

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## Working Party on German Quantitative Restrictions

### STATEMENT BY AUSTRALIAN DELEGATION

1. The Australian delegation has now had a little more time to examine the statement (W.12/36) of the German delegation on the Federal Republic's future commercial policy and, although our comments are still necessarily in the nature of immediate reactions, we feel we can now not only confirm fully what we said in the Plenary meeting but be equally firm in the further comments which I will now make. These will be principally confined to the German delgation's statement.
2. At the foot of page 1 of his statement, the German delegate says that restrictions and controls have been applied in a liberal manner and that imports have continuously increased. On this, we would point out that German liberalization has had serious exceptions and particularly in regard to certain wide and important areas of Germany's import trade, notably the agricultural sector. Surely what we are considering here is the situation where, with no balance-of-payments difficulties - in fact in a situation where Germany appears to be a large and increasingly persistent creditor - Germany nevertheless proposes to retain control over a large area of import trade and for a very high percentage of her import trade in agricultural products. Indeed, in our view, this point in the German statement is hardly relevant to the present consideration. We view Germany as the big expanding market in Europe and one to which we have every right to look as a source of earning foreign exchange to finance our increased imports from Germany and elsewhere.
3. On page 2 of the German statement there is the suggestion that "a point might be arrived at where the increase of imports would lead to a breakdown of the markets". We assume that the concern here is that as a result of increased imports of agricultural products the rural sector of the German community will suffer such a reduction in purchasing power that overall Germany's imports would diminish. If this is the meaning which the German delegation intended to convey it surely assumes that a gradual dismantling, such as is envisaged in the hard core waiver, would wreck agriculture in Germany. This is completely at variance with the views as put by previous German delegations. In fact, it is not only unavoidable but desirable that marginal producers at present protected by an extraordinarily high level of restrictions should be encouraged by more competition from outside to improve their efficiency or move to alternative activities. Dr. Erhard seemed to us to make this very point during his opening statement in the Ninth Session.

Torquay Protocol

4. We note the German view (in paragraph 3 on page 2) that the import controls on products the subject of the German marketing laws (cereals, meat, fat and sugar) are applied by the Federal Republic by virtue of the Torquay Protocol and under the reservation made by the Federal Republic in respect of the application of Parts II and III of the revised General Agreement. It is our understanding that the German view about these marketing laws is that import restrictions may be imposed because the laws were "existing legislation" at the time of the German signature of the Torquay Protocol.

5. Our information is that, whilst the Torquay Protocol was signed on 21 April 1951 the Meat Law is dated 25 April 1951 (the date of promulgation) and would accordingly appear to us to be "out-of-time".

6. It is the view of the Australian delegation, as also we understand it to be the view of other delegations, that the Torquay Protocol like the Protocol of Provisional Application covers only mandatory existing legislation. Clearly this is a matter which should be clarified as early as possible. Had the German delegation come forward with its proposals early in the Session - as we were led to expect they would - we would then have been prepared to argue the matter out during this Session. We do not think that time would permit us to deal fully with the subject now but because of its importance in relation to Germany's import policy we believe that it should be thrashed out in the Intersessional Committee.

7. We would suggest for the serious consideration of the German Government that there would be chaos if the Contracting Parties were to accept the German view that legislation authorising the imposition of import restrictions had only to be "existing" at the time of the signature of the Torquay Protocol to be used at will. Many countries who now operate legitimate import licensing under legislation passed well before their accession to the General Agreement would, on this view, be able to continue it regardless of their balance-of-payments position.

8. We ourselves are in this position and we know that other countries are similarly placed (and in fact in some cases their legislation has a mandatory flavour about it).

9. If the German Government should however take the view, as we hope they will, that persisting to hold their present line might result in the wholesale application of prohibitive restrictions by other contracting parties in a way which would be detrimental not only to the objectives of the General Agreement as a whole but to Germany's interests in particular, they may wish to argue that their marketing laws are, in fact, mandatory. It would then be a comparatively easy task for the German delegation to produce, for the consideration of the Intersessional Committee particulars of the Parliamentary discussions and explanatory material relating to the legislation when presented to the German Parliament, which would show the intent of the legislature in

making these laws. From the limited research which we ourselves have conducted we cannot conclude that the laws are mandatory nor can we see that it was the intention of the legislators at the time that they should have a mandatory intent in so far as they relate to the imposition of quantitative restrictions. This information, combined with the text of the laws appended to the Basic Document for the German Consultations (MGT/47/57) would be necessary basic material for use by the Intersessional Committee and it might be supplemented by further material specifically requested by the secretariat or an interested contracting party.

