

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Thirty-Fifth Session

## COUNCIL OF REPRESENTATIVES

### Report on Work since the Thirty-Fourth Session

#### Addendum

At the meeting of the Council on 16 November 1979 (C/M/136) the Council agreed to defer discussion on four items on its agenda to a later meeting to be held on 22 November 1979. The Council also agreed that the four subjects in question would be incorporated in an addendum to the Council's report.

The following subjects are included in this addendum:

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1. Safeguards (C/M/134, 135, 137)

At the meeting of the Council on 25 July 1979 the Director-General recalled that the Procès-Verbal, adopted by the Trade Negotiations Committee on 12 April 1979 (MTN/28, paragraph 6), stated that the work on safeguards should be continued within the framework and in terms of the Tokyo Declaration as a matter of urgency with the objective of reaching agreement before 15 July 1979. He had to report however that in spite of considerable efforts undertaken by all delegations concerned, it had so far not been possible to reach agreement on a safeguards code. He therefore submitted the following proposal to the Council for consideration and adoption (C/106):

1. Contracting parties would reaffirm their intention to continue to abide by the disciplines and obligations of Article XIX of the General Agreement. It would be expected that the existing rules and practices relating to the modalities of application of Article XIX, summarized in document L/4679 of 5 July 1978, would be adhered to by contracting parties when taking any future action under that provision.

2. Contracting parties would undertake to abide by the obligations contained in the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance, and in particular by the obligation to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement.

3. A Committee would be established by the CONTRACTING PARTIES with the following terms of reference:

- (a) to continue discussions and negotiations, taking into account the work already done, with the aim of elaborating supplementary rules and procedures regarding the application of Article XIX of the General Agreement, in order to provide greater uniformity and certainty in the implementation of its provisions;
- (b) pending a satisfactory outcome of the discussions and negotiations mentioned in (a) above, to examine any future case of a safeguard measure, whether taken under Article XIX or otherwise, by contracting parties in the light of the relevant provisions of the General Agreement, including Part IV thereof.

Membership of the Committee would be open to all contracting parties. It would also be open to all participants in the MTN to take part in the discussions and negotiations under 3(a) above.

The representative of Yugoslavia speaking on behalf of developing countries, said that the failure to introduce more discipline in the safeguard system of the GATT was due to the insistence of some major contracting parties to introduce an element of selectivity into the system. This was widely considered to be a serious departure from the rules of the GATT. As a matter of compromise developing countries had been ready to accept, as an extreme exception and under particular circumstances, the possibility of selectivity, provided that clearly defined criteria and conditions were met, including a test by an international body. On this basis an ad referendum text had been arrived at after intensive negotiations. As this solution had not been acceptable the developing countries had gone even further by making disposition for critical circumstances, when all other elements of the agreement would be satisfied. This also had not proved acceptable. He expressed concern that the reluctance of some contracting parties to accept discipline could seriously erode the results of the MTN. He stressed the importance developing countries attached to this subject. The developing countries considered that the responsibility for the failure to reach agreement was not due to a lack of effort from their side. He emphasized that in the absence of an agreement on discipline in a safeguard system any matter that had been contemplated during these negotiations could not be considered as being acceptable for the implementation of Article XIX. The developing countries would in the future base themselves entirely on their initial position that safeguard measures could only be applied on a most-favoured-nation basis.

Many representatives commented on the proposals made by the Director-General and on the statement made by the representative of Yugoslavia on behalf of the developing countries.

Representatives of developing countries stressed the flexibility they had demonstrated in the negotiations and the sacrifices they were willing to make in order to arrive at a safeguards code. They emphasized that the failure to arrive at a solution should not lead to a vacuum of the established norms.

The representative of the European Communities said that his delegation remained committed to finding a solution to the outstanding questions. In his view the developing countries had not shown any further flexibility since April. The Community had been prepared to consider disciplines and procedures more elaborate than presently provided for in Article XIX, but it had also sought provisions to make up for certain deficiencies of that Article.

All representatives who spoke expressed the view that in the absence of an agreement the Director-General's proposal deserved serious attention and they were ready to return to it at a future meeting of the Council.

The Council agreed to defer a decision on the Director-General's proposal to its next meeting.

At its meeting on 6 November 1979 the Council continued its considerations of this matter.

