

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/807  
15 April 1958

Original: English

## GERMAN IMPORT RESTRICTIONS

### Continued Application of the Marketing Laws under GATT

#### Statement by the Government of the Federal Republic of Germany<sup>1</sup>

The Government of the Federal Republic of Germany adheres to its interpretation to the effect that it was entitled under the Torquay Protocol of Provisional Application to continue applying any Marketing Laws in force at the date of the Federal Republic's accession to the General Agreement on Tariffs and Trade. Equally, it maintains its view that it is entitled to continue applying these Marketing Laws in the same way as heretofore also under the revised General Agreement on Tariffs and Trade by virtue of the resolution of the CONTRACTING PARTIES of 7 March, 1955 (vide Basic Instruments 3rd Supplement, page 48), by virtue of the reservation made by it based on that resolution, and by virtue of the resolution of the CONTRACTING PARTIES of 15 November 1957 (L/704/Add.2 - Basic Instruments and Selected Documents, 6th Supplement, page 13).

#### I

In signing the Torquay Protocol of 21 April 1951 the Federal Government undertook to apply Part II of the General Agreement to the extent consistent with the legislation existing on the date of signature of the Protocol. In undertaking this obligation, the Federal Government proceeded on the assumption that, according to the wording of that provision, the legislation in force on that date takes precedence over the General Agreement. This legislation includes the four Marketing Laws. Besides, the Federal Government expressed its views as to the scope of the reservation in a letter - Tgb. No. LC/55 - addressed to the Executive Secretary on 19 January 1955 (cf. Doc. L/309/Add.1 of 14 January 1955).

The Federal Government cannot, therefore, subscribe to the view expressed by certain contracting parties to the effect that only "mandatory" laws are to take precedence over Part II of the General Agreement on Tariffs and Trade.

The fact that several working parties had to consider this question in recent years shows that this question has not yet been clarified.

---

<sup>1</sup> Cf. Basic Instruments and Selected Documents, 6th Supplement, pages 60-61.

The first ambiguities arose shortly after the General Agreement on Tariffs and Trade had been concluded. Hence, a working party had to deal with this question as early as 1949. In drafting the resolution of the CONTRACTING PARTIES of 7 March 1955, on making a reservation of application, the wording was neither amended nor was the term "existing legislation" explained. This was deliberately left an open question in order to avoid that contracting parties become involved in difficulties in respect of their domestic legislation. As, however, the working party on purpose refrained from definitively clarifying the question, they could not possibly settle it by pointing out that such clarification was unnecessary since the executive authority, if existing legislation left to it a margin of discretion, would at any rate be obliged to comply with the provisions of the General Agreement on Tariffs and Trade (vide Basic Instruments and Selected Documents, 3rd Supplement, page 249).

If it were correct that the executive authority had to follow only a "mandatory" requirements on the law or to apply the General Agreement on Tariffs and Trade, it would not be possible for the executive authority to apply the provisions to a certain extent, and there would have been no need for inserting the phrase "to the fullest extent". The formulation that was chosen proves that the executive authority in decisions within its discretion need observe the provisions of the General Agreement on Tariffs and Trade only to the extent that this is possible within the wording, meaning and purpose of the law.

Any Government which, at the time of accepting the revised GATT, made a reservation of application, was bound, and had a right to assume that such reservation would entitle it to apply Part II of the General Agreement on Tariffs and Trade only to the extent that was consistent with legislation in force on the date of its accession to the General Agreement on Tariffs and Trade.

## II

However, quite apart from the question whether the Torquay Protocol and the authorization to make a reservation at the time of accepting the revised GATT refer to mandatory laws only, it should be noted that the German Marketing Laws are of a mandatory nature in any case.

It is the purpose of the Marketing Laws to harmonize domestic production with imports in such a way that, on the one hand, domestic production will find a ready market at reasonably stable prices and that, on the other hand, sufficient quantities of commodities will always be available to consumers at reasonable prices. This aim is to be ensured by import and supply plans in conjunction with import and stockpiling agencies. The executive authority is under obligation to ensure that only the difference between domestic production and actual requirements is imported. In doing so the import and stockpiling agencies have to act in accordance with the import and supply plans expressively provided for in three Marketing Laws and also established within the scope of the fourth Marketing Law.

It may be appropriate to state the following particulars concerning these laws:

(1) The Grain Marketing Law:

The provisions on the regulation of imports embodied in this Law are of a mandatory nature. This is not changed by the fact that the import and stockpiling agency - according to the wording of Article 8, paragraph 3 - "is authorized but not obliged" to take over any bread grain offered to it.

