

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Consultative Group of Eighteen  
Fifth Meeting  
22-23 September 1977

## NOTE ON THE FIFTH MEETING OF THE CONSULTATIVE GROUP OF EIGHTEEN: 22-23 SEPTEMBER 1977

### Introduction

1. The Consultative Group of Eighteen held its fifth meeting on 22-23 September 1977. An annotated provisional agenda was circulated in document CG.18/W/18 and a list of participants in document CG.18/INF/5.

### Agenda

2. The Group adopted the following agenda:

- (1) Recent developments in trade policies and international trade
- (2) Trade measures taken for balance-of-payments purposes
- (3) The international trading system and the rôle of GATT
- (4) World trade in agricultural products
- (5) Definitive application of the General Agreement
- (6) Other business - Report of the Group to the Council of Representatives, date of next meeting.

### Recent developments in trade policies and international trade

3. The purpose of this item was to enable the Group to review the current situation and problems in international trade, having regard to significant developments in the international economic situation generally since the Group last met. As background material the Group had before it, in documents CG.18/W/19 and CG.18/W/19/Add.1, the introductory chapter of the GATT secretariat report "International Trade 1976/77" and a summary version of its main points and conclusions.

4. In an introductory statement by the Chairman on what was described as the very real and growing threat of a retreat from the principles and practices of a free and open multilateral trading system, members of the Group were invited to consider, inter alia, whether protectionist measures were effective in meeting genuine domestic difficulties or whether they were an ad hoc and ultimately self-defeating response to sectional political pressures; and also whether resort to restrictions to deal with problems in certain sectors would be conducive to the pursuit of trade liberalization in other sectors within the context of the Multilateral Trade Negotiations.

5. In the ensuing discussion it was generally noted that following four years of recession, with depressed demand and investment, acute sectoral unemployment, sizeable changes in current account balances reflecting adjustments to higher energy costs and rapid shifts in comparative advantage, the international economy had entered a new and complex phase characterized by structural problems which did not lend themselves to the relatively straightforward solutions which had been successfully employed in the past. In this regard the view was expressed that the principal problem confronting countries was how to promote adequate and sustainable rates of growth in their economies and that a key factor in this regard was the creation of a climate of confidence in which investment spending could be expanded. It was generally agreed that the vigorous pursuit of the Multilateral Trade Negotiations by all participants with a view to achieving substantial results in all areas in the near future, was essential in order both to restore confidence and investment in the industrial and commercial sectors of the world economy and to discourage the further growth of protectionist tendencies. Reference was also made in this general connexion to the scope for stimulating demand for imports on the part of countries with balance-of-payments surpluses and to the need to relax unnecessarily restrictive conditions of access in the domestic markets of those countries that were most successful in exporting.

6. Some members expressed the view that trade liberalization in itself could not resolve many of the problems facing developing countries in what was described as the radically new and complex situation of the world economy, and that difficulties with respect to re-cycling of surpluses, as well as other monetary and financial factors, required an increasingly active rôle on the part of other organizations and agencies. On this view it was nevertheless considered that the basic situation facing all trading countries involved a choice between greater liberalization and an increasing introversion which would have predictable and irreversible results. It was pointed out that the failure of the Multilateral Trade Negotiations to produce concrete results after four years had had a negative psychological impact on trade and had undermined confidence on the part of some participants in the political will of other participants to deal with the problems of international trade. One result had been that many problems which would normally have been solved through existing GATT machinery had been left in suspense and it was suggested that the Multilateral Trade Negotiations should be speeded up in order to overcome this impasse in trade relations.

7. In discussion of the incidence of trade restrictive measures and practices concern was expressed at the situation as it had developed with respect to international trade in textiles and at the failure of developed countries to adjust to the clear shift in comparative advantage to the developing countries in this

sector. It was also noted that trade restrictive measures had been imposed on products of direct interest to developing countries and that in some cases these restrictions had been discriminatory. In this connexion it was observed that the significance of protectionist practices and tendencies had to be assessed in terms of their impact on the trade and prospects of the countries affected by them. In many cases it was countries least able to do so which had borne the brunt of protectionism in developed markets and it was considered that the proliferation of trade restrictions, and the related contradiction between stated policies and actual conduct, was one of the most important threats to international co-operation within GATT and elsewhere.

