

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/966

10 April 1959

Limited Distribution

Original: English

GERMAN IMPORT RESTRICTIONS

JOINT CONSULTATION WITH THE FEDERAL REPUBLIC OF GERMANY UNDER ARTICLE XXII CONCERNING THE MAINTENANCE OF IMPORT RESTRICTIONS

Report by the participating contracting parties

1. Since June 1957, when Germany ceased to be entitled to maintain import restrictions for balance-of-payments reasons under Article XII, there has been continuing effort by the CONTRACTING PARTIES to secure compliance by the Federal Republic of Germany with its obligations under the General Agreement. At the Thirteenth Session of the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade it was agreed that "contracting parties who considered that their interests under the General Agreement and their trade interests were adversely affected by the maintenance of import restrictions by the Federal Republic, should jointly consult with Germany under the provisions of Article XXII in order to make a detailed analysis of the quantitative restrictions on imports still maintained by Germany and their trade effects, to serve as a basis for further consideration by the CONTRACTING PARTIES of the possibilities of finding solutions within the framework of the GATT to the problems arising from the maintenance by Germany of such restrictions", and that a report should be made by the participating contracting parties to the Fourteenth Session.
2. The consultations opened in Geneva on 19 January and continued to 31 January 1959. The contracting parties participating in the consultations were Australia, Austria, Canada, Czechoslovakia, Denmark, India, Japan, New Zealand, Sweden, Norway, the United Kingdom and the United States. The delegation of the Federal Republic included officials from the Federal Ministry of Economics and the Federal Ministry of Food, Agriculture and Forestry. At the request of the participating countries the Executive Secretary acted in a personal capacity as Chairman.
3. The consultation was conducted on the basis of an item-by-item examination of the products on which Germany now maintains import restrictions (MGT/130/58/Rev.1). The examination was carried out within the framework of the provisions of the General Agreement. In the course of the examination particular attention was given to the reasons for the maintenance of the restrictions, the method of applying the restrictions, the effect of the restrictions on trade and the prospects for the relaxation or removal of the restrictions. It was agreed at the outset that discussion of the items covered by the agricultural Marketing Laws should be without prejudice to the views which had previously been expressed on the question whether the restrictions operated under the Marketing Laws were covered by paragraph 1(a) of the Torquay Protocol.

4. The main points which emerged during the consultations are set out below.

Prospects for Liberalization

5. The delegate of the Federal Republic confirmed that the liberalization measures which his Government had previously indicated would be introduced on or before 31 December 1958, had been implemented.

6. The participating countries referred to the liberalization measures which Germany had already indicated would be introduced on or before 31 December 1959. They noted that the German delegation had given no reason why these restrictions should not be removed at once and requested the Federal Republic to implement these measures without delay. The German delegate undertook to inform his Government of the views expressed and stated that for a number of items it was their intention to implement the proposed liberalization measures on 1 July 1959.

7. In respect of a few additional items, the German delegation indicated that the possibility of removing the restrictions would be reviewed but for all the remaining items in the negative list the German delegation were unable to give any indication of when the restrictions might be removed. The other participating countries considered that it would be difficult to envisage a useful basis for consideration by the CONTRACTING PARTIES of the possibility of finding solutions within the framework of the General Agreement to the problems arising from the maintenance of the restrictions, in the absence of more definite and forthcoming indications of the intentions of the Federal Republic.

RESTRICTIONS ON AGRICULTURAL ITEMS

8. In a large number of cases the German representatives admitted that the restrictions were maintained solely as a means of protection - either of the domestic agricultural producer or of the agricultural processing industries. In a number of cases the restrictions were applied on a discriminatory basis in order to afford protection against more efficient competition from particular countries or particular areas of the world. On certain other products imports were only permitted from specific countries under bilateral agreements.

9. Other participating countries took the view that protectionist reasons lay behind the bulk of the German restrictions while the German representatives had indicated that for certain groups of products the restrictions were primarily maintained for other reasons, such as the protection of plant or animal life, the incidence of the Marketing Laws, and the possibility of sudden damage from a flood of imports. Even for many of these items the controls were administered in a highly protectionist manner and often on a discriminatory basis.

