

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

TBT/W/134

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Special Distribution

Committee on Technical Barriers to Trade

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DISPUTE SETTLEMENT PROCEDURES

Note by the Nordic Delegations

Introduction

The CONTRACTING PARTIES have on 13 April 1989 decided upon Improvements to the GATT Dispute Settlement Rules and Procedures. This decision includes a number of provisions aimed at further developing and making more efficient the existing dispute settlement procedures. These new provisions are, however, not automatically applicable to the GATT MTN Codes, because the Codes are legally independent instruments.

The Nordic Delegations have therefore made an attempt to incorporate the relevant elements of the said decision into the present text of the TBT Agreement and thus to achieve an improved dispute settlement procedures also for the purposes of this Agreement. In editing the amended text, due consideration has been given to the specific nature of the Agreement. In addition, some amendments are proposed in order to further streamline the applicable procedures.

The present proposal has to be seen as a provisional one. Any developments in the ongoing negotiations on dispute settlement procedures shall of course subsequently be taken into account.

Consultation and Dispute Settlement

Consultation

14.1 Each Party shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by other Parties with respect to any matter affecting the operation of this Agreement.

14.2 If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, by another Party or Parties, and that its trade interests are significantly affected, the Party may make written representations or proposals to the other Party or Parties which it considers to be concerned. Any Party shall give sympathetic consideration to the representations or proposals made to it, with a view to reaching a satisfactory resolution of the matter.

14.3 The Party to which a request on consultations is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the Party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the Party that requested the holding of consultations may proceed directly to request the Committee to investigate the matter.

14.4 Requests for consultations shall be notified to the Committee by the Party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

14.5 In cases of urgency, including those which concern perishable goods en route, Parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have failed to settle the dispute within a period of thirty days after the request, the complaining Party may proceed directly to request the Committee to investigate the matter.

Dispute settlement

14.6 It is the firm intention of Parties that all disputes under this Agreement shall be promptly and expeditiously settled, particularly in the case of perishable products.

14.7 If the consultations under Article 14 fail to settle a dispute within sixty days after the request for consultations, the Committee shall meet at the request of any party to the dispute within thirty days of receipt of such a request, to investigate the matter with a view to facilitating a mutually satisfactory solution. If the Parties jointly consider that consultations have failed to settle the dispute, the request for a Committee meeting may be given during the sixty day period.

14.8 In the case of perishable products the Committee shall, in keeping with Article 14, paragraph 6, consider the matter in the most expeditious manner possible with a view to facilitating a mutually satisfactory solution within three months of the request for the Committee investigation.

14.9 It is understood that where disputes arise affecting products with a definite crop cycle of twelve months, every effort would be made by the Committee to deal with these disputes within a period of twelve months.

14.10 During any phase of a dispute settlement procedure including the earliest phase, competent bodies and experts in matters under consideration may be consulted and invited to attend the meetings of the Committee; appropriate information and assistance may be requested from such bodies and experts.

Good Offices, Conciliation, Mediation

14.11 Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties to the dispute so agree. They may be requested at any time by any Party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining Party can then proceed with a request for the Committee investigation or establishment of a panel as provided under Article 14. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining Party must allow a period of sixty days from the date of the request for consultations before requesting the meeting of the Committee. The complaining Party may request a meeting of the Committee during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

14.12 If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while Committee investigations or the panel process proceeds.

14.13 Chairman of the Committee may, acting in an ex officio capacity, offer his good offices, conciliation or mediation with the view to assisting Parties to settle a dispute.

Arbitration

14.14 Expeditious arbitration as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties to a dispute.

14.15 Resort to arbitration shall be subject to mutual agreement of the parties to the dispute which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to the Committee sufficiently in advance of the actual commencement of the arbitration process.

14.16 Other Parties may become party to an arbitration proceeding upon the agreement of the Parties which have agreed to have recourse to arbitration. The Parties to the proceeding shall agree to abide by the arbitration award.

Panel proceedings

14.17 If no mutually satisfactory solution has been reached under the procedures of Article 14, paragraph 7 within three months of the request for the Committee investigation, the Committee shall, upon request of any Party to the dispute, establish a panel.

14.18 The request for a panel shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. If the complaining Party so requests, a decision to establish a panel shall be taken at the latest at the Committee meeting following that at which the request first appeared as an item on the Committee's agenda, unless at that meeting the Parties to the dispute agree otherwise.

