

BISD 31S/9-10 March 1985

DISPUTE SETTLEMENT PROCEDURES

(L/5752)

I. The CONTRACTING PARTIES adopted the following proposal in L/5718/Rev.1:

At the 1982 Ministerial it was agreed that the Dispute Settlement "Understanding" provides the essential framework of procedures for the settlement of disputes among contracting parties and that no major change is required in this framework, but that there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end.

However, if improvement in the whole system is to be achieved, it is necessary not only to make specific procedural improvements, but also to obtain a clear-cut understanding by and commitment from the CONTRACTING PARTIES (or Signatories to the Codes) with respect to the nature and time-frame of (a) the panel process; (b) the decision on the dispute matter to be taken by the CONTRACTING PARTIES (or the Code Committee) on the basis of the panel's report; and (c) the follow-up to be given to that decision by the parties to the dispute.

A number of procedural problems related to the panel process have been encountered which can be addressed within the existing framework. Such problems include the formation of panels in a timely manner, and the timely completion of panel work. Although the "Understanding" provides guidelines for these procedures (thirty days for the formation of a panel and three to nine months to complete the panel's work), experience has shown these time targets are seldom met. These are only a couple of difficulties related to the dispute settlement mechanism, so addressing them alone will not cure all its deficiencies. However, procedural improvements can lead to improvements in the quality of panel reports. Therefore, the CONTRACTING PARTIES agree that, as a first step, the following approach should be adopted, on a trial basis, for a period of one year in order to continue the process of improving operation of the system.

Formation of panels

1. Contracting parties should indicate to the Director-General the names of persons they think qualified to serve as panelists, who are not presently affiliated with national administrations but who have a high degree of knowledge of international trade and experience of the GATT. These names should be used to develop a short roster of non-governmental panelists to be agreed upon by the CONTRACTING PARTIES in consultation with the Director-General. The roster should be as representative as possible of contracting parties.
2. The Director-General should continue the practice of proposing panels composed preferably of governmental representatives but may also draw as necessary on persons on the approved roster. The parties should retain the ability to respond to the Director-General's proposal, but shall not oppose nominations except for compelling reasons.
3. In the event that panel composition cannot be agreed within thirty days after a matter is referred by the CONTRACTING PARTIES, the Director-General shall, at the request of either party and in consultation with the Chairman of the Council, complete the panel by appointing persons from the roster of non-governmental panelists to resolve the deadlock, after consulting both parties.

Completion of panel work

1. Panels should continue to set their own working procedures and, where possible, panels should provide the parties to the dispute at the outset with a proposed calendar for the panel's work.
 2. Where written submissions are requested from the parties, panels should set precise deadlines, and the parties to a dispute should respect those deadlines.
- II. The CONTRACTING PARTIES referred proposals by Canada (L/5720) and Nicaragua (L/5731) to the Council for any appropriate action.