10. The participating countries noted that there was no provision in the General Agreement for the imposition of restrictions for protective purposes and that in accordance with German obligations under the Agreement, protective restrictions should be removed. In adhering to the General Agreement the Federal Republic like all other contracting parties had renounced the use of quantitative controls on imports except in certain limited and clearly defined circumstances. The continuation of protective controls by Germany in breach of her undertakings had the effect of nullifying tariff concessions previously granted and brought into question the whole balance of advantages in the General Agreement.

11. It was pointed out by participating countries that it was only complete freedom from restriction which enabled new markets to be fully developed and that if a trader found that quantitative restrictions, no matter how liberally applied, existed in a potentially new market, there was a disincentive to export. It was felt therefore that restrictions should be regarded by Germany as an exception rather than the rule, and that the contracting parties had a right to expect such deterrents to trade to be removed consistently with Germany's GATT obligations. In reply the German delegation stated that in many cases the restrictions maintained helped mainly to control imports into the Federal Republic without actually inhibiting them.

I. Reference to the Marketing Laws¹

12. The participating countries noted that the restrictions exercised under the laws included some operated by Decree issued under discretion allowed in article 14 of the Grain Laws, and that this discretionary power might require further examination.

13. For a number of products not covered by the Marketing Laws, the German delegation indicated that the restrictions were associated with the Marketing Laws. These items were restricted either because they were directly competitive with the Marketing Law items or in order to protect domestic processing industries which used materials covered by the Marketing Laws and were thus placed at a disadvantage compared with overseas producers, as they were generally obliged to buy this part of their raw materials at prices above the world price.

¹ The relevant Marketing Laws are:

1. Law of 4 November 1950
Concerning the Trade in Grain and Fodder (Grain Law).
2. Law of 5 January 1951
Concerning the Trade in Sugar (Sugar Law).
3. Law of 25 April 1951
Concerning the Traffic in Livestock and Meat (Livestock and Meat Law).
4. Law (1951) on the Traffic in Milk, Milk Products and Fats (Milk and Fat Law).

14. The participating countries questioned the need foreseen by the German delegation for the continuing maintenance of these restrictions, particularly in view of the recent liberalization of certain items falling in the same category, and expressed the view that in the total cost of production of items within this group, the element which was directly attributable to the high cost of the material controlled under the Marketing Laws varied considerably, and considered that in some cases this might be negligible. They considered that even if there were, in some cases, a competitive disadvantage, this would not justify the use of measures incompatible with the General Agreement. The German delegation stated that it was unlikely that it would be possible to remove the restrictions from items related to Marketing Law items within the near future. They added that such possibilities could be examined after a decision had been taken on the implementation of the relevant provisions of the Treaty of Rome. They subsequently undertook to review whether it was necessary to maintain restrictions on the entire group of processed goods.

15. The German delegation stated that quotas applied under the Marketing Laws were allocated in a non-discriminatory fashion in accordance with the provisions of Article XIII. They further stated that they would be prepared to consult with countries on items of particular interest in accordance with Article XIII. Other consulting countries were not satisfied that in practice the administration of the restrictions fulfilled the requirements of Article XIII that, where it is not practicable to grant a quota covering the total trade in any items, individual quotas should be allocated to countries having a substantial trade interest in the product. They feel that substantial adjustment in the general administration of these restrictions would be necessary before the system could be claimed to be in line with the criteria of non-discrimination laid down in Article XIII.

16. Reference was made to the import levy which is imposed in the Federal Republic on wheat and it was pointed out that to the extent to which the Marketing Laws involved an increase in import charges beyond those charged when the duty has been bound, it was contrary to Article II:1(b). Participating countries noted that a breach of an obligation under Article II was a breach of an obligation under Part I of the General Agreement and that therefore the legal argument about the reservation in the Torquay Protocol did not apply to such a case.