8. In addressing some of the broader issues raised in the discussion under this item one member outlined a number of elements and mechanisms which were considered to be essential to the achievement of the objectives of liberalizing trade and countering protectionism. One element was the need for a universal and persistent political will to pursue more liberal trade policies, which in turn needed to be systematized on a permanent working basis. Another element was the need for a more universal formula for "a balanced equality of sacrifice" as between all countries with respect to real internal problems on the one hand and the pursuit of liberal external trading policies on the other. A corollary to this latter concept was stated to be that the international trading framework should ensure an equitable balance of trading opportunities between all countries, especially the developing countries but also the primary producing countries, the semi-industrialized countries and the weaker oil importing countries. It was suggested that the current round of negotiations provided an opportunity to pursue these elements and to focus on possible techniques and mechanisms for their implementation.

9. In the course of the Group's exchange of views under this agenda item, several members mentioned the advantages of possible arrangements to keep track of and examine existing and newly imposed trade restrictions and also to take note of restrictions that had been abolished or relaxed. The Director-General recalled the observations which had been made on several occasions in the Group's discussions on the subject of trade measures taken for balance-of-payments purposes, concerning the unsatisfactory operation of the existing notification procedures and the lack of precision in the available information relating to trade restrictions. In this general connexion it was suggested that it would be useful to establish a system to monitor trade restrictive measures and practices so that governments, in carrying out their responsibilities as contracting parties to GATT, would have at their disposal a precise assessment of the state of health of international trade and of the multilateral trading system itself.

10. In the discussion of this suggestion several members said that one function of any monitoring system should be to assess the impact of individual trade restrictions on the economies and trade of affected countries, and in particular on the trade and prospects of developing countries. Referring to the scope of the measures to be monitored some members said that any system should be as comprehensive as possible and should cover action permitted under specific articles of the General Agreement as well as disputes or actions, including proposed measures, of concern to international trade.

11. The view was expressed that the establishment of the suggested monitoring system should be accompanied by improvements in the operation of the existing notification procedures. It was also observed that all countries should notify the measures they imposed in accordance with the existing procedures and that if there were deficiencies in these procedures they should be remedied in the appropriate forum. If particular measures were not notified it was nevertheless open to other contracting parties to raise the matter before the GATT Council. On this view it was considered that the existing procedures were adequate and that it was for individual contracting parties as sovereign states, if they wished to do so, to make better use of them.

12. With regard to the objectives of the suggested monitoring system it was noted that the establishment of procedures to regularly review the situation and trends with respect to restrictions on international trade could be regarded as a necessary adjunct to the work of the Consultative Group of Eighteen in following developments and forestalling sudden disturbances in international trade and trade relations in accordance with its terms of reference. Another suggestion was that the objective of any monitoring system should be to avoid a contraction of international trade and also to facilitate the work of the secretariat and of the Group in objectively analyzing the factors underlying developments in international trade and in the international economic situation generally.

13. At the conclusion of the discussion the Chairman stated that the suggestion to establish a system to monitor developments with respect to trade restrictive measures was a matter on which members might wish to reflect in the light, inter alia, of the initial exchange of views within the Group, and that the suggestion could be further pursued through informal consultations in GATT.

Trade measures taken for balance-of-payments purposes

14. 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 member for Argentina concerning balance-of-payments aspects to be considered within the framework of GATT (document CG.18/W/8); and a revised memorandum by the member for the United States on GATT Rules and Procedures Governing Trade Measures for Balance-of-Payments Purposes (document CG.18/W/9/Rev.1).

15. In accordance with the relevant decision of the Group at its fourth meeting (CG.18/4, paragraph 18), the Director-General outlined the stage reached in his further discussions with the Managing Director of the International Monetary Fund on measures to improve co-ordination between the GATT and the IMF in four broad areas, namely: exchange of information; ways of ensuring that trade considerations were adequately taken into account by the Fund in the conduct of its activities; the nature and content of the reports provided by the Fund under GATT Article XV; and, the co-ordination of the two institutions in their respective jurisdictions. The Fund's findings were now available to members of the Balance-of-Payments Committee (or a working party) some time before the actual date of consultations. Arrangements had been made for the IMF representative to be available a few days before consultations to discuss the Fund's findings and the balance-of-payments position of the consulting contracting party. Opportunities were thus provided to facilitate the identification for Fund missions of trade measures of particular concern to GATT and the resulting two-way flow of information would be useful not only for balance-of-payments consultations, but also for discharging GATT's wider responsibilities. Arrangements had also been made for more frequent informal discussions between management and senior staff of each institution which would permit both sides to follow more closely their activities in areas of mutual concern and, as a consequence, to pursue more co-ordinated policies. In particular, these arrangements opened the way for Contracting Parties and the secretariat to highlight trade considerations which should enable both the Fund and the GATT better to carry out their functions of surveillance over trade measures and adjustment policies under their respective jurisdictions.