Several representatives of developing countries expressed strong support for the Director-General's proposal. They stressed the importance of the three elements of the proposal, i.e. the establishment of a committee to pursue the negotiations, an undertaking to abide by disciplines according to agreed interpretations, and the surveillance of safeguard measures. Some of these representatives considered it essential that negotiations on safeguards be continued even after the formal conclusion of the MTN. Some delegations indicated that if the present proposal presented difficulties for some other delegations, they would be ready to co-operate with them in working out a solution on the basis of a simplified proposal. The objective should be the establishment of a committee to pursue the negotiations. Such a committee should be open to all countries which had participated in the MTN.

Several representatives of developed countries expressed their readiness to pursue negotiations on safeguards as a matter of urgency. While agreeing on the establishment of a committee for this purpose, some of these representatives considered that the committee should concentrate on this

specific task. The Committee should, therefore, not be charged at the same time with examining individual safeguard measures. This might moreover have the effect of giving premature recognition to certain types of actions, thereby prejudging in some important respects the outcome of the negotiations.

The Council agreed that further efforts should be made to find a satisfactory solution to this issue and that it would revert to this matter at its next meeting.

At the meeting of the Council on 22 November 1979 the Chairman mentioned that intensive informal consultations had taken place among a number of delegations on the basis of which a draft text had been prepared which was before the Council (the text is reproduced in Annex I).

The representative of Australia commented on the text and stated that in his view work on safeguards should not be confined to Article XIX, but should also take into account other safeguard actions. His delegation further could not accept a priori that an improvement of the safeguards system was necessary. His delegation proposed certain amendments to the text to meet these points and reserved its position on this matter.

The Council took note of the statement.

The Council agreed that the matter be referred to the CONTRACTING PARTIES for their consideration on the basis of the text reproduced in Annex I hereto.

2. Implementation of paragraph B.8 of UNCTAD Resolution 131(V) (C/M/135, 137)

At the meeting of the Council on 6 November 1979 the representative of India referred to paragraph B.8 of UNCTAD Resolution 131(V), which invited GATT to examine in an appropriate body any case of future protective action by developed countries against imports from developing countries. He urged that appropriate machinery for carrying out this examination be established.

The Council agreed to revert to this matter at its next meeting.

At the meeting of the Council on 22 November 1979 the Chairman drew attention to a text entitled "Examination of Protective Measures Affecting Imports from Developing Countries", which was the result of intensive informal consultations among a number of delegations. (The text is reproduced in Annex II.)

The Council agreed that the text reproduced in Annex II be forwarded to the CONTRACTING PARTIES for their adoption.

3. Relationship between agreements evolved in the MTN and the GATT (C/M/135, 137)

At the meeting of the Council on 6 November 1979 representatives of developing countries drew attention to the far-reaching effects on the international trading system of the new agreements negotiated in the framework of the MTN. Participation of developing countries in the negotiations had sometimes only been marginal, as a result of which some of their important concerns were not reflected in the agreements. Furthermore, it would take a long time for many developing countries to accept or accede to the agreements. It was therefore of major concern to developing countries contracting parties that they secure formal assurances that their rights under the GATT were not affected if they did not subscribe to the agreements. They were concerned to see that in the rules being formulated some of the advantages under the agreements were proposed to be extended only to the signatories of the agreements. This matter would need attention. In this connexion they stressed the importance they attached to the provisions of unconditional most-favoured-nation treatment of Article I of the General Agreement.

These representatives also noted that there were cases in which the agreements extended obligations beyond the GATT, or interpreted the GATT in a certain manner. Considering the large area of international trade law and policy which was covered by the agreements and which would be administered by Committees of Signatories, they considered it essential to maintain the unity of the GATT system. Therefore, and in order to protect the rights of contracting parties these Committees should function as part of the GATT system and under the overall supervision of the CONTRACTING PARTIES.

These representatives considered it also necessary that non-signatories with a particular interest in an area covered by an agreement should have the right to attend, at least as observers, the deliberations of the Committee. It was only in this manner that they could sufficiently follow the developments of the case law which might affect them and safeguard their interests. These representatives would therefore seek a decision by the CONTRACTING PARTIES on the participation of interested countries, at least as observers, in the Committees.