17. The German delegate stated in reply to a question that it was not general practice to examine the degree of protection given to Marketing Law items to find out if this was really essential but it was recognized by the Federal Republic that the list of products subject to the Marketing Laws was to some extent out of date and required revision; this could not, however, be undertaken at present because of the complicated problems arising out of the contemplated creation of common marketing regulations in the European Economic Community. Other participating countries could not accept the principle that the removal of protective restrictions should be made contingent on the development of policies in the European Economic Community. In this connexion, other delegations invited the attention of the German delegation to Article 234 of the Rome Treaty and stated that consequently the Federal Republic could not give

priority to its obligations under the Rome Treaty over those under the General Agreement. In reply, the German delegation gave an assurance that Germany had no intention of giving priority to its obligations under the Rome Treaty.

II. Other Explanations

(a) Plant or Animal health

18. The German delegation stated that restrictions on the import of certain livestock and seeds were imposed for reasons covered by paragraph (b) of Article XX, and for seeds also by Article XI:(2)(b). The other participating contracting parties agreed that an exception to the rules of the General Agreement was provided for in Article XX(b) for restrictions imposed for reasons of animal or plant health, but they did not examine in detail the applicability of the provision in Article XX to these particular restrictions. They noted, however, that in certain cases there appeared to be an additional element of protection and sometimes of discrimination in the administration of the restrictions. They also expressed the view that where the Federal Republic sought to rely on the provisions in Article XX, consideration should be given to the establishment of procedures which would enable external suppliers to comply with the Laws and thus be freed from restriction on that ground alone.

(b) Restriction of domestic production

19. The German delegation stated that restrictions were imposed on wine and grapes under a Decree issued pursuant to the Wine Laws. They claimed that since the Decree also provided for a restriction of domestic production, those restrictions were justified under Article XI(2)(c)(i) of the General Agreement.

(c) Protection against Subsidized Imports

20. The German delegate explained that import restrictions on certain items were designed to protect the domestic industry against possible damage from subsidized imports. The other participating countries noted that where dumping or subsidization causes or threatens material injury to an established industry in the territory of a contracting party, the General Agreement provided in Article VI for remedies. The General Agreement did not, however, permit the use of import restrictions as a means to meet subsidization. These countries also noted that the use of restrictions to meet subsidized competition had the effect of penalising the non-subsidizing countries equally with those against whose subsidies the Federal Republic sought to protect itself. The German delegation explained that they had chosen to maintain import restrictions in these cases because of the unwieldiness of the machinery provided in their own domestic countervailing legislation but undertook to inform their Government that in the view of these participating countries measures more compatible with the spirit of the General Agreement should be considered. One consulting country, however, suggested that recourse to Article VI might not in all cases be sufficient to safeguard also the interests of normal exporters.

(d) Protection of Industry against Possible Damage

21. In respect of a further group of products the German delegation explained that import licences were granted freely but that the control was maintained because of the possibility of sudden substantial increases in imports. The

other participating countries pointed out that Article XIX provided that a country faced with the sudden importation of any product on such a scale and in such conditions as to cause or threaten serious injury to domestic producers might take protective action. They noted, moreover, that Article XIX provided safeguards for other countries whose interests were affected by such emergency action including consultation and compensation in appropriate cases. By maintaining the present unilateral control the Federal Republic deprived interested countries of these safeguards. It was also pointed out that action taken under Article XIX would be non-discriminatory, whereas the restrictions maintained by Germany in these circumstances were applied in a discriminatory fashion. Finally it was noted that the General Agreement did not permit the maintenance of import restrictions against the mere apprehension of possible damage.

(e) Negotiations of Minimum Price Agreements within the European Economic Community

22. In the case of a number of fruit and vegetable items, the German delegate said that these were to be the subject of consideration with a view to establishing a minimum price system under the Rome Treaty and it was essential for Germany to reserve the right to impose restrictions on these products until the relevant decision had been made within the framework of the Community. The removal of the restrictions at this date would prejudice the possibility of applying the agricultural provisions of the Rome Treaty. Accordingly the Federal Republic was considering seeking a temporary waiver from the provisions of the General Agreement in respect of these items, and it was hoped that this request would be treated sympathetically since trade in the items concerned was largely confined to the European area.

