

Decisions regarding the appropriateness of the proposed withdrawals would be referred to binding arbitration. Withdrawal of concessions would not normally be allowed before the expiry of the "reasonable time", but the process of considering a request could begin earlier. Council or other appropriate body may decide, by consensus (without any of the parties to the dispute having a right to block), to allow the party bringing the dispute to withdraw concessions before the end of the "reasonable time" in unusual circumstances.

One possible way to structure the arbitration referred to above would be for the contracting party requesting authorization to withdraw concessions to present a specific request to the Council. The request as presented could be authorized by the Council or any contracting party, including the non-implementing party, could ask that it be referred to arbitration. The arbitration could be carried out by the panel that originally examined the dispute or some other body to determine the appropriateness of the request in the circumstances. Such a determination would not examine the products on which it was proposed to withdraw concessions. The choice of products must remain with the party seeking authorization to retaliate. Rather the determination of appropriateness would relate to the amount of trade likely to be affected by the proposed retaliation and its relation to the amount of nullification or impairment caused by the failure to implement. The parties to the dispute would be able to present to the panel or other body any material they consider relevant to such determination.

The panel would report to the Council as to what would constitute a suspension of concessions or other obligations that would be appropriate in the circumstances. The Council could then authorize the suspension of concessions or other obligations. The parties to the dispute would have the right to participate fully in the Council discussion of the matter but the non-implementing party would not be able to block the Council decision on authorization.

Retaliation, once imposed, would be temporary and would be removed when the losing party eliminates or begins to phase out the measure found to be inconsistent with the agreement or provides a solution to the nullification or impairment of benefits.