Some of these representatives were also in favour of a pragmatic approach, setting aside any legal questions for the moment. If, in the course of the operation of any of the agreements, any problem would arise in regard to the erosion of GATT rights, one could always revert to the legal question and discuss how to deal with these problems.

Some representatives of developed countries, while recognizing the legitimate desire of the developing countries to follow developments in the Committees, doubted whether participation of all developing countries in all Committees would be the most efficient method for safeguarding their interests. They were prepared to co-operate in finding a suitable solution to this problem.

It was proposed that the Council revert to this matter at the next meeting in order to prepare a recommendation for the CONTRACTING PARTIES on how to proceed.

The Council agreed to revert to the matter at its next meeting.

At the meeting of the Council on 22 November 1979 the Chairman drew attention to three texts<sup>1</sup> which had been drawn up as a result of informal consultations: Action by the CONTRACTING PARTIES on the Framework texts (Annex III); Action by the CONTRACTING PARTIES on the Multilateral Trade Negotiations (Annex IV); Action by the CONTRACTING PARTIES on the MTN Tariff Concessions (Annex V).

The representative of Jamaica said that his delegation was not in a position to join in a consensus on the text relating to Action by the CONTRACTING PARTIES with the Multilateral Trade Negotiations, as it had not authenticated the agreements. He further stated that his delegation could not be certain that Jamaica's rights and benefits under the GATT would not be affected until the implementing legislation of the parties to the agreements was known.

The representative of Australia said that his Government had not yet made an assessment of all the aspects of the MTN and his delegation therefore could not yet join in a consensus relating to the Framework texts. Referring to export restrictions and charges he emphasized that Australia did not consider itself bound by any consensus that might emerge in this regard. Australia reserved the right to decide whether or not it would participate in any future work on this subject. He also emphasized Australia's position that the MTN agreements could not infringe GATT rights of non-participants and, in particular, that no contracting party could take refuge in the codes in order to deny another contracting party any of the GATT rights. In respect of the question of initial negotiation rights, he recalled that Australia had reserved its position on full GATT rights in respect of certain contracting parties in the context of their protocols of accession.

The observer of Bulgaria raised the question of the position of non-contracting parties in the MTN agreements. He said that negotiations had to be carried out between non-contracting parties and the parties to the agreements, which would not be possible until after the agreements had entered into force. He requested that an understanding should be recorded to deal with the difficulties arising for non-contracting parties during the period between their application for accession and the finalization of the necessary negotiations.

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<sup>1</sup>The texts are reproduced in Annexes III, IV and V.

The representative of Czechoslovakia stressed his delegation's concern that the existing rights of contracting parties are fully maintained.

The representative of India recalled his delegation's earlier statements to which he would revert at the session.

The Council agreed that this matter should be referred to the CONTRACTING PARTIES for their consideration and approval on the basis of the three texts reproduced in Annexes III-V hereto.

4. Consultative Group of Eighteen (C/M/137)

At the meeting of the Council on 22 November 1979 the Director-General, Chairman of the Consultative Group of Eighteen, presented a report on the Group's activities in 1979 (L/4869). The report had been prepared on his own responsibility. He mentioned that the Group had had a full exchange of views on the GATT Work Programme. On the basis of the discussions in the Group and subsequent consultations he had circulated a proposal for a GATT work programme which was before the Council (reproduced in Annex VI).

The Director-General also mentioned that the Group, having reviewed its activities over the past four years, had decided to recommend to the Council that it be established as a permanent GATT body. A proposal for a revised mandate was annexed to the Group's report.

The Council agreed to the establishment of the Consultative Group of Eighteen as a permanent body of the GATT with the mandate proposed. The Council also established the membership of the Group for 1980 and took note of the report.