16. The Director-General, in stressing 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, expressed the view that, within the existing formal arrangements, facilities had been introduced which offered potential further to develop a sustained dialogue between the GATT and the IMF.

17. With regard to the subject of improvements in the rules and procedures relating to trade measures taken for balance-of-payments purposes, including the general question of improved GATT/IMF co-ordination, the view was expressed that whereas there had been a growing emphasis in the approach and policies of the IMF on the rôle and situation of countries with recurrent balance-of-payments surpluses, GATT action continued to be concerned almost exclusively with the examination of individual restrictions and the prospects for their removal. An approach within GATT which sought to deal with the situation created by countries with permanent balance-of-payments surpluses but which nevertheless maintained trade restrictive measures was called for in order to achieve a better balance of GATT commitments and a greater degree of symmetry as regards the closely inter-related activities and responsibilities of GATT and the IMF. On this same view it was suggested, in view of difficult international economic situation and of prevailing national policies, that further thought be given to the possibility of arriving at a broader but informal consensus within the Group on the major policy aspects of the proposals made for improvements in the rules and procedures relating to balance of payments which were currently before the Group "Framework" together with other proposals relating to longer-term reform of the GATT.

18. The Group exchanged views on the current procedures for balance-of-payments consultations with developing countries, and in particular on whether the simplified procedures adopted in 1972 were an exception to the full procedures adopted in 1970 in the sense that, while the simplified procedures would in practice normally apply to balance-of-payments consultations with a developing country, another contracting party might nevertheless require as of right that the full procedures should be followed.

19. The view was expressed that the terms of the 1972 Council decision were to be construed as constituting an alternative procedure for consultation and not simply as an exception to the more detailed procedures adopted in 1970. The General Agreement in Article XVIII:12(a) required developing contracting parties to consult with the CONTRACTING PARTIES but did not define the procedures to be followed in this regard. The requirement to consult would thus be met according to one or other of the two alternative procedures but the decision as to which procedure should be applied was to be determined by consensus within the Balance-of-Payments Committee, and not by the veto of a particular contracting party and without that contracting party having to present its reasons for requiring a full consultation. The view was also taken that since 1972 an understanding had developed that the simplified procedures were the rule for developing countries, that this in fact had been the practice adopted and that, unless there were to be a change in the persistent and structural nature of the balance-of-payments situation of developing countries, this practice should continue to apply.

20. Another view was that in general the full procedures should apply but that in some cases, because of the stage of development of the country concerned, or because it had recently consulted and its position was thus well known, or for other reasons of an administrative nature, it was recognized that less onerous procedures were obviously more appropriate and this had been reflected in the 1972 Council decision. On this view it was considered that it would not be wise in effect to exempt developing countries from the general rule requiring full consultations since, amongst other things, the full procedures could be helpful in explaining in a convincing manner the difficulties confronting the country concerned and would also contribute to that transparency of restrictive measures which is of particular value and importance to the international trading community. It was stated that from a procedural point of view the current arrangements were valid and that if only one country were to consider that it had an interest in a full examination then the full procedures should apply. In this connexion it was suggested that some of the administrative and other difficulties encountered with the full procedures might be alleviated if the GATT secretariat were to assist the country concerned in preparing for the consultations. Other views were that the provision for full consultations should be regarded as a right on the part of a contracting party whose trade was affected by the measures in question but that prior bilateral or plurilateral consultations should precede consideration of the issue in the BOP Committee, and that a country seeking full consultations should give its reasons for so doing.

The international trading system and the rôle of GATT: dispute management

21. Under this general item the Group had a further exchange of views on dispute management. It was recalled that since the last meeting of the Group the item "consultations, dispute settlement and surveillance procedures under Articles XXII and XXIII" had been included in the indicative programme of work of the Group "Framework".

