

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
Fourteenth Session

REPORT OF THE WORKING PARTY ON GERMAN IMPORT RESTRICTIONS

1. In accordance with the directive of the CONTRACTING PARTIES, the Working Party, in considering the suggestions of the Federal Republic, took as its point of departure the United States proposal embodying a draft Decision on German Import Restrictions (W.L./24).
2. At the outset of the discussions, the representative of Czechoslovakia drew attention to the situation that might arise for any contracting party which was unable to agree to the terms of a settlement with Germany. If the CONTRACTING PARTIES accepted that the problem of German import restrictions was in order for a certain period it was likely, in his view, that the support of the CONTRACTING PARTIES would be withdrawn from any contracting party not accepting this view even though that country would not be demanding anything more than its rights under the terms of the General Agreement. The representative of Czechoslovakia reserved his country's position on the final result of any settlement with Germany.
3. The representative of France pointed out that the Federal Republic of Germany, in discussing over a period of time with the CONTRACTING PARTIES the continued maintenance of certain import restrictions, had put forward a number of considerations of a commercial or economic character which were much broader than the very restricted considerations referred to in paragraph 3 of the Preamble to the proposed Decision. He therefore suggested that there should either be some reference to these broader considerations or that the words "inter alia" should be inserted after "the Federal Republic believes that" in order to recognize that such considerations existed and were part of the motives underlying German policy. The Working Party felt that its task was to select such considerations only as it felt would be relevant to a Decision by the CONTRACTING PARTIES. Accordingly, they were unable to accept the suggestion of the representative of France who reserved the right to revert to the matter when it came to be discussed by the CONTRACTING PARTIES.
4. Several members of the Working Party stressed their view that, while they recognized that the German authorities claimed that they were unable to dismantle entirely the restrictions imposed by the Marketing Laws, nevertheless, since these laws do not impose a mandatory requirement that restrictions on the products covered by the laws must be maintained at a certain level, there was no legal impediment to firm assurances of increased access to the German market being given by the German Government. They strongly urged that the German Government should

undertake that it would provide progressively increasing opportunities of access to the German market for the products concerned. In exercising its powers to influence supply and demand (e.g. through price-fixing functions) it should bear this in mind. The representative of the Federal Republic of Germany stressed that it was not the intention of the German Government to administer the price policy regulations in such a way as to keep out all imports but to keep these regulations within such limits as would best serve the interests of the German nation and provide for trade with Germany's traditional trading partners. In addition to what is stated in paragraph 5 of the Preamble to the draft Decision, the representative of the Federal Republic stated that, when the German Government reviewed its Marketing Laws within the framework of the establishment of a common agricultural policy in the European Economic Community it would endeavour to bring about conditions that would take into account the interests of all its trading partners but no undertakings or assurances could now be given about future commercial policy as it affected agriculture. The Norwegian delegation expressed the hope that the Federal Government, quite apart from its obligations under the Rome Treaty, would also review the Marketing Laws from the point of view of their obligations under the General Agreement.

5. The New Zealand representative noted that the Federal Republic had refused to liberalize a number of items of major importance in world trade in agricultural products which had appeared in List VII. In view of the fact that maintenance of these restrictions was illegal under the General Agreement it seemed to him to be all the more important that the Federal Republic should provide progressively increasing opportunities of access to the German market for the products concerned. This was the purpose of an amendment he had proposed. In rejecting the amendment the Working Party had shown once again the overwhelming lack of balance in the operation of the General Agreement. He noted that with the exception of the countries particularly interested in List VIII the requests of the industrial countries had been almost entirely met.