Referring to the GATT Work Programme the representative of Jamaica noted that the Consultative Group would advise the Council as regards the carrying out of the future work for export restrictions and charges. He suggested that such advice, through the Council, should also be forwarded to the Committee on Trade and Development. With regard to agriculture he drew attention to the earlier recommendation that the CONTRACTING PARTIES would address themselves to the question of Agricultural Framework before the end of 1979. He noted that the Council had now decided that this question of agriculture would be addressed by the CONTRACTING PARTIES in 1980. He believed that this matter should not be left for consideration until 1980 and suggested that the CONTRACTING PARTIES, at next week's session, should establish within the Work Programme a mechanism to look at the question of agriculture in a multilateral framework. He stressed the importance of agriculture, especially for developing countries. Referring to structural adjustments he emphasized the need for such adjustments to be made in industrialized countries. He was concerned about the lack of urgency with which the question of establishing machinery in GATT to deal with the structural adjustment as part of the work programme was considered. He finally emphasized the importance of the GATT as the central mechanism for the trade negotiations among developing countries.

The representative of Hungary, referring to agriculture, expressed the hope that the consultations referred to in the work programme would not prevent the CONTRACTING PARTIES from dealing with substantive matters and would not delay the consideration of substantive matters so far not resolved in the MTN. He considered his delegation to be an interested delegation for the participation in the consultations.

The representative of Czechoslovakia expressed disappointment that no multilateral solution had been found for the problem of quantitative import restrictions. He recalled the proposal made in the MTN that the CONTRACTING PARTIES should address themselves to this problem as a priority issue.

The representative of Australia reiterated his delegation's disappointment that no agreement had been reached for a more active co-operation on the agricultural issues. His delegation was, however, willing to go along with this section of the work programme. It was his delegation's understanding that the proposed high level consultations on agricultural trade would not be used as a means for preventing Australia from raising substantive issues on agriculture in other appropriate GATT fora.

The representative of India said that the mandate of the Group of Eighteen should not imply either that any of the matters to be substantively discussed in any of the bodies of the GATT had first to be considered by the Group of Eighteen, or, because a matter was under discussion in the Group of Eighteen, it could not be considered or decided upon in any of the substantive bodies of the GATT.

The representative of the European Community said that the GATT Work Programme was well balanced and that this balance should not be upset.

The Council took note of the comments made and agreed that the proposal of the GATT Work Programme (reproduced in Annex VI) be referred to the CONTRACTING PARTIES for their consideration.



ANNEX I  
SAFEGUARDS  
DRAFT

The CONTRACTING PARTIES stress the need for an agreement on an improved multilateral safeguard system.

The CONTRACTING PARTIES reaffirm their intention to continue to abide by the disciplines and obligations of Article XIX of the General Agreement.

A Committee is established to continue discussions and negotiations, taking into account the work already done, with the aim of elaborating supplementary rules and procedures regarding the application of Article XIX of the General Agreement, in order to provide greater uniformity and certainty in the implementation of its provisions.

The Committee will submit a report to the CONTRACTING PARTIES by 30 June 1980.

Membership of the Committee is open to all contracting parties and to all participants in the Multilateral Trade Negotiations.

ANNEX II

EXAMINATION OF PROTECTIVE MEASURES AFFECTING  
IMPORTS FROM DEVELOPING COUNTRIES

DRAFT

THE CONTRACTING PARTIES,

Recalling that at the Fifth UNCTAD unanimous agreement was reached to examine any case of future protective action by developed countries against imports from developing countries,

Decide that the Committee on Trade and Development establish a Sub-Committee to examine any case of future protective action by developed countries against imports from developing countries in the light of relevant provisions of the GATT, particularly Part IV thereof.

This examination shall be without prejudice to the rights of contracting parties under the GATT or the competence of other GATT bodies.

The membership of the Sub-Committee shall be open to all contracting parties. Developing countries not contracting parties to GATT may, upon notification to the Director-General of GATT, participate in the proceedings of the Sub-Committee in an observer capacity.

The Sub-Committee will report on such examination to the Committee on Trade and Development and through it to the Council.

These arrangements will be reviewed and revised as appropriate.

ANNEX III

ACTION BY THE CONTRACTING PARTIES ON THE  
FRAMEWORK TEXTS

DRAFT

The texts prepared by the Group "Framework" have been circulated to all MTN participants in document MTN/FR/6. In order to make the texts available to all contracting parties, including those who have not participated in the Multilateral Trade Negotiations, the text will be circulated as document L/4885 and made available at the Session.

It is suggested that following the introduction of this matter by the Director-General/Chairman of the Trade Negotiations Committee and any subsequent discussion, the Chairman of the CONTRACTING PARTIES propose that the CONTRACTING PARTIES adopt decisions in each case as follows:

Points 1 and 4

"Differential and More Favourable Treatment" and

"Reciprocity and Fuller Participation of Developing Countries."