22. One member recalled that at the previous meeting his delegation had expressed the view that while the existing procedures needed to be reinforced and improved, this was a matter which was under consideration in the MTN. However, the experience since then in the operation of the existing procedures, in particular their failure thus far in two recent cases to resolve the disputes or to arrive at definitive conclusions, indicated that it might not be possible to wait for general solutions to emerge from the MTN, and it was suggested that ways of overcoming these impasses should be looked at. The cases in question were examples of the two main recourses available under the existing procedures: namely, the establishment of a working party under Article XXII and of a panel under Article XXIII. As a practical matter the reporting out of differing inconclusive views might not in some instances be a matter of undue importance, but this was not the case where the matter concerned was a practice the status of which in terms of the General Agreement should be determined one way or the other.

23. Another member expressed the view that with some exceptions the existing arrangements had worked reasonably well and noted that improvements in this domain would not be realized by codification of procedures or by giving greater precisions to texts but were rather a question of the general atmosphere of co-operation among contracting parties. In this regard four areas were mentioned where improvements, on an unwritten basis, could be considered. Firstly, any contracting party was able to invoke Article XXIII(2) and to request the implementation of the dispute settlement procedures. In principle the Council, after having heard the parties concerned, was obliged to give effect to such a request. It was thus necessary to rely on the discretion of the parties concerned and of the Council not to require the application of these procedures in cases which were not properly speaking the subject of a dispute but which were rather the subject of bilateral or plurilateral negotiations or which were better suited to other procedures such as a working party or multilateral consultation under Article XXII. Secondly, it was considered that panels should be composed of at least five or seven members in order to have a wide range of opinions and to promote the adoption of independent positions, particularly in complex and politically delicate cases. As regards the difficulties encountered in the selection of panels, it was thought that the suggested establishment of a list of twenty suitably qualified persons would not greatly improve matters, since such a list probably already existed and nothing much would be gained by formalizing it. Another suggestion had been that persons other than members of delegations in Geneva might serve on panels, such as economists and retired GATT officials. Experience had shown that this approach also posed difficulties, such as absence from Geneva, lack of contact with recent developments in GATT relations and budgetary problems. Without excluding recourse to outside experts it was considered more important, and more effective in dealing with the problems of selecting panels, that governments should accept that their representatives in Geneva should serve on panels and in fact should be encouraged to do so. Thirdly, it was suggested that a panel should sound out the parties concerned on the conclusions it had reached before finally adopting them. The object in doing so would be to encourage conciliation and to avoid misunderstandings between the parties and the panel which might otherwise arise at a later stage. Finally, it was considered that it would be very difficult to establish uniform time-limits as a means of minimizing delays which would be appropriate in each and every case.

24. At the conclusion of the discussion under this item of the agenda the Chairman drew attention to two respects in which the current arrangements were not operating satisfactorily and where improvements could be made without the need

for written arrangements. The first was the failure of governments to notify measures taken so as to permit others, including the secretariat, to be more fully informed of what countries were doing and of how the situation in general was developing with regard to protectionist measures and tendencies. The other aspect was the lack of precision and consistency in the way in which disputes were being handled under the present procedures. It was accordingly suggested that at the next meeting of the Group an attempt should be made to draw up an overall picture of the situation as it existed at present with the object of facilitating progress towards appropriate improvements.

#### World trade in agricultural products

25. In introducing this subject and the memorandum which had been circulated to the Group on the problems for world agricultural trade arising from the disruptive overspill of high cost surplus production into world markets (CG.18/W/17), the member for Australia noted that it was not intended to canvas possible solutions, which in any event were under discussion elsewhere, but to identify burden sharing as a principle based on the recognition of the inter-dependence of producers and consumers and of the requirement that measures directed towards the improvement of international agricultural markets needed to embody a reasonable balance of obligations and benefits and an acceptance of disciplines on both sides.

26. In the course of the discussion reference was made to limitations inherent in any approach which attempted to deal with the consequences of national agricultural policies rather than with the policies as such, and to the need to establish rules and commitments which were satisfactory to all interested parties. The view was expressed that world trade in agriculture was extremely complex but that countries were committed to making progress in this area in the Multilateral Trade Negotiations, and it was noted that proposals had already been made and that further proposals would be made as the negotiations progressed.