10. We think that, in the particular circumstances in which the German Government is proposing further to use quantitative restrictions under this legislation, it is for the German Government to satisfy contracting parties that this legislation is in fact mandatory.

11. At the foot of page 2 the German delegate says that the present problems of the European economy do not permit decision on import restrictions on agricultural products and he refers to the Decision of the Council of OEEC on 17 October. For purpose of comment we would link this observation with Part III of the German programme of liberalization.

12. The Australian Government has tolerated the discrimination practised by countries within the OEEC with little protest because it thought that the discrimination might not be prolonged and might have some overall advantage. OEEC liberalization started at a time when hardly a country in Europe was not in serious balance-of-payments difficulties. Since then there has been a marked improvement and still this discrimination persists to the point where a challenge would not be unreasonable. In any event we cannot now accept that GATT must absolve Germany from her obligations merely because the Common Market and the Free Trade Area are in process of evolution. Should Belgium, who is operating under a hard core waiver, be absolved from her responsibilities? Should the Members of the Six be allowed, for the development of **their** agricultural policies over the next fifteen years, to maintain quantitative restrictions against the world when individually not in balance-of-payments difficulties?

13. We have already said enough in Plenary to indicate our views on the first part of page 3 of the German delegate's statement. However, I do wish to comment on his suggestion that import controls remain necessary because of export subsidies, monopolies and export taxes operating in countries which export to Germany.

14. It is admitted that the GATT is an imperfect document; it is particularly imperfect in the matter of export subsidies. In the Review Session there was an opportunity, which the Australian delegation attempted to promote, of doing something constructive and permanent about export subsidies: little was achieved and I will not now repeat the reasons. (We would not be the last to join with the German and other interested delegations in trying to remedy these imperfections.) But meanwhile, we all have to work within the GATT as we have accepted it, and it is no excuse to plead ineffectiveness of one part of the GATT as a reason for escaping from other more effective provisions.

15. Moreover, Germany has the right to use the proper procedure of anti-dumping and countervailing duties against goods entering her market under unfair trading conditions. She should use the law of GATT and not as it appears to us from the German delegation's statement resort to unilateral action.

16. A closer examination of Lists 1 and 2 has given us no grounds for expecting any worthwhile expansion of our exports to Germany; but at least in the interest of others and world trade as a whole we look for an assurance from the German delegation that whether the liberalization under Lists 1 and 2 be next January or next January two years - the latter too remote - it will be complete, and completely non-discriminatory. At the same time we are impressed with the point made by the American delegation that there appears in the construction of these two lists to have been an almost discriminatory selection of items.

17. We are not sure that we have completely grasped the intent of Part III of the Programme. However, we assume it to mean that there will still be special quotas for OEEC countries and after 1960 so-called global quotas for non-OEEC countries. Does it mean, as it seems to us to mean, that two or three OEEC countries will still have a first mortgage of some 25,000 tons of butter out of Germany's total imports of around 35,000 tons of butter? Does it mean that two or three OEEC countries will between them continue to have a first mortgage of about 750,000 tons of soft millable wheat out of a total import of around a million or so of similar wheats?

18. Meanwhile, we are appalled to think that in this agricultural sector, representing as it does such a large part of Germany's imports, even the consideration of liberalization must await the stage when intra-European managed markets extend across the face of European agriculture. If we ourselves were to attempt to clarify Part III of the Programme it would be to say that *what* seems to be envisaged is that outside countries will have to wait until 1960 or later for quasi non-discrimination in a situation which, even then, offers no progress whatever in the dismantling of quantitative restrictions. By that time there will be such a neat management of agriculture in Europe that the size of global quotas - if any - for the respective products will be governed by the extent of European agricultural and marketing integration. Could anything be more inward looking, more restrictive, less calculated to make any progress whatever to achieving the overall obligations of Germany which is the removal of all restrictions?