It is proposed that an opening sentence be inserted reading:

"Following negotiations within the framework of the Multilateral Trade Negotiations, the CONTRACTING PARTIES decide as follows

1. Notwithstanding ... etc."

[follows text of MTN/FR/6, page 1/1-1/3]

The Chairman of the CONTRACTING PARTIES should note that the CONTRACTING PARTIES agree to adopt the Decision by consensus.

Point 2A

"Draft Declaration on Trade Measures for Balance-of-Payments Purposes."

The Chairman of the CONTRACTING PARTIES should note that the CONTRACTING PARTIES decide to adopt the Declaration by consensus.

Point 2B

"Safeguard Action for Development Purposes."

The Chairman of the CONTRACTING PARTIES should note that the CONTRACTING PARTIES agree to adopt the Decision by consensus.

Point 3

"Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance."

The Chairman of the CONTRACTING PARTIES should note that the CONTRACTING PARTIES decide to adopt the Understanding by consensus.

ANNEX IV

ACTION BY THE CONTRACTING PARTIES ON THE MULTILATERAL  
TRADE NEGOTIATIONS

DRAFT

1. The CONTRACTING PARTIES reaffirm their intention to ensure the unity and consistency of the GATT system, and to this end they shall oversee the operation of the system as a whole and take action as appropriate.
2. The CONTRACTING PARTIES note that as a result of the Multilateral Trade Negotiations, a number of Agreements covering certain non-tariff measures and trade in Bovine Meat and Dairy Products have been drawn up. They further note that these Agreements will go into effect as between the parties to these Agreements as from 1 January 1980 or 1 January 1981 as may be the case and for other parties as they accede to these Agreements.
3. The CONTRACTING PARTIES also note that existing rights and benefits under the GATT of contracting parties not being parties to these Agreements, including those derived from Article I, are not affected by these Agreements.
4. In the context of 1 and 3 above, the CONTRACTING PARTIES would receive adequate information on developments relating to the operation of each Agreement and to this end there will be regular reports from the concerned Committees or Councils to the CONTRACTING PARTIES. The CONTRACTING PARTIES may request additional reports on any aspect of the various Committees' or Councils' work.
5. Further, the CONTRACTING PARTIES understand that interested non-signatory contracting parties will be able to follow the proceedings of the Committees or Councils in an observer capacity, and that satisfactory procedures for such participation would be worked out by the Committees or Councils.

ANNEX V

ACTION BY THE CONTRACTING PARTIES ON THE  
MTN TARIFF CONCESSIONS

DRAFT

The Director-General would draw attention to the results of the tariff negotiations which would be now embodied in the Geneva 1979 Protocol and the Supplementary Protocol. He would recall that he had circulated a draft decision on initial negotiating rights for concessions negotiated in the MTN along the lines of the rules adopted by the CONTRACTING PARTIES in 1967 after the conclusion of the Kennedy Round negotiations.

The Chairman of the CONTRACTING PARTIES could be expected to make the following proposals:

1. The CONTRACTING PARTIES note that as a result of the tariff negotiations in the Multilateral Trade Negotiations, the Geneva (1979) Protocol to the General Agreement on Tariffs and Trade and the Protocol Supplementary to the Geneva (1979) Protocol have been drawn up.
2. The CONTRACTING PARTIES adopt the following decision: in respect of the concessions specified in the Schedules annexed to the Geneva (1979) Protocol to the General Agreement on Tariffs and Trade and the Protocol Supplementary to the Geneva (1979) Protocol, a contracting party shall, when the question arises, be deemed for the purposes of the General Agreement to be a contracting party with which a concession was initially negotiated if it had during a representative period prior to the time when the question arises a principal supplying interest in the product concerned. This decision does not affect initial negotiating rights which are the result of bilateral negotiations and which have been duly notified.

ANNEX VIGATT WORK PROGRAMMEProposal by the Director-General

The conclusion of the Multilateral Trade Negotiations is an important event in the life of the GATT. The CONTRACTING PARTIES will need to take action on a number of points to ensure that results of the negotiations are effectively implemented and to further work on the improvement of the trading system. The main elements of the work programme for the post-MTN period are listed below, it being understood that this list is not exhaustive and may be reviewed.

