

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES  
Twelfth Session

## DRAFT REPORT OF THE WORKING PARTY ON GERMAN IMPORT RESTRICTIONS

### Introduction

1. In June 1957 the Federal Republic of Germany consulted with the CONTRACTING PARTIES under article XII:4(b) on the import restrictions which it applied under Article XII. When the report of the Consultations Committee on that consultation (L/644, Section VIII) was presented for approval by the CONTRACTING PARTIES at the present Session<sup>1</sup>, the German representative made a statement (W.12/36) in which he outlined a number of problems faced by the Federal Republic, and announced certain measures of liberalization to take effect successively between the beginning of 1958 and the beginning of 1960. The CONTRACTING PARTIES discussed the statement in the light of the results of the Article XII consultations<sup>2</sup> and established this Working Party on 19 November to consider the statement made by the representative of the Federal Republic of Germany in its import restrictions and to collect and present in an orderly fashion for transmission to the German Government the initial reactions and comments of contracting parties expressed both in the plenary discussion and in the Working Party. The Working Party was constituted by representatives of Australia, Belgium, Brazil, Canada, Ceylon, Denmark, the Dominican Republic, France, the Federal Republic of Germany, India, Japan, Norway, Pakistan, the United Kingdom and the United States, and was under the chairmanship of Mr. L. Cozzi (Italy).

### I. Position of Germany with respect to Article XII

2. In discussing the statement of the German delegation, contracting parties<sup>3</sup> expressed appreciation of the efforts made by the German Government towards meeting the undertaking which it gave in June. They thought, however, that the conclusion of the Consultations Committee should guide the German authorities in respect of their remaining restrictions. It was pointed out that, as the Federal Republic was no longer entitled to resort to the provisions of Article XII, the maintenance of restrictions, unless sanctioned by any other provision of

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<sup>1</sup> The report was approved on 22 November 1957.

<sup>2</sup> See paragraphs 52 and 53 of the Report, L/644, page 94.

<sup>3</sup> Australia, Brazil, Canada, Ceylon, Denmark, India, Japan, New Zealand, Norway, Pakistan, the United Kingdom and the United States of America.

GATT, would be in breach of Article XI. If, for special reasons, Germany found it impracticable immediately to eliminate the restrictions but required a certain period for readjustment, it could request consideration by the CONTRACTING PARTIES under the "hard core" waiver Decision of 5 March 1955. If the restrictions which it wished to maintain went beyond the scope of that Decision, the proper course to take would be to apply for a waiver under Article XXV:5.

3. These delegations emphasized that the very structure of the Agreement would be undermined and the balance of rights and obligations between contracting parties upset if the thesis set forth in the German statement were accepted and if Germany continued to maintain restrictions inconsistently with the General Agreement. During the long years of the post-war transitional period contracting parties had been waiting to reap the full benefit of the tariff concessions that had been negotiated, and in the absence of legitimate grounds for restricting imports, the Federal Government should be expected not to impair the value of the tariff concessions it had given. If the Federal Government followed the policy which it now declared, it might well leave other countries no choice but to take action on grounds of nullification and impairment.

4. In the German statement reference was made to the liberal manner in which the restrictions were being administered and to the increases in imports which showed that there was a controlled expansion of imports rather than a truly restrictive import scheme. A number of delegations<sup>1</sup> pointed out that under paragraph 2 of Article XII, restrictions should be eliminated when they are no longer justified under that paragraph. While the application of a liberal licensing policy was welcome in circumstances where restrictions could be legitimately maintained, it was no substitute for the elimination of restrictions required under the Agreement. Since the size of a country's imports depended on such dynamic factors as national income and propensity to import, increases in actual imports could be regarded neither as evidence of reduced incidence of restrictions nor as a reason for not abolishing restrictions. Some other delegations<sup>2</sup>, while mentioning the satisfactory trade relations that existed at present between their respective countries and Germany, generally supported this view.

## II. Comments on the Reasons for Retaining Restrictions

5. The German delegation in its statement attributed the over-all surplus in the German balance of payments to a considerable surplus with European countries, accompanied by an increasingly passive balance with the dollar area, and maintained that in the circumstances discriminatory restrictions were vital for maintaining the structure of European trade and the stability of the European economy

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<sup>1</sup> Same delegations as mentioned on page 1.

