

CONFIDENTIAL

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Consultative Group of Eighteen

Fourth Meeting
25-26 October 1976

NOTE ON THE FOURTH MEETING OF THE CONSULTATIVE GROUP OF EIGHTEEN: 25-26 OCTOBER 1976

Introduction

1. The Consultative Group of Eighteen held its fourth meeting on 25-26 October 1976. An annotated provisional agenda was circulated in document CG.18/W/13 and a list of participants in document CG.18/INF/4.

Agenda

2. The Group adopted the following agenda:

- (1) Recent developments in trade policies and international trade;
- (2) World trade in agricultural products;
- (3) Trade measures taken for balance-of-payments purposes;
- (4) The international trading system and the rôle of GATT;
- (5) Report of the Group to the Council of Representatives

Recent developments in trade policies and international trade

3. The purpose of this item was to permit delegations to raise questions of specific interest to them and to have an exchange of views on the wider aspects of recent trade policy developments. As background material the Group had before it a note by the secretariat on the current situation and outlook (document CG.18/W/14) and GATT Press Release 1183 "Prospects for International Trade".

4. Several members noted that in recent months the pace of recovery in their economies had shown signs of slowing down. Although to some extent this deceleration in growth rates could be regarded as a temporary phenomenon, it was also seen as reflecting a weakening of confidence and investment in response to uncertainties about rates of inflation and the trend of oil prices in the immediate future. The deterioration of trade balances concurrently with the upturn in economic activity and

persistently high levels of unemployment were also mentioned as matters of major concern to governments in the current situation. In this context it was pointed out that the balanced growth of individual economies depended increasingly on a balanced growth of international trade, and that in turn this depended on close co-operation and a mutual commitment to follow the path of liberalization, including in particular the effective implementation of the MTN's.

5. With reference to recent adverse developments in the world economy it was pointed out that it would be unfortunate, given the gradual recovery of world trade and economic activity, if undue pessimism in this regard were to stall the impetus of decisive negotiations currently underway, or if such pessimism were to be taken as a pretext for otherwise unjustifiable trade actions. Recently announced restrictions on certain products and the insufficiency or lack of contributions in the tropical products negotiations were, on this view, symptomatic of a failure on the part of countries which were better able to cope with the situation of the world economy to perceive the problems of the developing countries. A similar state of affairs was said to be evident at the recent Fund/Bank meetings in Manila, to the extent that, notwithstanding special facilities in their favour, the first victims of policies to restrain inflation and international liquidity were the developing countries for whom the burden of the recession had been the heaviest.

6. In this general context it was stated that it was essential that the framework of international trade be improved through the introduction of adequate remedial trade measures to enable the developing countries to recover and increase their share of world trade and thereby to meet the massive and increasing debt obligations which they had been obliged to accumulate. In this regard it was suggested that the gradual emergence of the international economy from world wide recession provided an excellent opportunity for developed GATT member countries to reallocate their resources according to comparative advantage. On this analysis developed countries might move out of those industries which had lost their comparative advantage internationally, as in the less sophisticated areas of the textiles industry, and concentrate on industries where the changing endowment of technology and resources allowed them to expand their production more easily and to absorb labour from uncompetitive sectors. In relation to the trade in textiles generally it was also suggested that there might be some advantage to be gained from a general discussion within the Consultative Group on the conditions and arrangements under which this trade takes place with a view to facilitating further progress in this regard.

7. The representative of Egypt recalled his statement made at the second meeting of the Group (CG.18/W/6) and again invited members of the Group to respond to the proposal that action be taken by the GATT on a programme of emergency relief for the developing countries in general and for the most seriously affected among them in particular.

8. Specific trade measures and trade related measures referred to in the course of the Group's discussions under this agenda item included: the imposition by the United States of quotas on imports of beef; the introduction for a four-month period by Italy of a seven per cent charge on purchases of foreign currencies; the introduction by Spain as a temporary measure of increased duties on a range of products; restrictions by Switzerland on imports of wine; Australian quotas on plywoods; the administration by New Zealand of its quotas on canned pineapple; and, various restrictions in the field of textiles.