1. Implementation of the results of the Multilateral Trade Negotiations

It is noted that the CONTRACTING PARTIES have taken action regarding the Agreements evolved in the Multilateral Trade Negotiations (see separate proposal). The GATT Work Programme should give immediate priority to the results of the MTN.

1.1 Tariff schedules

The tariff concessions negotiated in the MTN should be implemented as agreed. The relevant schedules should be brought up to date. This task would be greatly facilitated by the establishment of a Committee on Tariff Concessions with a mandate to:

1. supervise the task of keeping the GATT schedules up to date;
2. supervise the staging of tariff reductions; and
3. provide a forum for discussion of questions relating to tariffs.

1.2 "Framework" texts

The following action should be taken in order to ensure the effective implementation of these texts.

1. Without prejudice to action requested by the CONTRACTING PARTIES through the Council, primary responsibility for the supervision of the implementation of points 1 and 4 of the "Framework" texts should be given to the Committee on Trade and Development.

2. The agreement relating to the conduct of the regular and systematic review of developments in the trading system as agreed in the Group "Framework" and in the Trade Negotiations Committee, should be referred to the Council, with the request that appropriate procedures be taken up at an early meeting of the Council.

3. The Consultative Group of Eighteen should be requested to advise the Council on the forum and modalities for carrying out the future work in the area of export restrictions and charges as agreed in the Group "Framework" and the Trade Negotiations Committee.

### 1.3 Agriculture

Questions relating to trade in agricultural products will continue to be an important part of the work of the GATT and of its work programme. In this context, it should also be noted that the Council has agreed, in the light of the discussion and the recommendation in the Trade Negotiations Committee to the CONTRACTING PARTIES to further develop active co-operation in the agricultural sector, to request the Director-General to consult with interested delegations on this matter and to report to the next regular session of the CONTRACTING PARTIES.

## 2. Safeguards

Continued negotiations on safeguards constitute an essential element in the GATT Work Programme and should be carried out as a matter of urgency in accordance with the agreement reached in the Council on this matter (see separate proposal).

## 3. Continuation of the process of trade liberalization

The continuation of the process of trade liberalization should be referred to the Council with the request that appropriate procedures be elaborated, and in this context the secretariat should be requested to update the relevant information.

## 4. Structural adjustment and trade policy

The Consultative Group of Eighteen should be requested to examine this matter further and to advise the Council, and also, through it, the Committee on Trade and Development, on the modalities for carrying out further work in this area, taking into account the continuing rôle of the Committee on Trade and Development.

## 5. GATT and developing countries

The CONTRACTING PARTIES should recognize the importance of this area and that it is a priority area of work. Each point of the Programme listed so far includes work in individual areas of particular interest to



developing countries. These form part and parcel of an overall approach to the problems faced by developing countries. GATT should ensure that a coherent overall approach be maintained and to this end the Council and the Committee on Trade and Development should co-ordinate their activities on issues of common concern.

5.1 The rôle of the Committee on Trade and Development should be strengthened and should cover, inter alia,

1. work on trade policy and development policies including trade liberalization in areas of special interest to developing countries;
2. primary responsibility for supervision of the implementation of points 1 and 4 of the "Framework" texts (see paragraph 1.2 above);
3. examination of protective action by developed countries against imports from developing countries (see separate proposal);
4. work on structural adjustment and trade of developing countries (see paragraph 4 above); and
5. special attention to the special problems of least developed countries.

5.2 The importance of a new round of trade negotiations among developing countries has been acknowledged. The CONTRACTING PARTIES, through the Committee on Trade and Development, should continue to follow developments in this important area of activity.

5.3 The technical assistance activities of the GATT secretariat should be continued and readapted to meet the requirements of the developing countries in the context of the new Work Programme.

#### 6. Other proposals for future work

The present programme of work does not exclude the future consideration of additional elements, and may be reviewed by the CONTRACTING PARTIES. It is to be noted that certain delegations have presented some proposals for additional items for future work of GATT in the Consultative Group of Eighteen, as reflected in document L/4869. The Consultative Group of Eighteen will continue to deal with these as well as any other proposals as may be presented to it in the future.