<sup>2</sup> e.g. Pakistan.

and regional payments system. Other delegations, while recognizing the significance of the German credit and reserve position, stated that this consideration was, however, not relevant to the justification for the maintenance of quantitative restrictions in accordance with the obligations under the GATT. In their view, the present clearing arrangements in the European Payments Union would not be prejudiced by the dismantling of the German import restrictions. Moreover, the elimination of restrictions would clearly not present any threat of a serious decline in the German monetary reserves, the only justification provided under Article XII:2 for the maintenance of balance-of-payments restrictions.

6. Brazil and France, however, were of the view that the regional distribution in the German balance of payments involved special considerations.

7. With respect to agricultural products, the German delegation had mentioned in its statement a number of considerations justifying the maintenance of restrictions, including the general situation of agriculture in Europe, the plans for setting up a managed market within the Customs Union in this field and the current negotiations for a European free-trade area. Other delegations<sup>1</sup> considered that these were not valid reasons for delaying the removal of restrictions in accordance with the provisions of the Agreement. Some thought that the arguments advanced by Germany seemed to substantiate their misgivings concerning the implications of the agricultural provisions of the Rome Treaty. They likewise rejected the contention that since there had been references to the possibility of re-examining the provisions of the Agreement relating to Agriculture, relaxation of controls in that field were not really necessary, or indeed could be deferred. Contracting parties were obliged to operate under the Agreement as it stood and not as it might be revised. Two delegations (Denmark and Sweden), however, thought that in so far as the European arrangements held forth hopes for a solution of the intractable problems of European agriculture, the CONTRACTING PARTIES would be well advised not to take hasty decisions but to leave any legal dispositions to a later state when developments in that field could be more adequately taken into account; they had some understanding for Germany's hesitation in taking measures which might prejudice the discussions of future European arrangements.

8. Many delegations observed that the German statement seemed to imply that the Federal Republic was reserving to itself the unilateral right to maintain quantitative restrictions whenever it considered that the commercial policies of other contracting parties might be distorting the pattern of international trade. Even if some provisions of the Agreement were weak, this did not entitle a contracting party to disregard its obligations. Such an approach would undermine the Agreement and prejudice the rights of other contracting parties. Problems created by trade monopolies, export duties and other trading practices should be dealt with by measures permitted under the Agreement, some of which were specially

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<sup>1</sup> Same delegations as mentioned on page 1.

designed for the purpose, e.g. customs tariffs, anti-dumping and countervailing duties. One delegation (India) indicated in this connexion that the export duties and export restrictions in other countries could not affect trade or production in Germany. Some delegations also pointed out that any difficulties caused by the invocation of Article XXXV could not be regarded as relevant for the maintenance of import restrictions by Germany. It was pointed out that such difficulties might best be solved by the withdrawal of such invocation, not by import restrictions. Certain delegations emphasized that in any case the effect of the application of Article XXXV was limited as a number of countries, notwithstanding the formal invocation of that Article with respect to a contracting party were applying most-favoured-nation treatment to the latter through direct arrangements.

9. A number of delegations<sup>1</sup> noted the suggestion in the German statement that a point might be reached where the increase in imports would lead to a breakdown of markets, particularly those of agricultural products. This seemed to imply that the principle of eliminating quantitative restrictions was valid only in so far as such elimination did not affect the pattern of internal production or marketing, or the level of income. Such a limitation was not envisaged in the General Agreement. It was desirable, as the German delegation had itself stated at previous sessions, that in the interest of general productivity and economy of resources marginal producers should be encouraged to improve their efficiency or move to alternative activities.

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<sup>1</sup> Same delegations as mentioned on page 1.