6. In regard to the non-discriminatory administration of import restrictions dealt with in the proposed Decision the Working Party discussed a proposal to include a reference in paragraph 2(c) to Article XXIV of the General Agreement. Some members of the Working Party held the view that such a reference was inappropriate and would in any case appear to cast doubt on the scope and extent of the specific obligations to be undertaken by Germany in the administration of import restrictions and they could not accept such a reference unless its implications, both for countries inside and outside the European Economic Community, were clearly drawn. The Working Party noted that discussion on the legal issues raised by Article XXIV had for the time being been laid aside but that it had been recognized that it was open to any contracting party to invoke the benefit of Article XXIV in so far as it considered that this Article provided justification for any action which might otherwise be inconsistent with a provision or provisions of the General Agreement (BISD, Seventh Supplement, page 71). Accordingly, the absence of any specific reference in the Decision to Article XXIV could not have the effect of preventing Germany from resorting to the provisions of that Article as relevant. The Working Party also recorded its agreement that resort to Article XXIV could not be interpreted so as to exclude direct consultations about the administration of import restrictions, or to require that consultations on these matters should be conducted jointly with

Germany and the rest of her partners in the European Economic Community. There was agreement that consultations concerning quotas should be held with regard to Germany's imports from all sources.

7. Some countries expressed concern that this Decision would be incorrectly interpreted as condoning the use of certain discriminatory measures because the Decision does not reaffirm the specific principles to be applied under Article XIII. These countries would accordingly have preferred that the Decision enter into effect subject to the outcome of the consultations referred to in paragraph 2(c) of the Decision and the Note to Section D of Annex A. However, having regard to the impossibility of completing such consultations at this session and the importance of reaching a final decision at this time, these countries have concurred in that paragraph of the Decision, with the understanding that every effort will be made to resolve satisfactorily the issues of concern to them prior to the submission of the reports referred to in paragraph 3 of the proposed Decision.

8. The Working Party noted that the effect of the Decision was limited to the provisions of Article XI and could therefore not affect in any way the applicability of other provisions of the General Agreement, e.g. the provisions relating to non-discrimination. The representative of Canada welcomed the clarification that the non-discriminatory restrictions included in this Annex were in no way legalized by the inclusion of this Annex into the operative part of the Decision. Nevertheless, the representative of Canada maintained his objections to the inclusion of this Annex in the operative part of the Decision since in the view of his delegation the German Government had not provided any grounds which justified special consideration under a waiver for any of these restrictions, whether discriminatory or non-discriminatory, applied to the products in this Annex. The representative of Australia reserved his Government's position with regard to the inclusion of Annex B in the operative part of the Decision (paragraph 2(b)).

9. As a number of the contracting parties were not clear as to the manner in which Article XIII is administered by Germany, it was agreed that it would be desirable, in the course of the consultations referred to in paragraph (3) of the Decision, to discuss the administrative arrangements maintained by the Federal Republic of Germany in the context of Article XIII. Some members of the Working Party, in agreeing to the terms of paragraph 2(c) of the proposed Decision, stated that their agreement did not signify that they were satisfied that the administration of the German restrictions as at present applied were in conformity with the non-discriminatory provisions of the General Agreement. They were particularly concerned over Germany's bilateral agreements with a number of countries covering a range of important products. They pointed out that bilateral arrangements could give a supplying country preferential access to the German market and could therefore conflict with Article XIII of the General Agreement.

10. With reference to certain preserved fruits it was noted that liberalization was proposed by container size rather than by kinds. In particular, Annex A (products which will be liberalized on 1 July 1960) includes apricots, peaches and preserves of certain other fruits in containers of 5 kg or more.

On the other hand, similar items in containers weighing less than 5 kg remain in Annex B (agricultural products not covered by Marketing Laws which cannot be liberalized). The fact was emphasized during the discussions that the great bulk of trade in these commodities takes place in containers weighing less than 5 kg and that little or no fruit in the larger size containers was supplied by contracting parties. The nature of such liberalization was viewed with much concern by some members of the Working Party. Representatives of the Federal Republic were urged, in the light of these considerations, to make every effort to eliminate this discrimination by further liberalization of the fruit items in containers weighing less than 5 kg at the earliest possible date. Other members of the Working Party in supporting this recommendation commented that the discriminatory liberalization of canned fruit provided only one example of discrimination within a product group.

