GENERAL AGREEMENT ON TARIFFS AND TRADE
Seventh Session of the Contracting Parties

United States Import Restrictions on Dairy Products:
Statements by the Leaders of the Delegations of
Netherlands, New Zealand, Denmark, Canada,
Australia and the United States

Statement by Mr. H. van Blankenstein, Dutch Delegation

By their resolution of 26 October 1951 the Contracting Parties recognized
that the import restrictions, a.o., of dairy products, applied in the United
States of America on the basis of Section 104 of the Defense Production Act
constituted an infringement of Article XI of the General Agreement on Tariffs
and Trade and that the circumstances were serious enough to justify recourse
by certain parties to Article XXIII paragraph 2.

Nevertheless the Contracting Parties counselled the contracting parties
affected to afford to the United States Government a reasonable period of
time, in order to rectify the situation through a repeal of Section 104.

Today, almost a year after the resolution of the Contracting Parties,
it appears from the reports by the United States Government that Section 104,
though amended, has not been withdrawn. Some types of cheese have been
freed from quantitative restrictions, but only because they are not
considered competitive with types of cheese produced in the United States.
Import restrictions on the types of cheese mainly exported by the Netherlands
so called Edam and Gouda - have not been lifted. Though the quota for these
types of cheese has for the time being been increased considerably - and we
appreciate the spirit in which this was done - the fact remains that not
only the quantitative restriction has been maintained but that discrimination
has been added.

The Netherlands Delegation have, therefore, been instructed to declare
the following:

a) It is felt as a grievous injustice that the Netherlands are prevented
   from obtaining the share that on the ground of pre-war performance
   they might expect in an expanding United States market for cheese
   or from making an effort to sell their butter in that market. This
   is happening at a time at which the Netherlands are striving hard
   to attain solvency through steadily increased exports, now that by
   the efforts of their people and the generous assistance of the Govern-
   ment and people of the United States they have recovered their
   production capacity once destroyed by the enemy.
b) Nevertheless it is not the immediate damage that the Netherlands Government consider most serious. They are convinced that the psychological effects of the institution and the maintenance of the restriction in question will be even more damaging for the countries to help increase exports to the United States so as to diminish the shortage of dollars which at the present has such a profound influence on world trade. It is a well known fact that European exporters often find the developing of a market in the United States a very costly affair. It is feared that the experience with import restrictions under Section 104 will discourage and has most likely already discouraged exporters to incur such expenses. The damage done by this psychological effect is incalculable. Anyhow it is certain that the United States policy in this matter has caused strong feeling in the Netherlands.

In view of these facts and in accordance with the second paragraph of Article XXIII of GATT, the Netherlands Delegation requests the Contracting Parties to decide that the Netherlands shall be authorized insofar to suspend the application to the United States of America of their obligations under the General Agreement on Tariffs and Trade so as to allow them to impose an upper limit of 57,000 metric tons on imports of wheat flour from the United States of America during the calendar year 1963.

It is of course understood that the measure referred to in paragraph 5 would be withdrawn as soon as the quantitative restriction on imports of dairy products from the Netherlands into the United States of America should be lifted.
Statement by Mr. K. L. Press, New Zealand Delegation

The Contracting Parties will recall that New Zealand was one of the countries whose delegations at the last Session drew attention in the most emphatic terms to the unfortunate effects of Section 104 of the United States Defense Production Act. We described briefly just how the implementation of that Section had affected New Zealand and we stressed the fact that the damage caused extended far beyond the direct economic loss inflicted.

However, in view of the assurance given that the United States Government were strongly determined to seek repeal of the offending section, New Zealand accepted the counsel given in the Resolution of the Contracting Parties and refrained, in the meantime, from that recourse to the provisions of paragraph 2 of Article XXIII which, in terms of the Resolution, we were fully justified in taking.

That was a year ago and we now come to the position as it is today. Despite the strong determination expressed by the United States Government last year, the Section has not been repealed, but has been re-enacted in only a slightly amended form. Under the amended section, there has been certain administrative action to relax the severity of some of the restrictions, and it would be ungracious not to record appreciation of this.

Nevertheless, we must point out that the so-called "liberalised" version of Section 104 has added to its already objectionable provisions a considerable element of discrimination - on the face of it merely between different types of cheese but, because certain countries normally produce certain types, in fact very largely discrimination between supplying countries.