27. The view was also expressed that the concept of self-imposed disciplines on the part of surplus producers in disposing of surpluses in a way which did not disrupt normal trade was an ideal but probably unrealistic solution. Article XVI(3) of the GATT attempted to encourage such self discipline but had not led to an adequate response. However the problem was considered to be one with which the GATT should come to grips. In this regard it was noted that suggestions made in the MTN for dealing with the problem of subsidized agricultural exports included the negotiation of minimum prices for appropriate commodities and the making of provision for consultative procedures on particular problems. With regard to the specific questions posed in the Australian memorandum it was pointed out that subsidized exports of surplus production to the detriment of low-cost exporters was not necessary to the attainment of national agricultural policy objectives, and that the policy response to the trade problems arising from support programmes should take account to the maximum extent possible of the destabilizing effect of such practices and should seek to adapt policies to minimize that effect. It was suggested that such adaptation could vary from wholesale changes in the form of support to systems which penalized over-production while maintaining a level of production necessary to achieve the objectives of domestic agricultural policies.

28. At the conclusion of the discussion the member for Australia said that the exchange of views on this subject over several meetings had been most beneficial and constructive. However it was suggested that further discussion of the subject within the Group be deferred until after the end of the Multilateral Trade Negotiations to ensure that shorter-term negotiating considerations did not prejudice the development of positions on fundamental longer-term aspects of trade and resource allocation in agriculture. On this basis the Group might revert to this subject and review the situation in the light of the outcome of the MTN's.

#### Definitive application of the General Agreement

29. The discussion on this subject and the memorandum which had been circulated to the Group on the definitive application of the General Agreement (document CG.18/W/20) were introduced by the member for the European Communities, at whose request this item had been placed on the agenda.

30. In the preliminary exchange of views on the memorandum support was expressed for the suggestion that the General Agreement should be applied on a definitive basis and for the view that it would be opportune to take the matter up in the context of the Multilateral Trade Negotiations. Several members said that both the stability of international trade and the credibility and prestige of the GATT would be enhanced if all contracting parties were to apply the GATT definitively. One member stated that his authorities had long supported definitive application of the

General Agreement under Article XXVI subject to specific reservations which might be necessary because of existing legislation but noted that such reservations would be at a minimum or even unnecessary if negotiations on measures which were inconsistent with the GATT were successfully concluded in the MTN.

31. The view was also expressed that the question of definitive application was part of a wider complex of issues related to the status of GATT provisions, including the provisions of Part IV and the status of arrangements and agreements which were derived from waivers or derogations such as the generalized scheme of preferences. It was suggested that all of these issues including the status and compatibility of certain measures and practices needed to be examined if all areas of uncertainty in the application of the General Agreement were to be taken into consideration. Some members said that an important aspect from the point of view of the trading community at large was not whether the GATT was applied provisionally or definitively but whether its provisions were respected and applied by contracting parties. In particular the solidity of GATT obligations would not be realized if a definitively applied General Agreement was still flouted. It was also considered more important for GATT that concrete results should be achieved in the Multilateral Trade Negotiations and in re-structuring the General Agreement in order to make membership more attractive to some very important outsiders.

32. Various suggestions were made with regard to the nature and scope of the studies which might be undertaken to facilitate further examination of this subject. One view expressed was that any inventory that might be established should cover all existing legislation inconsistent with the General Agreement. Another suggestion was for a secretariat study on the precise significance and practical implications of the provisional status of the General Agreement, on the implications with regard to protocols of accession, and on the implications of this provisional status with regard to obligations of a more permanent or fixed character which might be undertaken.

#### Other business

33. Under this item the Group discussed the question of the annual report it was required by its terms of reference to submit to the Council of Representatives. It was noted in this connexion that in November 1976 when it confirmed the decision establishing the Group in all its elements the Council agreed to re-examine the situation in a year's time (C/M/117, page 18), and that it was therefore desirable that a report on the activities of the Group since November 1976 should be submitted to the meeting of the Council which would precede the session of the CONTRACTING PARTIES to be held on 28-30 November 1977. It was agreed that, in accordance with the procedure adopted for the submission of the Group's first report (L/4429), the Chairman, on his own responsibility, would prepare the report to the Council on the activities of the Group since November 1976.

34. The Group agreed that a brief press release on the meeting should be issued by the secretariat.

Date of next meeting

35. It was agreed that the date of the next meeting would be fixed by the Chairman in consultation with members of the Group.