

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.17/34

16 November 1960

Limited Distribution

CONTRACTING PARTIES

Seventeenth Session

Working Party on German Import Restrictions

DRAFT REPORT TO THE CONTRACTING PARTIES

1. In accordance with its terms of reference, the Working Party has carried out the consultation with the Government of the Federal Republic of Germany under paragraph 3 of the Decision of 30 May 1959 concerning its import restrictions. The Working Party had before it the report furnished by the Federal Republic (L/1331) together with statistical tables showing relevant imports in 1958-59 and the first half of 1960 (MGT(60)75). It also took into account the discussion at the plenary meeting on 4 November 1960 as recorded in SR.17/3. The first three sections of the present report note the principal points of discussion relating respectively to Annexes A, B and E to the Decision. Certain points of general relevance are set out in the concluding section.

Liberalization list (Annex A to the Decision)

2. The Working Party noted that in accordance with the undertaking given by the Federal Republic as noted in the Decision, the liberalization of products specified in Section B of Annex A had been put into effect as from 1 January 1960, and that a number of products included in Section C of Annex A (products to be liberalized not later than 31 December 1960) had been freed from restrictions with effect from 1 July 1960. The Working Party welcomed this progress. Some members enquired, however, whether, in view of the present favourable conditions and the experience gained in liberalizing the other imports, the remaining items in Section C of Annex A could not be liberalized at earlier dates than those indicated in the Decision. The representative of the Federal Republic stated that the possibility of liberalizing these products was under constant review by his Government. The wish that had been expressed by members of the Working Party would be reported to his Government.

3. With regard to the products listed in Section D of Annex A, the Working Party noted from the statement submitted by the Federal Republic that as a result of consultations held pursuant to the provisions in that Section:

- (a) unlimited import possibilities had been opened for certain products as from 1 July 1960;
- (b) certain other products had been provided with global tender arrangements with effect from the same date;

- (c) the products in both these groups would be fully liberalized as from 1 January 1960;
- (d) certain other products had been placed under a licensing system which "corresponds to the wishes of all interested exporting countries". (The Working Party was informed that under this system licences were issued freely upon application); and
- (e) all the other products in Section D were still subject to global quotas which would be increased in size from year to year.

4. The Working Party welcomed this development and enquired about the possibility of further steps being taken in the near future towards freeing all the items on the list from restriction. Representatives of contracting parties having a direct interest in the products in question pointed out that the provision of quotas, while welcome, was no substitute for full liberalization. Other members of the Working Party observed that these products were all of interest to less-developed countries and urged that special efforts be made by the Federal Republic for their liberalization, having regard to the general view of the CONTRACTING PARTIES concerning exports of less-developed countries. The representative of the Federal Republic replied that, as a result of the liberalization measures already decided upon, only forty-two items on the list would remain under restriction at the beginning of next year. Among these forty-two items, thirty-two would be freed from restriction at various dates already decided upon. While no definite date had as yet been envisaged for the liberalization of the ten remaining items (mainly ceramic ware and pottery) these products nevertheless were definitely candidates for liberalization, as indeed were all products included in Annex A to the Decision.

Agricultural products not under the Marketing Laws (Annex B)

5. The Working Party noted from the report of the Federal Republic that among the products listed in Annex B, one item, namely candies, had been liberalized as from 24 October 1959. All the other products continued to be subject to quota restriction. There had been increases in certain quotas but the German Government was unable to give any indication as to when they might be freed from restriction.

6. The Working Party discussed with the representative of Germany various products on the Annex B list. With respect to skimmed, unskimmed and other types of powdered milk, the representative of Germany stated that these products had previously been liberalized for OEEC countries, but as from October 1959 the liberalization had been rescinded so that imports from all sources were now subject to quota restriction. The current global quota, valid for imports from all sources except Australia and New Zealand, was 4,000 tons. The global quotas, as noted in paragraph (8) of the statement by the Federal Republic, had been enlarged "as far as the conditions permitted", the restrictions being retained only in order to forestall any disruptive influx which might be damaging to domestic producers.

7. Representatives of overseas countries having a direct interest in milk products commented on the limited access to the German market for their exports and the decline in these imports in Germany in the first half of 1960. They enquired whether, if full liberalization were considered impossible at present, these products could at least be placed under open general tenders. Countries like New Zealand, whether or not they were likely to benefit more from global quotas, would prefer to have an equal opportunity to compete with other suppliers. They considered that the kind of sporadic quotas of short duration used by Germany was different in value from established annual quotas, and that in compliance with the waiver, annual quotas should be published and extended in size from year to year. The representative of Germany stressed the difficulties of providing for global quotas on a long-term basis owing to the uncertainties on the domestic market. The Federal Government would, however, be prepared to consult with contracting parties at any time and would consider any representations that might be made.