I think it would be proper at this stage to indicate to the Contracting Parties, in a little more detail than we gave at the last Session, what the direct economic impact of these measures is on New Zealand. Here, of course, we are up against the common difficulty of determining what trade would have taken place in the absence of the restrictions, but we have made a careful study of potential demand in the United States, availability in New Zealand, and commitments to other countries of destination.

Taking first the case of butter, the position is that importation is completely prohibited, and neither under the original Section 104 nor under the amended version are we able to sell one pound of butter to the Continental United States or to one of our traditional markets for this product - the Territory of Hawaiii.

We estimate that from our 1951/52 production we could have sold enough butter in an open United States market to earn us over £4.5 million or about $12.5 million. It should be made clear that New Zealand did not suffer an overall loss of trade to this extent, as the butter we should have liked to sell to the United States we shall be able to dispose of elsewhere, but at considerably lower prices. Even so, there was a probable loss of over £1.5 million in total export earnings on this product alone.
With cheese the position is somewhat different, for we are able to do business within the quotas established under Section 104, and here we shall derive some benefit from the recent increase in the quotas applicable to the cheddar type cheese which we produce.

But, even with the increased quota, we shall be permitted to export to the United States this year considerably less cheese than in 1950 and 1951, and a very great deal less than we could sell there in the absence of the restriction. We estimate our loss of dollar earnings on this product at almost £0.5 million or about £1.4 million. Here again, the cheese will have to be disposed of elsewhere but the net result may well be a loss of something like £150,000 in overall export earnings.

A less important but still significant item is skim milk powder, and this provides an interesting example of rather less direct economic effects. We have not normally sold this product in appreciable quantities in the United States, but with the complete prohibition imposed on its importation into that country we have lost a market in a third country which, itself unable to export skim milk powder to the United States, now provides little scope for the marketing of our product. Another restricted product is casein, but here I think it would be fair to say that to date the application of the restriction has probably not been such as to cause economic loss to New Zealand.

We have also watched with considerable alarm the move in the United States to apply similar restrictive measures to other commodities - particularly whole milk powder - and we are pleased to note that, at least in the meantime, this is not being proceeded with.

At this point we may summarise the actual losses to New Zealand trade resulting from the restrictions. Firstly, there is a net loss in total export earnings. Perhaps a loss of something like £1.75 millions does not sound much against a total income from exports of £200 millions and more, but nevertheless it is not insignificant, particularly in the delicate balance-of-payments position we are in today. More important in our view, however, is the loss of potential dollar earnings of the order of £14 million.

We have all been told, over and over again, that restrictions on imports by the soft currency countries provide no real answer to their balance-of-payments problems with the dollar area. This action by the United States seems, on the other hand, to provide a very real answer, but in a rather different sense, to the efforts of those countries to find a solution by what they have been led to believe is the "respectable" method of increasing their exports. It is only too likely to cause a sense of frustration and to encourage the belief that restriction is, after all, the only effective action.

We all realise that domestic agricultural policies may conflict with general trade policies, as the United States representative pointed out to us on another occasion earlier in this Session, but we would certainly hope - and indeed all hope for any rational development of international trade ultimately depends on this - that conflicts of this kind may be resolved with due regard to international obligations.
The record of the United States in international affairs during the war and post-war years, and particularly in efforts to get world trade established on a sound basis (as witness GATT itself) is one that has perhaps never been excelled, and we in New Zealand still feel that this blot on the record will be erased in due course.

It is accordingly with the greatest regret that we must once more point out that a year ago the CONTRACTING PARTIES recognized that we and others were suffering, as a result of this breach of the General Agreement, such damage as to justify recourse to the provisions of Article XXIII:2, that the United States Government has failed to desist from its action, and that we are still suffering substantially the same degree of injury.

The New Zealand Government therefore feel that they have allowed a reasonable period of time, in terms of the Resolution of 26 October 1951, for the situation to be rectified, and that they are now free to institute measures of the kind referred to in paragraph 2 of Article XXIII.

We at any rate would not regard such action as completing a cycle of events, or as solving any problem, but merely as a step towards the only solution satisfactory to all parties - the restoration of the benefits accruing to us under the Agreement.
Statement by Mr. Gunnar Seidenfaden, Danish Delegation

I do not wish to go too much into detail as to the specific harmful effects to Denmark of the continuing existence of Section 104 of the United States Defense Production Act. These problems were thoroughly discussed at the last session and all the different aspects of the matter have also been the subject of bilateral discussions between Danish and United States representatives during the last year.