World trade in agricultural products

9. In introducing this subject and the memorandum which had been circulated to the Group on world trade in agricultural products (document CG.18/W/16), the member for Australia outlined what were considered to be a number of important defects in the application of the GATT to agricultural trade, including the implications of this situation for the trade of developing countries, for the world food problem, and for the MTN's and trading system generally, and suggested that the Group might concern itself with more realistic ways of dealing with agricultural trade than those which had hitherto been pursued.

10. In expressing their support for the proposal that the Group should address itself to the longer-term prospects for agriculture in the multilateral trading system, several members stated that the discussion envisaged and its objectives were such as to transcend the nature of the involvement of the MTN's in this subject. In this regard it was suggested that the Group might explore new approaches to the major problems, and new commitments designed to ensure equity in the treatment of agriculture and the durability of arrangements which might be concluded. Reference was made in this connexion to new commitments in respect of access, export subsidies, and to improved international consultative arrangements. Some members noted that it was important that the GATT should function effectively and fairly across the broad spectrum of international trade, and that an effort should be made to bring the treatment of agriculture into line with the rules, disciplines and objectives of the General Agreement. Although the complex and politically sensitive nature of the issues had made it difficult to make progress, it was considered that there were grounds for optimism that changing attitudes in a number of areas would hasten the pace of adjustment towards a more rational world trading system for agricultural products. However in the immediate future most of the issues involved would have to be taken up in the MTN's so that the Group's discussions should concentrate on specific aspects of the longer-term situation.

11. Some other members noted that most GATT members were both importers and exporters of agricultural commodities and that there was an interdependence of interest in this general subject. The difficulties encountered in this sector and their relative intractability reflected the specific and complex nature of agricultural production itself, and it was essential that any approach should take account of the traditionally important economic, social and political factors involved, as well as of more recent developments in technology, productivity and transport. In this connexion it was suggested that purely economic, financial or environmental considerations were unlikely to radically alter the basic structure of policies so as to put agricultural trade on the same footing as trade in industrial products. It was also noted that recent experience in relation to the supply of a number of internationally traded commodities would tend to reinforce policies of self-sufficiency. It was observed that despite the difficulties referred to, world agricultural trade had continued to expand. In this regard it was noted that many agricultural products had ceased to be traded or were traded at greatly reduced levels, and that what was relevant was not the fact of expansion but rather the rate of expansion that would have been achieved if trade had not been impeded.

12. Several members said that they did not share the view that the rules of GATT were generally disregarded in agricultural trade or that agricultural problems had been left aside in previous negotiations. In this regard it was noted that since 1968 extensive analytical work had been undertaken in the GATT Agriculture Committee in preparation for the current round of negotiations and that the common objective of those concerned should now be to bring these negotiations to a successful conclusion. As balanced solutions to the problems raised were currently being pursued in the MTNs it accordingly would not be appropriate on this view that the discussion proposed should be undertaken in isolation from the negotiations. A more rational method of work would be to assess the situation at the completion of the MTNs, with a view to considering how such problems as remain outstanding might be dealt with. In this regard it was stated that the view was not shared that the problems raised could not be dealt with in the MTNs. Such a hypothesis was considered to be dangerous for the negotiations as a whole, because although progress had thus far been slow, it was fully expected that the negotiations would make rapid and substantial progress in 1977.

13. Some members considered that it was misleading to attribute the failure to achieve solutions to the problems in the agricultural sector to the institutional framework and rules: rather the failure consisted in not dealing with the fundamental question of national policies and in attempting instead to deal with trade barriers in isolation from such policies. The resultant situation was one in which efficient developing country producers were either unable to trade in world markets because of the export practices and protectionist policies pursued

by relatively less efficient producers, or were obliged, because of the lack of stimulus which trading opportunities would otherwise have created, to become net importers. It was suggested that this was a subject which the Group might consider in detail at a later stage, particularly with respect to the restraints which the present trading system for agriculture placed on the opportunities for the balanced development of the economies of the developing countries. It was also suggested that the recommendations of the World Food Conference might also be considered in this general context. Another member observed that any discussion on agriculture within the Consultative Group, including tropical agriculture and related problems of synthetics and substitutes, would be useful to the extent that it contributed to the avoidance of a situation in the negotiations where problems were shunted from one group to another without serious attention being given to them in any one of the groups.