11. In the light of their discussions, the Working Party has drawn up the attached draft Decision which it presents to the CONTRACTING PARTIES.

DRAFT DECISION

CONSIDERING THAT

(1) at their twelfth session the CONTRACTING PARTIES, on the basis of the findings of the International Monetary Fund regarding monetary reserves and balance of payments of the Federal Republic of Germany, decided that the Federal Republic was no longer entitled to maintain import restrictions under Article XII;

(2) the Federal Republic contends that it is entitled to maintain restrictions on imports of products specified in the Agricultural Marketing Laws because (a) the German Marketing Laws impose on the German executive mandatory requirements for the application of restrictions on imports and (b) in any case this legislation does not need to impose a mandatory requirement in order to be covered by paragraph 1(a)(ii) of the Torquay Protocol; but most contracting parties do not accept this contention;

(3) the Federal Republic believes that the sudden removal of restrictions on certain imports both in the agricultural and industrial fields would cause serious injury to the domestic industries concerned which could be avoided if the removal of the restrictions were spread over a period of time;

TAKING NOTE THAT

(1) the Federal Republic, since the date of the findings and Decision referred to above, has consulted with the countries principally concerned and has from time to time proceeded by successive stages to reduce the number of import restrictions still maintained by it;

(2) the Federal Republic intends to take the further measures of liberalization set out in Annex A¹ to this Decision;

¹ This refers to the lists of products incorporated in Lists I, II, III and VIII in the SECRET document VA2-421/59 circulated by the Federal Republic of Germany plus tariff items 0405 11, 0406 00, 0702 10, 20, 30 and 90, 0810 90, 2003 00 and 0203 50ex formerly included in List VII of the same document. List VIII items will be included in Section D of Annex A with the following note:

D. Products which are still the subject of consultations.

The removal of these restrictions is under continuous consideration by the Federal Republic. In order to achieve this objective at the earliest possible date, it is the intention of the Federal Republic to initiate and actively pursue consultations with the contracting parties principally interested. The Federal Republic will report to the fifteenth session of the CONTRACTING PARTIES on the action taken.

(3) restrictions on products listed in Annex C will be progressively relaxed and liberalized in accordance with the terms and conditions set forth in that annex;

(4) the Federal Republic is ready to make all possible efforts to reduce the number of restrictions still maintained and, therefore, to lessen the scope of the problem;

(5) in particular, when reviewing the Marketing Laws, the Federal Republic will seek to ensure that any measures applied to products covered by these laws are consistent with the General Agreement;

The CONTRACTING PARTIES, pursuant to paragraph 5 of Article XXV of the General Agreement

DECIDE THAT:

Without prejudice to the legal questions referred to in the second paragraph of the Preamble to this Decision and subject to the conditions and procedures set out hereunder, the Federal Republic of Germany may, notwithstanding the provisions of Article XI, maintain restrictions on products enumerated in Annexes B, D¹ and E (Marketing Law negative list) to this Decision;

The conditions and procedures referred to above are:

(1) Restrictions maintained on the products listed in Annex D shall be so administered as to impose no practical impediment to imports from any contracting party to the General Agreement - that is to say - that these products shall be the subject of unlimited global tender arrangements without restrictions as to quantity or source of supply.

(2) Restrictions on the products covered by this Decision shall be subject to the following terms and conditions:

(a) The Government of the Federal Republic, in the application of the Marketing Laws and within the limitations imposed by those laws, will endeavour to establish conditions which will afford increasing opportunities of access to the German market for the products concerned. In this connexion, the Federal Republic will accord sympathetic consideration to representations made by interested contracting parties. The Federal Republic will keep the restrictions on products in Annex E under constant review with the object of liberalizing as many as possible of the products on the de facto basis set out in paragraph (1) of this Decision.

(b) As regards the products listed in Annex B² the Federal Republic will keep the restrictions on these products under constant review and will use its best endeavours to remove such restrictions at

¹ This refers to List V in SECRET document VA2-421/59.