The important fact is that Section 104 is still in existence and while we fully appreciate that the United States Administration have done what they could within the limits of the Act to alleviate our situation, we must maintain that what has been done in the way of easing the import restrictions has had not only the positive effect of allowing some extra quantities of cheese to enter the States as compared to the situation a year ago, but also the negative effect of increasing the discrimination between the different foreign types of cheese and the different exporting countries, making it even more difficult for Denmark to gain a much needed market, once normal conditions are again established.

In short it may be said that the maintenance of Section 104 is harmful to Denmark in three ways: first the direct economic effects on our dollar earnings from the export of dairy products at a time when the dollar problem is perhaps the most important for our economy.

Secondly the indirect effects of Section 104 on our dollar export drive generally. It is not pessimistic to say that most of our efforts to get Danish private enterprises to put more energy and capital in the venture of establishing a much needed export market in the United States have been in vain. When our exporters tell us that they do not want to put money and efforts into an export drive, because they feel certain that they will be met by action on the line of Section 104, as soon as a market is created, we in the administration have no possibility of giving a reassuring reply to this argument.

The third main effect is of a more intangible nature but is in my opinion of considerable importance. The generous way in which the whole Marshall Plan was created and carried through and the excellent co-operation with our American friends, had the effect of establishing a considerable understanding and goodwill for the United States in Denmark. It is regrettable to state that the cheese case is doing a lot to spoil this valuable and most desirable development. This is a clearcut case easily understandable to the common man, and the fact is, that it has had the constant attention of very broad groups of the population. To the man in the street it is incomprehensible that the United States prefer to continue to assist us through Dollar grants from the American taxpayer, thereby keeping us in the constant state of a gift-receiving nation, instead of allowing us to pay in goods for the dollars we urgently need to buy American products. The common man understood the idea behind the Marshall Aid as a temporary measure to get us through the difficulties of the post-war years and feels that we have now reached the stage where trade should be substituted for aid. He feels genuinely worried by the fact that the import into the United States...
of our main export products, butter and cheese, is still being hampered, when considering the fact that the quantities ever to enter the States would be negligible in the immense American market, at the same time as the proceeds to a large extent would solve our dollar problem.

Accordingly, we are in full agreement with the Governments who feel that something should be done within the framework of GATT and will work together with these governments towards a solution making it possible for them to introduce compensatory action in such ways and at such time that they may make it most effective.

There is, however, one important side of this problem which I feel should be strongly underlined.

The introduction of compensatory action, even if it if formally perfectly correct and even if it is the fully legal way provided for in our Agreement as solution in a case like the present, is not a lucky or healthy solution and should under no circumstances be considered a final solution. The introduction of Section 104 and the import restrictions for butter by the United States of America and the counteraction by other countries in the form of compensatory measures is in our opinion a step in the direction of a situation which could be called "legalised economic warfare", and such procedures introduce a precedence contrary to the fundamental spirit and objectives of our Agreement, which are that our "relations in the field of trade and economic endeavour should be conducted with a view to developing the full use of the resources and expanding the production and exchange of goods."

Therefore, while supporting such contracting parties who ask for a decision making it possible for them to introduce compensatory measures effectively, I must request the Contracting Parties in their decision on this matter to make it clear that this is not a solution fully satisfactory to any or all contracting parties, and that accordingly the United States Government should be strongly urged to continue its efforts to get Section 104 repealed. Also, we should keep the item on our agenda and ask the United States for a report on the result of their endeavours next time we meet.
Statement by Mr. C. Isbister, Canadian Delegation

Almost exactly a year ago a debate took place in the Contracting Parties on this same subject of the United States import restrictions on dairy products, including butter, cheese and skimmed milk products. A resolution was adopted which recognized that tariff concessions granted by the United States to various countries under the General Agreement have been nullified or impaired within the meaning of Article XXIII, and further that the import restrictions in question constitute an infringement of Article XI of the Agreement which specifically prohibits restrictions of this type. Canada is one of the countries which was recognized as being injured by these United States measures which nullify the value of tariff concessions granted to Canada on cheese, and impair the effectiveness of Article XI of the General Agreement to which Canada and the United States are both signatories.

In this same resolution of a year ago the contracting parties affected were advised to delay recourse to compensatory action under Article XXIII in order to afford to the United States Government a reasonable period of time to rectify the situation through repeal of Section 104 of the Defense Production Act.

An entire year having elapsed and this restrictive legislation still being in force in the United States, it would be in accordance with the views of the Canadian Delegation for the Contracting Parties now to withdraw the advice which was given to those injured to delay in taking compensatory steps.