14. At the conclusion of the discussion it was suggested that the approach outlined by the member for Australia deserved careful consideration as to the manner in which a topic of such magnitude might best be handled. In this regard the member for Australia agreed to present a number of selected points on which the Group might focus at a later stage in its further consideration of world trade in agricultural products.

Trade measures taken for balance-of-payments purposes

15. As background material the Group had before it: the Note by the Balance-of-Payments Committee reviewing the work of the Committee over the period 1970-1974 (document L/4200); a Background Paper for Discussion of GATT Rules and Procedures Governing Trade Measures for Balance-of-Payments Purposes (document CG.18/W/5); a list prepared by the secretariat of issues raised at the second meeting of the Group (document CG.18/W/7); a memorandum by the Argentine delegation concerning balance-of-payments aspects to be considered within the framework of GATT (document CG.18/W/8); and a revised memorandum by the United States representative on GATT Rules and Procedures Governing Trade Measures for Balance-of-Payments Purposes (document CG.18/W/9/Rev.1).

16. In accordance with the relevant decision of the Group at its third meeting (CG.18/3, paragraph 24), the Director-General outlined the stage reached in his discussions with the Managing Director of the International Monetary Fund on a number of possible measures to improve co-ordination between the GATT and the IMF. The Director-General stressed the confidential nature of these discussions, and the sensitive nature of the issues raised in relation to the procedures of the Fund and the prerogatives of its competent bodies.

17. The Director-General outlined four principal areas where possible improvements were under discussion. The first concerned ways and means of exchanging information on matters within the respective jurisdiction of the two institutions in respect of trade measures taken or being considered by countries experiencing balance-of-payments or other financial or monetary difficulties of an international nature. In each case the sources of information and its quality differed significantly depending on the nature and circumstances of the particular case, so that the pooling of information would enable both institutions to work more effectively. The second area concerned the ways and means of ensuring that trade considerations were adequately taken into account by the Fund in the conduct of its activities. It was noted that improvements in this area pre-supposed better co-ordination in matters pertaining to trade and finance within governments and between the institutions concerned. It was also noted that measures were often notified to the GATT, if they were notified at all, after they had been notified to the IMF, and that this element of timing had a bearing on the scope for co-ordination in the way in which a particular matter might be handled. The third area referred to concerned the nature and content of the reports provided by the Fund under Article XV of the General Agreement: the objective in this regard being to develop an input on the part of the Fund which would better enable the GATT to discuss and assess the range of possible approaches and measures to which governments might resort in dealing with balance-of-payments related difficulties. The fourth area concerned the question of closer co-ordination between the Fund and the GATT in the exercise of their respective jurisdiction so as to avoid situations in which measures taken were not effectively dealt with by either institution.

18. In the discussion of the Director-General's statement and of the general question of improved GATT/IMF co-ordination, it was agreed that it was important that progress should be made in each of the areas outlined, and that the Director-General should keep the Group informed of his further discussions with the Managing Director of the Fund.

19. With regard to the general question of improvements in the rules and procedures relating to trade measures taken for balance-of-payments purposes, it was noted that this subject was under discussion in connexion with the work programme of the new group to be established by the TNC, and also that members required more time to study the revised version of document CG.18/W/9 which had only recently been circulated to the Group. In these circumstances it was agreed to defer substantive discussion until the next meeting when the Group would revert to this subject on the basis, inter alia, of documents CG.18/W/8 and CG.18/W/9/Rev.1, and in the light of such decisions as may have been taken on how various aspects of this subject are to be handled in the Multilateral Trade Negotiations.

The international trading system and the rôle of GATT

20. Under this general item the Group discussed two subjects: dispute management; and, proposals for improvements in the operation of the GATT.

Dispute management

21. The subject of dispute management was introduced into the Group's discussions on the basis that, having regard to the work being undertaken on this subject in various MTN groups, a preliminary discussion and exchange of views on how this matter might be dealt with, and on points requiring consideration, might facilitate a coherent and co-ordinated approach to the general question of dispute management. For this purpose the Group had before it a note by the secretariat which outlined a number of headings under which the matter might be discussed, including certain specific issues which could be examined in more detail (CG.18/W/15).