23. The participating countries did not examine in detail the German case but pointed out that problems which affected fresh fruit and vegetables (for which the minimum price system had been evolved) did not apply to frozen foods and, in this case at least, it seemed likely that restrictions would be simply for the purpose of protecting the domestic processing industry. Without prejudice to the general question whether a waiver could be granted, these participating countries therefore took the view that it would not be appropriate for the frozen food items to be included in a waiver application of the kind described by the German delegation.

(f) OEEC Liberalization

24. In several cases where an item had been liberalized from OEEC countries only, the German delegation stated that control on imports from other areas was applied so liberally as to amount to de facto liberalization. Several participating countries disagreed that quotas were provided to meet all the demands and expressed the view that if, as the German delegation claimed, the system of de facto liberalization by means of open licensing or global quota was not an effective restriction to trade, but was simply designed to maintain a degree of control for possible future use, it should be removed as safeguarding action was specifically provided within the General Agreement.

(g) Bilateral arrangements

25. It was observed in discussion on the allocation of bilateral quotas that this system did not allow countries who did not take part in bilateral agreements to gain access to the German market, and the view was expressed that countries which had ceased to have balance-of-payments difficulties should take steps to discontinue bilateral agreements which often resulted in the use of quotas for bargaining purposes.

INDUSTRIAL ITEMS

26. The German delegation admitted that most of the restrictions on industrial items were maintained for general protective reasons. They stated that the Federal Republic was reconsidering its attitude towards a number of the remaining restrictions in the industrial sector. It was possible that a few of the items might be liberalized but it was also likely that a number of others might be included in Germany's application for a hard-core waiver.

27. The German delegate explained that the reason why the Federal Republic thought it necessary to maintain restrictions was that the German industry concerned could not face further competition even though, in many cases, the industry concerned had a fairly substantial export trade. Other participating countries pointed out that as many of these items had already been liberalized for OEEC countries the next step should be the complete removal of restrictions. The German delegate stated in this connexion that the problem of eventual discriminatory aspects of the liberalization in OEEC was a general one which had been discussed on various occasions in GATT and in OEEC. The German delegate thought that this problem would have to be examined by the concerned organizations themselves. It was pointed out to the German delegation that restrictions were being maintained for the benefit of some processing industries, purporting to be under the Marketing Laws, although the raw material was not produced in the Federal Republic but was wholly imported, and that these restrictions could not be defended in any case.

I. Protection against "Low-Cost Producers"

28. The German delegate stated that restrictions on a number of items in the industrial sector were imposed to control imports from countries in one area of the world where costs of production were unduly low. The German delegate reminded the participating countries that this problem of competition within the markets of industrialized countries from such imports was one which faced most countries. The German delegation had entered into bilateral discussions with the countries involved to try to reach a solution, but so far without definite success though they were confident that progress would be made. It was recognized that such bilateral discussions would not prejudice the rights of such countries under the General Agreement.

29. The participating countries pointed out that there was nothing in the General Agreement to permit discrimination against countries where overall wage levels and standards of living were low, and that if other countries were to follow the example of Germany in imposing severe and arbitrary import restrictions it would never be possible for such countries to expand trade, improve their balance-of-payments position, achieve economic development and raise wages and living standards.

30. A number of countries rejected the German suggestion that in case of liberalization pressure of competition from "low-cost producers" would be concentrated on the German market because others had invoked Article XXXV or had entered into agreements with "low-cost producers" on voluntary limitation of exports. Other consulting countries could not accept the argument that "low-cost" imports constituted a special problem peculiar to the Federal Republic. Indeed the maintenance of import restrictions in Germany concentrated pressure on the other importing countries and increased the problems of the exporting countries.

31. It was also pointed out that liberalization extended to OEEC countries had benefited one "low-cost producer" and not others. This had intensified the problems of the latter who expressed their wish to share in these advantages.

32. The participating countries noted the argument that in a number of cases discriminatory import controls were applied against "low-cost producers" because liberalization for OEEC countries had resulted in such increased competition that the German Government felt that it could not risk extending liberalization measures to non-OEEC countries even where the possibility of competition was slight.