19. We entirely agree with the American comment in the Plenary about the effect of continuing frustration of tariff concessions by the German proposals to continue restrictions. I do not wish to dwell on the point but we do regard this as a matter of fundamental importance to the GATT.

20. A further point is even more fundamental. We are all old enough - some of us just old enough - to have witnessed what happened when countries started taking retaliatory economic action against one another. One of the underlying

purposes - perhaps the major purpose - of the General Agreement was to remove the causes of economic disputes between Member Governments. I do not want to be misunderstood here but I do want to make it clear that we are fearful that if Germany, such an important market for so many countries, persists with this declared commercial policy, it might well leave other countries with no recourse but to approach the CONTRACTING PARTIES for permission to take action on grounds of nullification and impairment - a negative remedy at the best - against products coming into their countries. We would urge that the German Government consider this aspect very seriously, and ask themselves whether a leading country like Germany can afford to set an example which the rest of the world might be sorely tempted to follow.

21. Indeed we ourselves would expect, in the light of the uncompromising line taken in the German decision, to have to enter into formal bilateral talks with the German authorities to determine our position under the General Agreement.

22. In the last paragraph of his statement the German delegate asked for the understanding of the CONTRACTING PARTIES with the particular problems with which the German Government is faced. We have an understanding of their problems. We had an understanding of their problems in 1954 during the Review Session when a hard core waiver decision was tailored especially to meet the specific German problem of transitional quantitative restrictions; but it tries out understanding that the German delegation does not seek to avail itself of that facility which was provided by sympathetic contracting parties to meet the position of Germany. We regret that the German delegation seems to have completely ignored this special arrangement.

23. We believe the German Government should be asked to reconsider its policies; that it should recognise its obligations under the GATT to abolish quantitative restrictions immediately and, where Germany's special problems cannot be reconciled with those obligations, the German delegation should seek a hard core waiver (where appropriate) or a waiver under Article XXV.

#### Conclusion

- (1) We cannot accept the inference of the German delegation that liberalization in the non-agricultural sector is a reason for not liberalizing in the agricultural sector.
- (2) We cannot accept that in the circumstances of her payments position Germany is entitled to treatment more favourable than that provided by the hard core waiver (or other exceptive) provisions of GATT.
- (3) We cannot accept that because over the next fifteen years a common agricultural policy is to be formulated by certain countries, in the meantime Germany or any other country not in balance-of-payment difficulties can nevertheless use quantitative restrictions to which we feel they are not entitled.

- (4) We do not believe that the Government of Germany, upon re-examination, would wish to maintain the position that "existing" legislation which is not mandatory provides escape from quantitative restrictions provisions of GATT. This way lies the complete break-up of all the GATT provisions with teeth in them.
- (5) We believe that the German Government, upon reconsideration, should elect to demonstrate to the CONTRACTING PARTIES - if the circumstances indeed support the argument - that the legislation is mandatory.
- (6) Even if mandatory, the German Government should be invited to demonstrate to the CONTRACTING PARTIES that Part II and III of the General Agreement is being complied with to the fullest extent not inconsistent with those laws.
- (7) Because Germany agreed in 1955 that the provisions of the hard core Waiver would meet the circumstances and problems involved in dismantling agricultural restrictions - even those involving difficult social and economic problems - we can see no reason in the statement of the German delegation (or in the facts of the situation as we know them) why a request for a hard core Waiver should not be put forward by the German delegation for the consideration of the Intersessional Committee.
- (8) We believe that the CONTRACTING PARTIES should request the Government of Western Germany:
  - (a) to reconsider the position in regard to restrictions on agricultural products, etc;
  - (b) to submit to the Intersessional Committee details of any revised proposals;
  - (c) to discuss further with the Intersessional Committee the reasons for any reservations which upon further consideration it still might feel duly compelled to maintain, and its plans for removing such restrictions.
- (9) We believe that the retention of quantitative restrictions by the Government of Western Germany on such a large sector of agricultural trade cannot help but have serious effects upon the payments position of her trading partners and represent a serious impairment of the benefits which such trading partners have a right to expect to derive from the General Agreement.