8. The Working Party was informed that imports of hard cheese into Germany had been freed from restriction for OEEC countries, while remaining subject to restriction for non-OEEC countries. The sporadic provisions which had been made for non-OEEC imports did not allow any test to be made by exporting countries of the extent to which these products might be absorbed by the German market over the year as a whole in the absence of restrictions. Members of the Working Party urged that the present tenders system be replaced by annual quotas. The representative of the Federal Republic explained that the quotas for cheeses were established on an annual basis, but had been invariably taken up shortly after they were announced. After 31 December 1960 only hard cheese would continue to be restricted. The retention of restrictions on hard cheese was considered necessary because of its close connexion with certain other dairy products which were subject to regulation under the Marketing Law on Milk and Fats. Because of the keen competition, Germany had found it difficult even to maintain the present level of liberalization within Europe without resorting to bilateral agreements providing for the avoidance of subsidies and for minimum prices, etc. In the view of the German Government, the prevalent protective practices, such as subsidies, import restrictions and surplus disposal measures, had resulted in pressures being concentrated on the German market necessitating a measure of protection which would otherwise not be required. Members of the Working Party pointed out that most important exporting countries applied no subsidies on cheese and that under the General Agreement the effects of any subsidies should properly be dealt with by countervailing duties rather than by quantitative restrictions. The representative of the Federal Republic stated that his Government was not claiming the right to use quantitative restrictions to redress the effects of subsidies. It only felt that the existence of subsidies was a relevant factor when considering the restrictions which Germany was authorized to maintain on account of difficulties faced by its producers. Whatever their purpose might be, the restrictions on hard cheese was maintained under the

authority of the waiver granted by the CONTRACTING PARTIES. In response to the suggestion that hard cheese might be placed under expanding quotas in preparation for liberalization, the representative of the Federal Republic stated that it was at present too early to foresee the liberalization of this product, although one might hope that the situation might improve in one or two years' time.

9. The Working Party's attention was drawn to the sharp decline in 1959 in the Federal Republic's imports of apples and pears from GATT countries outside the EEC, while the total of these imports increased. The representative of the Federal Republic stated that under the special control régime applying to these products imports were admitted under open licensing during the season subject to minimum prices, and that no difficulty was placed in the way of the importation of apples and pears from countries in the Southern Hemisphere. The lack of increase in imports from North American countries was probably attributable to the long distance and the coincidence of the seasons in Europe and North America. The representative of the United States informed the Working Party that his Government considered the present German import arrangement for these products to be inequitable, that it had initiated consultations with the Federal Republic, and that a United States suggestion aiming at assuring equal opportunities for suppliers outside Europe had been rejected by the latter. The representative of the Federal Republic said that his Government had given full explanation to the United States why the quasi liberalization régime adopted for OEEC countries on a reciprocal basis could not be extended to cover imports from North America and gave the assurance that any new proposals from the United States would receive his Government's earnest attention.

10. The Working Party was advised by its members that the rate of increase in 1959 in imports of preserved peaches from GATT countries except the EEC was disproportionately lower than the rate of increase in the total of such imports; that the import of canned cherries seemed to be subject to prohibition except from EEC sources; and that whereas North American exporters had had a significant share in the German market of canned vegetables in 1959, no licence for such imports from countries in that area seemed to have been issued in the first half of 1960 when the total of these imports into Germany expanded twenty-eight-fold. The representative of the Federal Republic maintained that all quotas for canned fruit and vegetables were open to overseas countries

and that there had been a substantial increase in the quotas.¹ The representative of the Federal Republic thought that the substantial increase of imports of canned fruit and vegetables from the United States, from DM 2.7 million in 1956 to DM 26 million in 1960, bore witness to the Federal Republic's intention to improve conditions of access to its markets in respect of these products. Restrictions on these products, which were in force only for products in containers of less than 5 kilograms (similar products in larger containers being free of restrictions), were maintained mainly for the purpose of lessening the difficulties faced by the domestic canning industry.

11. Members of the Working Party were of the view that a substantial relaxation of the present restriction on canned fruit and vegetables should have no serious effects on the canning industry which had doubled its size since 1954. On the contrary, the availability of a greater variety of canned products might in fact have the effect of raising the general propensity to consume tinned goods and thus be beneficial to the canning industrial.

