

XIII. DISPUTE SETTLEMENT

A. OVERVIEW OF THE UNDERSTANDING

The dispute-settlement system of the GATT is generally considered to be one of the cornerstones of the multilateral trade order. The system has already been strengthened and streamlined as a result of reforms following the Mid-Term Review Ministerial Meeting held in Montréal in December 1988. Disputes currently being dealt with by the Council of Representatives are subject to these new rules.

The new Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) will further strengthen the existing system by conferring a substantial degree of automaticity to the adoption of the findings of the dispute-resolution panels and the new Appellate Body. Moreover, the DSU will establish an integrated system permitting WTO members to base their claims on any of the trade agreements included in the new WTO system. For this purpose, the Dispute Settlement Body (DSB) will exercise the authority of the General Council and the councils and committees of the various trade agreements.

Trade-dispute procedures are set out in the DSU, including detailed provisions with respect to consultations; conciliation; the establishment of panels including their terms of reference, composition and procedures; third parties; and also provisions regarding confidentiality and the right of panels to seek information.

In a significant departure from the current rules, a panel report *will* be adopted unless the DSB decides by consensus *not* to adopt the report (the so-called "reverse consensus" approach) or one of the parties notifies the DSB of its intention to appeal to the new Appellate Body.

Further provisions set out rules for the implementation of the panel's or Appellate Body's report, including rules for compensation or the suspension of concessions in the event of non-implementation. Finally, one of the key provisions of the DSU reaffirms that members shall not themselves make determinations of violations or suspend concessions, but shall make use of the dispute-settlement rules and procedures of the DSU.

B. POTENTIAL ENVIRONMENTAL IMPLICATIONS

Environmentalists have expressed their concern about the GATT dispute-settlement mechanisms and process, and have indicated that there is a need for increased transparency and improved procedures for dispute settlement involving trade and environmental conflicts. Suggestions have included increased access to information, ensuring that GATT panels access environmental expertise in rendering their decisions, changes in the burden of proof and the publication of panel reports.