III. The Question of "existing legislation" and provisional application

10. A number of delegations<sup>1</sup> were unable to accept the claim that the German Marketing Laws were covered by the qualifying clause in the Torquay Protocol relating to existing legislation. These Laws seemed to them to require that the goods in question (cereals, meat, fat and sugar) be imported under State monopoly, not that imports be restricted. Under paragraph 1(a)(ii) of the Torquay Protocol contracting parties are required to apply Part II of the General Agreement, including Article XI, to the fullest extent not inconsistent with the legislation existing on 21 April 1951. In their view, this provision applied only in respect of legislation which was of a mandatory character, i.e. which imposed on the executive authority requirements which could not be modified by executive action. This meant that if existing legislation left the German Government no discretion but to act contrary to Article XI, the German Government would be entitled to suspend the application of the provisions of that Article to the extent necessary to conform to those Laws. On the other hand, where "existing legislation" gave the Federal Government discretion between action which was in conflict with that Article and action which was consistent with it, then action in accordance with Article XI would not be inconsistent with its national legislation; there would thus be no ground for deviating from Article XI.

11. Should the Federal Government wish to maintain its claim that the Marketing Laws in fact require the maintenance of restrictions inconsistent with GATT provisions, the German delegation should produce the text of the Laws and particulars of the parliamentary discussions and explanatory material relating to the legislation in question to bear out its contention. If the view were accepted that all action under existing legislation was ipso facto exempt from the Rules of Part II of the Agreement, most contracting parties would be entitled to claim the right to maintain quantitative restrictions irrespective of their balance-of-payments position, and to take many other measures contrary to the provisions of the GATT: this would mean that Part II of the Agreement would have no binding force and, inter alia, the tariff concessions could therefore be completely nullified with impunity, a situation which would lead to a complete breakdown of the General Agreement.

Two delegations (Chile, Sweden) did not agree that the provisions concerning provisional application should be interpreted in the way outlined above. The German delegation reiterated its view that the "existing legislation" referred to in the Torquay Protocol need not necessarily be mandatory legislation, and that in any case the German Marketing Laws were of a mandatory character.

12. Contracting parties generally<sup>2</sup> supported the proposal that, in view of the pressure of business at this Session, this particular question should be referred to the Intersessional Committee, which should report its findings to the next Session. One delegation (Sweden) wished to make it clear that the Intersessional Committee's findings should not have the binding value of a Decision of the CONTRACTING PARTIES.

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<sup>1</sup> Australia, Canada, New Zealand, Norway, Pakistan, United Kingdom, United States of America.

<sup>2</sup> Same delegations as mentioned on page 1.

IV. Comments on the Liberalization Lists

13. Without prejudice to their views on the justification of the German restrictions under the provisions of the Agreement or the Torquay Protocol, a number of delegations offered preliminary comments on the measures of liberalization announced by Germany. Most of the delegations<sup>1</sup> which expressed views considered that the programme contemplated by Germany fell far short of what could be expected of a country in her financial position. Both the scope of the measures and the delay in their implementation were unsatisfactory. Many products on the list would remain unrestricted for a further two years. Even then nearly 20 per cent of total imports was to remain under restrictions. Certain processed foodstuffs would also remain restricted although they were so unrelated to agriculture that they could hardly present "hard core" difficulties. Certain delegations also indicated that the selection of the items to be freed involved de facto discrimination in favour of nearby markets. This applied, for example, to the liberalization of certain fresh foodstuffs but not the same products in frozen or canned form. Although it was proposed by the German Government that global quotas should be established for certain agricultural products, as from 1960, contracting parties inferred that even at that time there would be discrimination as between OEEC countries and non-OEEC countries. The statement of policy furthermore seemed to imply that imports of agricultural products from countries outside Europe would be residual.

14. A delegation (Denmark) also noted that contracting parties highly dependent on agricultural exports hoped to see a continued and accelerated increase in international trade in agricultural products, including those subject to the German Marketing Laws.

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15. As the statement by the German delegate had been available only two days previously, certain delegations (Belgium, France, Italy, Czechoslovakia) stated that they could not present their views on it until a later time.

16. A substantial number of delegations expressly stated that the Federal Republic of Germany, which was no longer entitled to apply restrictions under Article XII, should be requested to reconsider and revise its import restriction policy accordingly.

17. In concluding the discussion, the German delegation stated that it would convey all the views expressed by other delegates to the attention of its Government, which would no doubt give them its most serious consideration. The German delegate hoped that a solution would be found in the near future to many of the problems that had been referred to in the discussions.

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<sup>1</sup> Australia, Canada, United Kingdom, United States of America,