Marketing Laws Negative List (Annex E to the Decision)

12. The Working Party discussed with the representative of the Federal Republic the restrictions applied under the Marketing Laws on the import of meat (notably beef, mutton and lamb), wheat, butter and vegetable oils. In discussing meat, a member of the Working Party noted that according to authoritative estimates meat consumption in Europe would rise by 50 per cent

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The Working Party was informed that the following quotas had been established in the past year:

		<u>DM million</u>
1 August 1959	Canned fruit	25.0
27 August 1959	Canned vegetables	3.5
27 August 1959	Canned beans	15.2
15 January 1960	Canned beans (additional)	2.0
17 June 1960	Canned beans "	1.6
31 August 1960	Canned vegetables (other than beans)	5.2
2 July 1960	Canned fruit	25.0
16 September 1960	Canned peas	10.0

and that the quotas for canned fruit were not available for canned cherries or strawberries. Fruit juices were liberalized except apple juice.

in ten years, and effective demand for meat within the EEC would rise by between 23 and 32 per cent by 1965, depending on the rate of increase in personal income. There was therefore ample scope for the absorption of expanded production and imports in the years to come. Meat exports were generally not subject to subsidization, and access to the principal markets, notably the United Kingdom and the United States, was completely open; consequently, there were no abnormal pressures on the international market such as could in certain circumstances make it difficult to free imports immediately. Especially in the case of mutton and lamb, Europeans not being accustomed to these meats, there was only insignificant demand in countries such as Germany. Consequently, liberalization of these imports, as the experience of certain other European countries had shown, was not likely to be followed by any significant increase in imports. At present imports of mutton and lamb permitted to enter Germany were negligible in relation to the size of the market. Overseas exporters could only hope that freer access to the European markets would allow them, through tenacious efforts in promotion and "education", gradually to build up a market.

13. The representative of the Federal Republic replied that under the Marketing Law on Cattle and Meat, imports of beef, as well as mutton and lamb, had to be regulated in the light of domestic requirements and production. Imports of beef were admitted only during certain months of the year, mainly in the form of live cattle for slaughter. Imports of cattle and fresh meat were mostly made under short-term bilateral quota arrangements. On the other hand, chilled and frozen beef was under open general tenders applicable to all sources of supply without discrimination. In the view of the German Government the removal of import regulations might cause difficulties to domestic producers. In the case of mutton and lamb, although the lack of demand lessened any risk that might be involved in liberalization, it also aggravated the difficulties of finding outlets for the output of the small sheep farmers in Germany. Members of the Working Party pointed out that the high prices prevailing on the world market were a sure safeguard against any sudden influxes of substantial beef imports into Germany. A member of the Working Party observed that such a step would also contribute to a lessening of the pressure of exports concentrating on markets which were unprotected by restrictions. In regard to beef, as well as mutton and lamb, the Working Party considered that it should be possible for the Federal Republic to introduce de facto liberalization and transfer these products on to Annex D to the Decision. They could not accept that the Marketing Law required controls on the import of meat. In their view, the present sporadic quotas should be replaced by de facto liberalization. The representative of the Federal Republic said that he was not aware that world prices of meat, especially of chilled and frozen beef, were higher than German domestic prices. His delegation would, however, undertake to report to the Federal Government the general desire expressed at the Working Party that beef, mutton and lamb be given de facto liberalization treatment.

14. Concerning wheat, the representative of the Federal Republic stated that apart from certain commitments under old bilateral agreements which would be modified at the first opportunity of renegotiation, imports were generally admitted under global quotas. Members of the Working Party wished to know in what way the quotas were announced and publicized for the benefit of exporters in overseas countries, and whether the global quotas were in any way allocated among supplying countries and, if so, to what extent account was taken of the provisions of paragraph 2(c) of Article XIII. The representative of the Federal Republic stated that for most qualities of wheat, the global quotas, in the form of open general tenders, were announced in advance of the licensing period and were valid for all sources of supply on a competitive basis without discrimination.

15. A member of the Working Party referred to the "skimming charge" levied through operations by the Import and Stockpiling Agency and questioned the compatibility between this charge and Germany's obligations under Article II of the Agreement regarding this bound item. The representative of the Federal Republic maintained that the equalization fees were one of the basic features of the Marketing Laws of which contracting parties were not unaware when they negotiated the tariff concession with Germany. Members of the Working Party were of the view that the decision of 30 May 1959 covered only Germany's obligations under Article XI of the Agreement so as to permit the maintenance of import restrictions, and did not affect Germany's obligations under Article II. The imposition of this charge was therefore not within the terms of the waiver, nor could it be covered by the provision in the Torquay protocol relating to "existing legislation" which was relevant only for provisions in Part II of the Agreement.

