dispute would respond to nominations of panel members by the Director-General within seven working days;

- a panel should be constituted as promptly as possible and normally not later than thirty days from the decision by the CONTRACTING PARTIES;

- a panel should aim to deliver its findings without undue delay, with findings on urgent cases being delivered within a period normally of three months from the time the panel was established.

Additionally, if a panel has not completed its report within six months of its establishment, it shall provide a preliminary report to the CONTRACTING PARTIES by that date, explaining the reasons why it has not been able to conclude its final report, and advising of an estimated date of completion.

(iii) Contracting parties should make available, on request of the Director-General, non-Geneva based experts to serve on panels. The travel and living expenses of such experts shall be met from the GATT budget which shall, if necessary, be increased to meet these expenses.
(iv) All panels on disputes under Article XXIII:1(a), (b) and/or (c) shall examine and include in their report to the CONTRACTING PARTIES their conclusions on the question of nullification and impairment in accordance with the provisions of paragraph 5 of the "Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement (Article XXIII:2)". If a panel concludes that a measure has prima facie nullified or impaired the rights of a contracting party, it shall also reach conclusions on the rebuttal of the charge by the contracting party maintaining the measure, in accordance with paragraph 5 of the Annex to the Framework Agreement.

(v) If a panel reaches the conclusion that a measure has nullified and impaired the rights of a contracting party under Article XXIII:1(a), (b) or (c), it shall set out for consideration by the CONTRACTING PARTIES appropriate measures which could lead to a solution of the problems which gave rise to the dispute.

(vi) The CONTRACTING PARTIES shall reach conclusions on all panel reports. If they conclude that the rights of a contracting party have been nullified and impaired, they shall recommend that the offending contracting party rectify the matter. (As noted in the Annex to the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, the aim of the CONTRACTING PARTIES "has always been to secure a positive solution to a dispute" and "in the absence of a (preferred) mutually agreed solution, the first objective of the CONTRACTING PARTIES is usually to secure the withdrawal of measures concerned if these are found to be inconsistent with the General Agreement".)

(vii) No contracting party to a dispute shall be allowed to block the adoption by consensus of a decision by the CONTRACTING PARTIES on that dispute. If, however, the contracting party does not accept such a decision, its views shall be fully recorded in the record of the meeting at which the decision is adopted.

(viii) If the CONTRACTING PARTIES recommend that a contracting party take action to rectify a matter, as provided for under paragraph (vi) above, the contracting party concerned shall advise the CONTRACTING PARTIES, within a period of six months, of the action it has taken or proposes to take to rectify the matter, including a detailed description of how and when that action will rectify the matter.

(ix) If the CONTRACTING PARTIES have recommended that a contracting party take action to rectify a matter, the contracting party whose rights have been or are being nullified or impaired may seek the immediate intervention of the CONTRACTING PARTIES. It may also take action in
accordance with Article XXIII:2 if the contracting party has advised the CONTRACTING PARTIES that it does not intend to take action to rectify the matter, or if its advice on rectification is considered unsatisfactory. It may also request the Director-General to meet with the contracting parties concerned with a view to facilitating a solution, in which case the Director-General shall report to the CONTRACTING PARTIES on the outcome of his discussions.

(x) All contracting parties agree to act in good faith when engaging in the GATT's dispute settlement procedures and commit themselves to abide by decisions of the CONTRACTING PARTIES on disputes under Article XXIII:2.