33. The participating countries urged the Federal Republic to discontinue discriminatory restrictions imposed against "low-cost producers"; they were of the opinion that in many cases German industry would suffer no damage from this action. They asked that in any case the Federal Republic should seek solutions through the recognized procedures of the General Agreement.

II. Restrictions in respect of which the Federal Republic has requested a hard-core waiver

34. It was agreed that the discussion of the items in respect of which the Federal Republic has applied for concurrence under the hard-core waiver should be without prejudice to the attitude which might be adopted by the participating countries when the application was considered formally at the fourteenth session.

35. The German delegate stated that these items had been liberalized to OEEC countries and it was hoped that the participating countries in examining the application would bear in mind that the liberalization already granted to OEEC countries would be extended gradually to other areas and that the application of restrictions would continue to be governed by the non-discrimination rules of Article XIII. So far as dollar discrimination was concerned, there remained only a small part of the industrial sector in which there was discrimination against dollar goods, and once the restrictions on items included in the hard-core waiver application had been fully dismantled, dollar discrimination for these products would be completely eliminated.

36. The German delegation stated that reasons for the maintenance of import restrictions on items included in the hard-core waiver application were:

- (i) transitional protection of German industry which had been receiving incidental protection for balance-of-payments reasons against possible damage as a result of low-priced or greatly increased imports from dollar countries, which could no longer be offset by means of an increased tariff because of the difficulties arising from the establishment of the common tariff of the European Economic Community.
- (ii) transitional protection of an expanding new industry.

Moreover, the German delegation stated that import licences for these products, except leather, were being granted practically without any limitation.

37. The participating countries noted that there was provision in Article XIX of the General Agreement for safeguarding emergency action to be taken where necessary, and that the General Agreement does not permit the use of quantitative restrictions to combat low-priced imports or to protect expanding industries.

With regard to the non-discriminatory application of the restrictions, the other consulting countries pointed out that Article XIII referred to treatment accorded to all contracting parties and not only to countries against which the restrictions were maintained.

38. The participating countries expressed the view that a hard-core waiver was intended to be granted only for a transitional period to assist an industry which had been receiving incidental protection from restrictions imposed for balance-of-payments reasons, to adjust itself to normal competitive trade conditions. The hard-core waiver decision did not in any case permit the discriminatory application of restrictions. The participating countries appealed to the German Government to reconsider their application before the fourteenth session in the light of this discussion to determine whether they could not simply liberalize these items in accordance with the provisions of the General Agreement.

General Observations

39. It was pointed out in discussion that Germany had entered into tariff commitments under GATT in respect of many of the items still subject to restrictions and that the effects of these bound tariffs, for which other contracting parties had in return made tariff concessions, were being nullified by the maintenance of restrictions on imports.

40. The delegate of the Federal Republic stated that the present consultations and the examination of the negative list had been a useful exercise which had helped to clarify Germany's position. The German delegate recalled that his Government had proposed at the thirteenth session to resolve the question of German import restrictions in the agricultural field by seeking a temporary waiver under Article XXV. He thought that his Government would be prepared to consider more closely which items should be included in such a waiver and which items could be liberalized. In the case of the industrial restrictions, the German Government would be prepared to examine for which items an application for a hard-core waiver or a waiver under Article XXV might be possible and what other solutions could be found in agreement with contracting parties for the eventually remaining items.

41. The delegations of a number of countries were of the opinion that none of the explanations given by the German delegation could justify the further maintenance of discriminatory treatment against any country or any area and urged the Federal Republic to extend liberalization to all the member countries of the General Agreement.

42. While appreciating the difficulty which confronted the German Government in the elimination of its remaining import restrictions consulting countries pointed out that similar difficulties existed in other countries and that there were corresponding pressures to resort to measures inconsistent with the General Agreement. If an important trading country like Germany yielded to such pressures other countries might be similarly obliged to yield and there would be a serious risk that the restraints of the General Agreement would be widely ignored and the whole fabric of the Agreement destroyed. They hoped that the German Government would give serious thought to this aspect of the question which had potentially the most important implications.