16. Members of the Working Party noted with some satisfaction the continuous increase in the Federal Republic's net imports of butter since 1958 and expressed the hope that the trend would be sustained in future. They noted at the same time, however, that the marked increase in 1959 might be attributable more to the shortage caused by the severe draught in Europe than to the relaxation of restrictions by Germany. A member of the Working Party drew attention to the recent recommendations by the Deputy Ministers of Agriculture in OEEC which included recommendations to take measures to stimulate consumption of dairy products; to reduce domestic subsidies; to reduce export subsidies, to encourage movement away from dairy farming; to remove restrictions on imports, etc. He suggested that application of such measures by Germany would show evidence that conditions of access were being improved as required by the waiver. The representative of the Federal Republic said that no action along these lines had yet been taken and that efforts made at encouraging milk consumption had not been successful. Owing to the exigencies of the Marketing Law on Milk and Fats, the German Government had not been able to liberalize butter imports even for OEEC countries; incessant changes in supply and demand and fluctuations in price made it necessary for the German authorities to regulate the import of this product on a short-term basis. The German authorities considered that overseas suppliers situated at great distances from Europe would derive little benefit from any global quotas. Consequently the establishment of

bilateral quotas might be a necessary means of trade, especially as the butter supplied by some of these overseas countries was of a different type from that in general demand in Europe. The representative of New Zealand pointed out in this connexion that ample quantities of New Zealand butter, for example, were normally stocked in London and deliveries could reach the German market with as little delay as from any European sources. While New Zealand normally produced butter of a type which was not commonly consumed in Europe, it also produced the type which was in demand in European countries. Exporting countries such as New Zealand were not anxious to have a privileged position but would merely like to have access to the German market and the elimination of discrimination so that the consumer was allowed to make his own choice. The representative of the Federal Republic replied that these views would be given careful consideration by his Government.

17. In discussing the various restrictions applied under the Marketing Laws the representative of the Federal Republic made reference to the contention of his Government that restrictions were mandatorily required under these Laws. Members of the Working Party recalled the discussion of this matter in 1958¹, and reiterated their view that it was within the executive authority of the Government of the Federal Republic under the terms of the existing Marketing Laws, to effect de facto liberalization for all the products covered, or at any rate to reduce the incidence of the restrictions. In this connexion the Working Party discussed with the German representative the procedures used in admitting imports; the manner in which quotas were established, announced and allocated among supplying countries; and the influence of bilateral commitments on the operation of the Marketing Law restrictions. In particular, attention was called to statements made by representatives of the Federal Republic in Committee II to the effect that about 40 per cent of total German imports of cereals and about 80 per cent of meat imports in 1958 had been admitted under bilateral quotas. There seemed to be no evidence that in administering restrictions under the Marketing Laws the Federal Republic had ever taken account of the provisions in paragraph 2(c) of the waiver Decision, which required consultations to be carried out in accordance with Article XIII:2(d) of the Agreement. The representative of the Federal Republic explained that most of the bilateral agreements referred to by the German delegation at Committee II had been more than ten years old. In all renegotiations carried out since the adoption of the waiver Decision, the Federal Republic had been keenly aware of the requirements of paragraph 2(c) and 2(d) of Article XIII. Many contracting parties were in close contact with the Federal Republic through diplomatic channels, and the Federal Government was always prepared to enter into consultations with any contracting party upon request.

¹ Cf. BISD, Seventh Supplement, p.99 et seq.

General

18. The Working Party was glad to note that, in accordance with the undertaking given by the German Government as set out in the Decision of 30 May 1959, import restrictions were being removed for products included in Annex A, in certain cases ahead of the time schedule. The Working Party hoped that it would be possible for Germany to advance the dates for the removal of the restrictions on the remaining items on the list and urged that firm dates for full liberalization be fixed for all the items remaining on the list in Section D of Annex A. On the other hand, the Working Party noted the almost total absence of progress in the removal of restrictions applied on the wide range of agricultural products included in Annexes B and E. Apart from one single item (candies) which had been freed from restriction, the maximum benefit that had been accorded to any product on the list had been the provision of additional import possibilities, in certain cases in the form of global quotas. Measures of this kind, which showed that the German Government was aware of its undertaking "to improve conditions of access to the German Market", would be welcomed by the CONTRACTING PARTIES, but expanding quotas would be considered desirable only insofar as there were genuine difficulties making it impossible for the German Government to remove the restrictions completely. The Committee believed, however, that the removal of restrictions was not impossible with regard to many of the products remaining under restriction. The Federal Republic had undertaken, as a condition of the waiver, to liberalize as many products as possible and to remove the restrictions at the earliest possible date, but there was no indication that any serious consideration had been given to removal of restrictions in the agricultural sector.