This regulation is not a permissive provision in the usual sense since the import and stockpiling agency is only authorized to take over such quantities as are necessary to satisfy domestic requirements. This follows from Article 2 of the Grain Marketing Law according to which the Federal Minister of Food has to establish for each grain year a supply plan in which he has to determine the quantities and qualities of grain available from domestic production and those necessary to be imported in order to meet requirements. Thus, it is the intention of the legislature to have only such imports effected as are necessary for maintaining domestic grain supplies. If Article 8 of the Grain Marketing Law is interpreted in the light of the intention of the legislature as expressed in Article 2 of that Law, it becomes evident that the import and stockpiling agency has to make all its decisions only within the legally established framework of the supply plan. The only thing that matters is whether the parcel offered is required within the country and whether it is necessary to take it over in order to meet that requirement. This shows that the import and stockpiling agency has no margin of discretion in its decisions and that, in the light of the intention of the legislature, also the Ministry of Food as the superior authority may only allow imports covering the difference between domestic production and actual requirements. The said Law contains provisions regarding penalties (Article 21) which are to ensure the strict observation of the legislature's intention.

(2) The Sugar Marketing Law:

Article 2 of this Law also provides that the Federal Minister of Food has to determine for each sugar year on the basis of a supply plan to be established by him what quantities of sugar are available from domestic production and what quantities will have to be imported to cover requirements. As is the case in the Grain Law, the function of the import agency is clearly defined in Article 9 of the Sugar Law. Because of the almost identical wording of both Laws, it is hardly necessary to point out once again that the import agency for sugar is required to make their decision always according to the supply plan established by the Federal Minister of Food and that neither that agency nor the Minister disposes of any margin of discretion.

(3) The Milk and Fat Marketing Law:

The Minister of Food establishes a supply plan also for this sector. It is true that his obligation to do so is not expressis verbis stated in the Law. The reason for this is that about 95 per cent of the requirements in raw material for margarine (oil seeds, oil crops as well as all crude oils) have

to be covered by imports from abroad. In view of this heavy dependence on overseas markets in the supply of raw materials for margarine there is no foreseeable stability. Therefore, imports of such products have to remain flexible. If, however, an important part within the overall fat supply has to remain flexible, the overall import and supply plan for fats cannot be a rigid one. The crucial point in the field of milk and fat supplies is to be able to regulate them for relatively short periods. Therefore, the Federal Minister of Food was given the right to issue instructions (Article 14, paragraph 5).

This makes it possible to counter in good time any fluctuations that may occur. Imports can be handled flexibly without being tied to a rigid supply plan established for a year.

(4) The Live-stock and Meat Marketing Law:

- (a) The Live-stock and Meat Marketing Law was the last of the Marketing Laws to be passed by Parliament. This Law, like the Grain and Sugar Laws, requires the Federal Minister of Food to establish each year a supply plan showing the quantities of live-stock and meat available from domestic production and those necessary to be imported to meet requirements. It follows from the establishment of an import and stockpiling agency (Article 16) that its functions can be seen only in conjunction with the intention of the legislature expressed in Article 2, viz. to admit imports only to the extent that any are necessary to cover domestic requirements. Therefore, in this instance too, one cannot deduce from the wording of Article 17 (responsibilities of the import and stockpiling agency) that permissive provisions exist allowing for decisions at the discretion of the said agency. From the foregoing it rather follows that both the Federal Minister of Food and the import and stockpiling agency are required to take their guidance from the clear intention of the legislature to permit only such imports as make up the difference between domestic consumption and requirements.
- (b) The Marketing Laws, according to their objective, should be regarded as one consistent whole. It was intended through them to establish a uniform regulation for all important basic foods. The Live-stock and Meat Law was adopted by the Bundestag on 28 February 1951 and approved by the Bundesrat on 16 March 1951. Therefore, it had been passed prior to 21 April, the date of reference for the Federal Republic of Germany. The delayed entry into force of this Law is due to technical difficulties connected with its promulgation. Therefore, the Federal Government considers itself justified in continuing to apply this Law though it came into force on 28 April 1951 only.

III

As early as during the consultation of the GATT with the Federal Republic of Germany in 1957 the German delegation declared that the revised GATT would be accepted by the Federal Republic only subject to the reservation

that the Marketing Laws would continue to be applicable (L/644). This procedure has been followed in the meantime. The explanatory preamble to the relevant bill brought before Parliament contains an explicit indication as to this point.

It is not intended to deal here with the question of international law which would arise if the CONTRACTING PARTIES should come to the decision that at the time of acceding to the revised GATT a reservation could only be made with respect to mandatory laws and that the German Marketing Laws are not of a mandatory nature.

#### IV

Since the available background material concerning these Laws does not contribute anything substantial to the question under review, the Federal Government has abstained from attaching such material. The Marketing Laws themselves were submitted for the consultations under Article XII:4(b) and attached to the "Basic Document" for that consultation (MGT/47/57).