22. With regard to the desirability of a consistent approach in the specialized arrangements for dealing with disputes which might be negotiated in the MTN, some members said that for the time being the issue of dispute management could best be dealt with in the specific groups of the MTN and that the achievement of a degree of harmony as regards dispute management aspects between the various codes or agreements and in their relationship to the General Agreement were matters which might more appropriately be taken up at a later stage in their development. Some other members said that while the rigid standardization of dispute management provisions between various codes would be impractical, the situation ought to be avoided in which there were as many dispute management arrangements as there were codes. In this regard it was suggested that an early start should be made to develop generic dispute management provisions applicable to all disputes within GATT and which could be supplemented by specific provisions in the context of individual codes or agreements. On this view the Non-Tariff Measures Group would be the appropriate body in which to consider generic dispute management provisions in respect of individual codes or agreements on specific non-tariff measures, and other areas or aspects might be taken up in the proposed framework group or in the Consultative Group of Eighteen.

23. As regards the adequacy and efficiency of the present rules and procedures, several members expressed the view that it would be untimely and even dangerous to start querying the basic rules and provisions of the General Agreement, although this would not preclude examination of areas where current practice was in need of improvement. Some other members said that although the present arrangements had worked well, there were many areas in which improvements were required. In this regard it was noted that the wealth of experience which had been accumulated in dealing with disputes within GATT provided a valuable and necessary basis for

building on and improving present procedures. It was also noted that the present arrangements provided a wide and diverse range of methods for dealing with disputes whose potential ought to be fully explored and taken into account in any review of these arrangements. In this regard several members expressed the view that the willingness of governments to resort or submit to GATT dispute settlement procedures was an important factor and one which needed to be kept in view in considering the mechanics of present procedures. It was suggested that in some respects there would be merit in a general reaffirmation of the rôle of consultation under the General Agreement including the 1958 decision of the CONTRACTING PARTIES on procedures under Article XXII on questions affecting the interests of a number of contracting parties.

24. Several members said that there were significant disadvantages from the point of view of economically less powerful countries in a system of rules whose efficacy ultimately depended on retaliatory action and withdrawal of concessions. Whereas the developed countries were able to maintain a relative balance of rights and obligations under the present system of sanctions, this was not the case for developing countries. The ability of developing countries to take effective retaliatory action was often heavily circumscribed by the fact that any such action necessarily affected imports essential to their development needs. This situation was further complicated by the additional burden of compensation in cases where the retaliatory action involved bound items. The disadvantages inherent in the present rules were equally apparent in cases where developing countries sought to defend their interests in respect of actions taken by developed countries. In this connexion it was stated that a major objective in the field of dispute management should be to establish a greater degree of equity within the framework of GATT rights and obligations between the developed and developing contracting parties. It was suggested that means should be sought to render developing countries less vulnerable to the inequities inherent in the present system both by improving the possibilities for retaliatory action and by giving the contracting parties as a whole a more satisfactory and positive rôle in the management of disputes. On this view it was essential that any new procedures should derive from, and take account of, the problems of substance in this area. Reference was made in this connexion to the 1966 decision of the CONTRACTING PARTIES on procedures under Article XXIII as having remained at an embryonic stage because the procedures were dealt with in a manner which was unrelated to the problems of substance involved. Reference was also made to the fact that developing countries had not resorted to the procedures for consultation under Part IV of the General Agreement and it was suggested that an examination of why this had been so might constitute a useful point of departure for an examination of the inter-relationship of the issues of substance and procedure in this general area.

25. In the course of the Group's discussions a number of areas were mentioned where the current rules and procedures were deficient and where improvements might be considered. Several members referred to the undue scope for delay and delaying tactics as being a significant impediment to the efficient operation of the present arrangements, and as being a disincentive in some cases to having resort to the GATT procedures to deal with disputes. The fixing of specific time-limits governing the transition of a complaint from one stage of the dispute settlement process to another, and the establishment of a standing list or body of persons to serve on panels or working parties, were suggested as possible ways and means of avoiding delays in the operation of the present arrangements for dealing with disputes. Reference was made in this regard to the budgetary implications of setting up a standing list or body of panel members.