19. Further, while there had been in the past year increases in imports of many products, the proportional increases were often much more substantial in imports from EEC countries than in imports from GATT countries outside the EEC. The increase in certain imports from overseas sources in 1959 often reflected the effects of the severe drought in Europe in that year rather than of any measures of liberalization or improvements in the conditions of access to the German market. Members of the Committee felt therefore that under the present restrictive system there could be no assurance that the trend towards higher imports would be sustained.

20. In the course of the discussion, the representative of the Federal Republic had invoked various internal economic and social problems which, in the view of the German Government, prevented progress being made in the liberalization of imports. The Working Party was of the view that while such problems were real and might even be serious in certain particular sectors of the German economy, they could not by now be still so prevalent as to call for the protection of such a wide range of domestic products. The waiver had been granted to Germany on the ground that the sudden removal of restrictions on certain imports might cause serious injury to the domestic industries concerned, and the purpose was to enable the Federal Government to remove the restrictions over a period of time so as to avoid any such injury. Now that nearly half of the envisaged period of transition had elapsed, no significant

progress was yet in sight. Nor was there any indication that measures were contemplated by the German Government to ensure the progressive removal of the restrictions within that period. On the contrary, the position taken by the German representative seemed to imply that serious consideration of this problem would not be undertaken pending the adoption of a common agricultural policy by the EEC. This afforded little consolation to countries having a substantial interest in agricultural exports which were of the opinion that current proposals under consideration in EEC were likely to lead to régimes more restrictive than at present for many important sectors of agriculture. The negative attitude of the German Government, in refusing to undertake any definite commitment regarding the removal of restrictions and the related impediments to trade, such as the mixing regulations and the skimming charges, could not but be a source of grievance for contracting parties which had granted tariff concessions to Germany and assumed obligations under the General Agreement with respect to their imports from that country.

21. Some members of the Working Party pointed out in this connexion that contracting parties which relied principally for their external earnings on agricultural exports would be particularly entitled to question the equity of the situation; some of them could conceivably be faced with the question whether they should not review their commercial policies towards the Federal Republic. The problem was likely to be particularly acute for less-developed countries faced with difficulties arising from a penury of foreign exchange and burdened with a heavy demand for imports of capital equipment and other goods needed for economic development. Some of these countries were running a heavy trade deficit with the Federal Republic, while their exports to Germany continued to be hampered by the German import restrictions.

22. Many members of the Working Party also expressed concern about the attitude of the German Government towards the use of bilateral agreements; serious doubts were entertained on the likelihood or possibility of the conditions regarding non-discrimination set forth in paragraph 2(c) of the Decision being met, having regard to the prevalent use of bilateral quotas by Germany, as well as the practice of announcing global quotas of very short effective validity. The representative of Uruguay advised the Working Party that direct consultations were being held with the Federal Government regarding the discriminatory restriction against certain Uruguayan exports and that his Government reserved the right to raise the matter with the CONTRACTING PARTIES if necessary. The representative of Czechoslovakia expressed disappointment at the cancellation of certain open tenders resulting, in the view of the Czechoslovak Government, in an intensification of discrimination.

23. Members of the Working Party pointed out that the statistics supplied by Germany for the present consultation, while most useful, did not give a clear picture of Germany's import trade in agricultural products. They requested the German delegation to include in the next report details of imports of products included in Annexes A, B and E by country, quantity, and value for the last three available years; the quotas established during those years and the manner and extent, if any, that these quotas were allocated on a country basis.

24. The Working Party indicated that the present situation in regard to liberalization was unsatisfactory. They noted that in respect of the products listed in Annex C the German Government had set forth a programme under which quotas for the commodities concerned would be expanded from year to year. In the view of the Working Party similar quotas providing for annual expansion should be established for the commodities covered by Annexes B and E. Such quotas should wherever possible be open over the whole year.

25. The representative of the Federal Republic referred to the increases in certain important lines of imports in the past year, and recalled the progressive liberalization that had been achieved since the adoption of the waiver Decision. He explained that, as had been brought out in another forum of the CONTRACTING PARTIES, problems in the agricultural field were being faced by many European countries, for which no fundamental solution had yet been found or proposed. Pending a substantial change in the general situation no assurance could honestly be given by the Federal Republic regarding the date by which the restrictions on agricultural products now in force could be eliminated. The Federal Government would constantly endeavour to improve the conditions of access to its market and constantly examine the possibility of a further relaxation and removal of restrictions. All the views that had been expressed by the representatives of other contracting parties at the Working Party or at the plenary meeting on 4 November, would be conveyed to the Government of the Federal Republic which would undoubtedly give them its most serious consideration.