

CONFIDENTIAL

dti

Christopher Roberts CB  
Deputy Secretary

N L Wicks Esq  
10 Downing Street  
London SW1

Department of  
Trade and Industry

1-19 Victoria Street  
London SW1H 0ET

Switchboard  
01-215 7877

Telex 8811074/5 DTHQ G  
Fax 01-222 2629

Direct line 215 5285

Our ref

Your ref

Date 17 May 1988

Dear Nigel,

GATT ROUND: DISPUTE SETTLEMENT *attached*

Thank you for your letter of 12 May. It is very helpful for those of us involved in the day to day discussions in Brussels and Geneva to have this account of the Prime Minister's current thinking.

2 The improvement of procedures for dispute settlement, with agriculture and services, are major priorities for us in the GATT Round. Although there has been some recent improvement, too many countries are willing to drag their feet over, or even to disregard, the judgements of the GATT panels set up to resolve trade disputes. The United States and the Community (the latter in agricultural cases) in fact have a worse record in this respect than Japan, even though you rightly point to the Japanese reluctance to implement in full the GATT panel recommendations on the taxation of alcoholic drinks, over which the battle continues.

3 In the GATT Round discussions we are therefore arguing that better and quicker arrangements are needed for dealing with individual disputes, and that it should be made significantly more difficult (ideally impossible, but we have not yet persuaded our EC partners of this) for those to whom panel recommendations are directed to block them. Our main proposal is that the Governments principally involved - as it were the appellant and the defendant - should agree in advance to accept panel judgements. We have made considerable headway in getting the Commission and member states, as well as other GATT Round participants, to take our ideas on board, and we will go on pressing.

4 You refer in your letter to penalties. Under existing GATT Rules, a Government which is unwilling to implement specific panel recommendations must then offer compensation of at least

2

equivalent value in another area of trade, to be agreed with the injured Government; and if agreement cannot be reached the injured Government is entitled to retaliate by imposing trade restrictions, again equivalent in trade value to the injury identified by the panel.

5 These alternatives are often less satisfactory than putting right the original cause of complaint. But there are no powers under GATT to force Governments to change their policies. To provide such powers would be to change GATT from a body which operates by consensus to one which has the ability to enforce its decisions with some form of supranational legal authority. Our view hitherto has been that such a radical change would not be acceptable to the great majority of the members of GATT, including the UK and other EC Governments. But we could certainly look into this further if asked to do so.

6 Dispute settlement is one of the GATT Round areas where we have a reasonable chance of achieving specific agreements at the mid-term meeting in Montreal in December, without waiting for the completion of the Round itself two years or so later. It would therefore be most timely if the Prime Minister (and you as Sherpa) were able to give the issue a push forward in the preparations for the Toronto summit, and at the summit itself. Since it is the Commission which negotiates in GATT for the Community as a whole, it is particularly important to carry with us the other EC Governments and the Commission.

7 The particular points on which we wish to focus are how to increase the speed, certainty and authority of panel findings and how to strengthen the implementation of results. They would be echoed by the Americans in relation to past disputes with the Community. We have solutions, as do the US, Canada and others. The summit will not wish to become embroiled in the detail. A clear commitment to find an answer consistent with these general objectives would be enough and, we would hope, decisive in ensuring that agreement was reached in the mid-term meeting.

8 The DTI is of course working with the FCO on the specific briefing required for the Sherpas' meetings. But I thought you might find it helpful to have this overview of the dispute settlement issue as seen from here: it reflects earlier inter-Departmental discussion.

9 I am sending copies of this letter to Rodric Braithwaite (FCO) and Geoffrey Littler (Treasury).

Yours sincerely  
Christopher Roberts.