² This refers to List VII in SECRET document VA2-421/59 minus those items now incorporated in Annex A.

the earliest possible date, and meanwhile, endeavour to improve conditions of access to the German market for all contracting parties, according to sympathetic consideration to such representations as interested contracting parties may make to the Federal Republic.

(c) The restrictions covered by this Decision shall be administered in accordance with the relevant provisions of the General Agreement. As envisaged in paragraph 2 (d) of Article XIII, in cases in which a quota is allocated among supplying countries, the Federal Republic shall consult with all other contracting parties having a substantial interest in supplying the product concerned with respect to the allocation of shares in the quota.

(3) The Federal Republic shall consult with the CONTRACTING PARTIES annually regarding the application of the Decision, for the first time at the fifteenth session, and in particular report on the progress achieved in the relaxation or elimination of the restrictions maintained on the products listed in Annexes A to E.

(4) The present Decision shall remain in effect until the close of the first regular session of the CONTRACTING PARTIES after it shall have been in effect for three years.

THE CONTRACTING PARTIES DECLARE

that this Decision shall not preclude the right of affected contracting parties to have recourse to the appropriate provisions of Article XIII.

ANNEX C

The Government of the Federal Republic of Germany undertakes to liberalize the products listed in this Annex in accordance with the following terms and conditions:

- (a) it will develop and apply appropriate measures designed to ensure the elimination of the restrictions within a period of five years;
- (b) it will grant to other contracting parties a fair and reasonable share of the market for the product concerned;
- (c) it will increase the global quotas granted under the present system to countries outside the OEEC area, in accordance with the programme outlined for each product below, with a view to the progressive relaxation of each restriction during the period referred to in sub-paragraph (a) above and to the progressive elimination of the existing discrimination during that period;
- (d) it will submit annual reports to the CONTRACTING PARTIES in such detail as may be required, and setting out:
 - (i) the progress made in the relaxation of the restriction authorized;
 - (ii) the result of the measures taken to ensure the elimination of the restriction;
 - (iii) any change it may be proposing in the method of application of the restriction; and
 - (iv) if it is found necessary to maintain the restriction, the reasons for such maintenance.

On the basis of the reports referred to in sub-paragraph (d) above and of any other data which may be submitted to them by other contracting parties, the CONTRACTING PARTIES shall review annually the operation of the restrictions to which this Annex applies.

List of Products

Product: Woven fabrics of jute
Tariff item number: 5710
Product: Bags of jute for packaging
Tariff item number: ex 6203-B

NOTE: The Government of the Federal Republic of Germany undertakes to increase the annual global quotas for these items by

Product: Imitation pearls
Tariff item number: ex 7019

NOTE: The Government of the Federal Republic of Germany undertakes:

- (1) that the global quota for the second half of 1959 in respect of this item shall be not less than DM.35,000, and
- (2) that it will increase the annual global quota
 - by at least 15 per cent for 1960
 - by at least 20 per cent for 1961
 - by at least 25 per cent for 1962
 - by at least 30 per cent for 1963
 - by at least 30 per cent pro rata for the period January to May 1964

The percentage increase shall be based on the quota for the preceding year, except in the case of the 15 per cent increase for 1960 which shall be based on twice the quota for the second-half of 1959.

Product: Neat leather
Tariff item number: ex 41.02 B

NOTE: The Government of the Federal Republic of Germany undertakes:

- (1) that the global quotas for the second half of 1959 shall be not less than DM 300,000 for neat leather undressed and not less than DM 630,000 for neat leather dressed, and
- (2) that it will increase the annual global quotas
 - by at least 15 per cent for 1960
 - by at least 20 per cent for 1961
 - by at least 25 per cent for 1962
 - by at least 30 per cent for 1963
 - by at least 30 per cent pro rata for the period January to May 1964

The percentage increases shall be based on the quotas for the preceding year, except in the case of the 15 per cent increase for 1960 which shall be based on twice the quotas for the second-half of 1959.