14.19 When a panel is established, the Committee shall, unless the Parties to the dispute agree otherwise, within twenty days from the establishment of the panel, direct it to:

examine the matter;

consult with Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

make a statement concerning the facts of the matter as they relate to the application of provisions of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

14.20 In establishing a panel, the Committee may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be communicated to the Committee. If other than standard terms of reference are agreed upon, any Party may raise any point relating thereto in the Committee.

14.21 Where more than one Party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Parties concerned. A single panel should be established to examine such complaints whenever feasible.

14.22 Panels shall be governed by the procedures in Annex 2.

14.23 Panels may establish a technical expert group to assist in questions of a technical nature requiring detailed consideration by experts and direct it to:

examine the matter;

consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution:

make a statement concerning the facts of the matter; and

make such findings as will assist the panel in its work, including inter alia, and if appropriate, findings concerning the detailed scientific judgments involved, whether the measure was necessary for the protection of human, animal or plant life or health, and whether legitimate scientific judgment is involved.

14.24 Technical expert groups shall be governed by the procedures of Annex 2.

Time devoted to panel proceedings

14.25 After consulting the parties to the dispute, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting. In determining the timetable for the panel process, the panel shall provide sufficient time for the Parties to the dispute to prepare their submissions.

14.26 Each Party to the dispute shall deposit its written submissions with the secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining Party shall submit its first submission in advance of the responding Party's first submission unless the panel decides, in fixing the timetable referred to in the paragraph above and after consultations with the Parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

14.27 In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed four months. In cases of urgency, including those relating to perishable goods, the panel shall aim to provide its report to the parties within two months.

When the panel considers that it cannot provide its report within four months or within two months in cases of urgency, it shall inform the Committee in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission of the report to the Committee exceed nine months.

14.28 In cases where a technical expert group has been established, the period for panel proceedings shall be extended accordingly, but not by more than two months.

14.29 Reports by panels and technical expert groups shall set out the rationale behind any findings that they make.

Enforcement

14.30 After the investigation is complete or after the report of a panel or other body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report, unless extended by the Committee, including:

a statement concerning the facts of the matter; or recommendations to one or more Parties; or any other ruling which it deems appropriate.

14.31 Parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Committee meeting at which the panel report will be considered.

14.32 If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event the Committee shall consider what further action may be appropriate.

14.33 If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend, in respect of any other Party, the application of such obligations under this Agreement as it determines to be appropriate in the circumstances. In this respect, the Committee may, inter alia, authorize the suspension of the application of obligations, including those in Articles 5 to 9, in order to restore mutual economic advantage and balance of rights and obligations.

14.34 Prompt compliance with recommendations or rulings of the Committee is essential in order to ensure effective resolution of disputes to the benefit of all Parties. The Party concerned shall inform the Committee of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the Party concerned shall have a reasonable period of time in which to do so.

14.35 The Committee shall monitor the implementation of recommendations or rulings adopted. The issue of implementation of the recommendations or rulings may be raised at the Committee by any Party at any time following their adoption. Unless the Committee decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Committee meeting after six months following their adoption and shall remain on the Committee's agenda until the issue is resolved. At least ten days prior to each such Committee meeting, the Party concerned shall provide the Committee with a status report in writing of its progress in the implementation of the panel recommendations or rulings.

ANNEX 2

PANEL PROCEDURES

The following procedures shall apply to panels established in accordance with the provisions of Article 14.

1. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of technical barriers to trade and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established, the Chairman, within seven days shall propose the composition of the panel consisting of three or five members, preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons. Citizens of countries whose central governments are Parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

2. Each panel shall develop its working procedures. All Parties having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. In case such consultation with competent bodies and experts is necessary, it should be at the earliest possible stage of the dispute settlement procedure. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.

The single panel will organize its examination and present its findings to the Committee so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.

If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

3. The interests of the parties to a dispute and those of other Parties shall be fully taken into account during the panel process.

Any third Party having a substantial interest in a matter before a panel, and having notified this to the Committee, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the Parties to the dispute and shall be reflected in the panel report.

At the request of the third Party, the panel may grant the third Party access to the written submissions to the panel by those Parties to the dispute which have agreed to the disclosure of their respective submission to the third Party.

4. Where the parties to a dispute have failed to come to a satisfactory solution, the panel shall submit its findings in a written form. Panel reports should normally set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

5. To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

ANNEX 3

TECHNICAL EXPERT GROUPS

The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Participation in technical expert groups shall be restricted to persons, preferably government officials, of professional standing and experience in the field in question.
2. Citizens of countries whose central governments are Parties to a dispute shall not be eligible for membership of the technical expert group concerned with that dispute. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.
3. The Parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.
4. To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each technical expert group should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.