

GATT Dispute Settlement

First codified in an annex to the 1979 *Understanding on Dispute Settlement*, the process by which GATT adjudicated trade conflicts shares much in common with the system set out by the DSU. Then, as now, a case would first manifest itself in a request for consultations. If a mutually satisfactory solution to the dispute were not struck in consultations, a complainant would then request a panel proceeding. Of course, the wrinkle in this story is that, under the GATT, a defendant could *block* the complainant's request for a panel, a possibility long regarded as one of system's most glaring birth defects. Interestingly, few defendants blocked requests for a panel.¹⁴ Rather, they more frequently blocked the *adoption* of panel reports, taking advantage of GATT's other notorious shortcoming. For example, in both GATT-era *Bananas* disputes, the European Communities (EC) blocked the adoption of panel reports, revealing the challenge of winning a ruling against a recalcitrant defendant. Given the prospect of being denied a panel proceeding, let alone a favourable panel report, one could be forgiven for wondering why complainants would ever have made use of GATT dispute settlement, never mind that they did so quite often, and often quite successfully.

The 1989 *Dispute Settlement Procedures Improvements* closed the first of these loopholes, giving complainants the right to a GATT panel. Although the threat of non-adoption still loomed large, defendants could no longer block, or significantly delay, a panel request. In the GATT-era *Bananas* cases, for example, the EC conceded that the *Improvements* had removed the tactic of delay, and urged that the panel not proceed too quickly in hearing this complicated case.¹⁵ In this sense, the *Improvements* gave complainants a way to escape the "power politics"

¹⁴ Van Bael 1988, 68; Vermulst 1995, 134; Vermulst and Driessen 1995, 135. That said, some of the GATT-era cases were pre-emptive blocked, *EC—Hormones* being among the more salient examples. See Busch and Reinhardt 2003a.

¹⁵ GATT document C/M/264.