

PRESS BACKGROUNDER ON
GATT DISPUTE SETTLEMENT SYSTEM

- Under Article XXIII of the GATT, any party has the right to bring forward complaints when they consider that their rights are being nullified or impaired by the actions of another GATT member.
- Where bilateral consultations fail to resolve the issue, the complaining party may request the GATT Council to establish an impartial Panel of experts (usually 3 to 5 persons) to consider the matter and make recommendations.
- Panel membership and its terms of reference are worked out in consultation with the GATT Council Chairman. The Panel hears the case of each disputant, as well as presentations by other interested parties. It then undertakes an objective assessment of the matter and makes a determination of whether the measures subject to complaint conform with GATT rules.
- Panel reports must be adopted by consensus in GATT Council in order to have formal legal standing. When a measure has been found inconsistent with the GATT, the offending party has a reasonable period within which to comply. Should this fail to occur, a further decision may be taken by GATT Council to authorize complainants to suspend "substantially equivalent concessions" (i.e. retaliation).
- Since the formation of the GATT in 1947, fifty-eight Panel reports have been submitted to GATT Council. Of these, forty-nine have been adopted while, in six other cases, the report's adoption became a non-issue in light of the dispute being resolved after the Panel had reported. The three remaining cases are the findings against Canada's salmon and herring export restrictions and provincial liquor boards practices, as well as a Panel report on the U.S. trade embargo against Nicaragua.
- Of the fifty-eight GATT Panels which have reported, the complainant has lost the case only seven times. Canada's record in GATT dispute settlement is similar. Since 1979, Canada has initiated eight GATT cases against other countries, and has lost only one. Most recently, the GATT Council has adopted Panel reports or cases which Canada successfully pursued against the U.S. Superfund legislation (a discriminatory tax on imported oil) and U.S. Customs User Fees. Of the four Panel reports submitted to GATT Council since 1979 where Canada was the defendant, all have found the Canadian practices in question to be inconsistent with the GATT.