26. One member expressed the view that as international trade expanded it was inevitable that the class and range of disputes would also tend to increase. It was accordingly essential that such disputes should be dealt with efficiently and expeditiously, and on the basis that sanctions should be applied where a settlement could not be reached. In this connexion it was noted that the reluctance of countries to resort to, or to submit to, the GATT dispute settlement procedures had often been conditioned by what some countries regarded as the accusatory nature of the proceedings, and it was suggested that in any reform of the present rules and procedures arrangements should be sought under which governments were induced to regularly resort to the GATT to resolve their differences by making use, inter alia, of the assistance which third parties could render in this respect. The view was also expressed that the respect for and the influence of GATT decisions, to which the less powerful contracting parties attached great weight, should not be weakened by too frequent resort to the GATT dispute settlement procedures.

27. Another member suggested that, with the objective of removing procedural impediments in dealing with disputes, new procedures might be developed under which the passage of a complaint through each of a series of measured steps in the dispute settlement process would be a matter of right on the part of a complainant. In this general context, and by way of comment on document CG.18/W/15, it was stated that recommendations on remedial action and the authorization of the withdrawal of concessions should be regarded as involving essentially different kinds of decisions. It was suggested that it should be within the province of a panel not only to adjudicate on matters of fact and law but also to make recommendations on remedial action, whereas the decision to authorize the withdrawal of concessions should lie with a superior dispute settlement body or with the CONTRACTING PARTIES. It was also noted that the possibility of settling a dispute through conciliation was relevant not only in the intermediate stage between the failure of consultations and before resort was had to adjudication but also throughout the

adjudication stage itself. The view was expressed that once consultations had failed the scope for conciliation in this intermediate stage was somewhat limited in the absence of some element of coercion available to the conciliator to induce the parties to compromise. On the other hand, it was considered that conciliation was apt to work better in the context of a panel given that this necessary element of coercion was available in the form of the powers at its disposal to adjudicate or make recommendations.

28. Some other points or suggestions made in the course of the Group's discussions on the present rules and procedures related to: the representation of the parties to a dispute at all stages of the dispute settlement process; whether the special problems of developing countries should be dealt with in the context of the dispute settlement procedures or in some other manner; the problems posed by standardized terms of reference for panels and working parties as regards the exclusion ab initio of certain lines of argument; the difficulties encountered in reaching agreed interpretations of GATT provisions and the related problem of assessing the compatibility therewith of various measures; and, the need to make provision for redress in respect of injury caused in the context of decisions on the withdrawal of illegal actions or measures.

29. At the conclusion of the discussion under this item of the agenda the Chairman expressed the view that one of the main problems in the operation of the present rules and procedures was the failure of countries to regularly notify measures taken, and suggested that, without prejudice to the views held by the country taking a measure as to its conformity with or relevance to the General Agreement, other contracting parties should at least have the opportunity of being informed and of deciding what initiatives, if any, might be taken.

Proposals for improvements in the operation of the GATT

30. The member for India stated that it was intended to revert at a future meeting to the statement made at the first meeting of the Group (document CG.18/W/4) in which it was suggested that a group of competent persons be appointed to consider the experience of the last twenty years and to make recommendations on the further realization of the objectives and purposes of the General Agreement and of its articles XXXVI and XXXVIII.

Report of the Group to the Council of Representatives

31. At the last meeting of the Group it was agreed that the Chairman, on his own responsibility, would submit to the Council a comprehensive report on the Group's activities during the first year of its existence as required by its terms of reference (CG.18/3, paragraph 39).

32. The Director-General outlined in general terms the content and style of the report which he proposed to submit to the Council and noted that in considering the report the Council would also be concerned with whether the Group should be maintained and if so with what terms of reference and tasks. It was agreed that members' personal views on the value of the Group's activities in the first year of its existence should be included in the report, on the basis that the Council, in considering the Director-General's report and in deciding whether the Group should be maintained, would expect to have the benefit of such views. These views are contained in paragraphs 28 and 29 of the report of the Consultative Group of Eighteen to the Council of Representatives (document L/4429).