The Canadian Delegation has taken note of the Netherlands' proposal to reduce its purchases of wheat flour from the United States. In view of all of the attendant circumstances, the Canadian Delegation regards this proposed measure as being reasonable and justifiable.

The Canadian Government has followed with appreciation the strenuous efforts which have been made within the United States Government to obtain the repeal of these import controls. Some progress has been made and some amelioration has been granted to certain countries and to particular types of cheese. While some of the countries which produce cheese have been assisted by these measures, other countries which have not been assisted to the same extent are now suffering from discrimination, in addition to the continuing injuries about which they complained last year. The Netherlands Delegate and other delegates have already referred to this
matter. It must be remembered, furthermore, that the import restrictions have not been liberalized for other important products.

The Canadian Government has been much concerned about the damage done to Canadian trade with the United States in dried milk products and cheese in particular. My Government has also laid great emphasis from the beginning, however, upon the more far-reaching implications of these controls, which are inconsistent with the obligations assumed by the United States under the General Agreement on Tariffs and Trade. For all these reasons my Delegation is deeply disturbed over the continued infringement of the General Agreement by the United States by reason of its restrictions on dairy products. My Delegation wishes to urge the United States Government, through its representatives who are presented at this meeting, to continue to seek repeal of this restrictive legislation.

In conclusion, I wish to state clearly that the Canadian Government still hopes the United States will produce a satisfactory remedy for this situation. The Canadian Government has not decided to adopt any compensatory measures at this time. My Government wishes, however, to reserve all of its rights under the Agreement with respect to possible compensatory action in the future.
Statement by Mr. J.A. Tonkin, Australian Delegation

When perusing the tentative agenda for the Seventh Session of the CONTRACTING PARTIES, prior to my departure from Australia, I had hoped that the inclusion of this item on the agenda would have signified that positive action would have been taken by the Government of the United States to adjust the position which the CONTRACTING PARTIES had dealt with at their Sixth Session last year. It is my understanding that measures have been taken to alleviate the position somewhat in respect of certain dairy products, but that restrictions on their importation still remain.

I wish to direct the attention of the CONTRACTING PARTIES to the fact that a total restriction on the importation of butter into the United States of America still remains. No action has been taken to alleviate the position in any way in regard to that particular commodity, imports of which into the United States are prohibited.

There has been some adjustment in regard to cheese, but in the case of Australia, this has not been of any real value as our cheese quota is some 1100 lbs., which would now perhaps increase to 1200 or 1300 lbs., a negligible quantity which, in a trade sense, cannot be considered in the scheme of things. It would appear also that the position has not been improved in regard to the particular types of processed milk products in which Australia is interested.

The foregoing represents a statement of fact which, on examination, reveals that during the period intervening between the Sixth and Seventh Sessions of the CONTRACTING PARTIES, action has not been taken by the United States Government to eliminate the measures which are in conflict with the provisions of the GATT and which would make possible an improvement in the export position of the Australian products to which I have referred.

I would like to deal historically with the concessions which the Commonwealth Government negotiated with the Government of the United States at Geneva in 1947. The reduction in the tariff on butter, item 709, from 14 cents per pound, to 7 cents per pound, was, I understand, offered to Australia, New Zealand and Denmark. This item was bound directly to us. The concessions on cheese and dried milk were of interest to Australia, although bound to other countries. It will be apparent, therefore, that butter is the commodity which is of real importance to us. I would, however, wish to go a little further in connection with this matter and mention some of the other items which were negotiated in 1947. These included beef, mutton, lamb and wool but, additionally, there was a range of other agricultural products, with very few of other than agricultural and raw material interest.

It will be recalled that Australia was one of the few countries whose Parliament authorised the Government to proceed with ratification of the Havana Charter. This approval was subject to the condition that the Charter would not enter into force unless ratified by the Governments of the United States and United Kingdom. This action by our Government was influenced considerably by the outcome of the Geneva negotiations, and the condition expressed
the concern I am now expressing, as to the strength and permanence of the structure that had been established and the importance which these concessions had not only to Australian exporting interests but to Australia as a whole.

I can best underline the value we attached to the Geneva negotiations by recapitulating some of the statements which were made by the responsible Australian Ministers in the Parliament on the occasion when consideration was given by the Parliament to the ratification of the Geneva tariff schedules. It was then stated, inter alia: "Not only Australia, but the whole Sterling Area, is starved for dollars. The only way to increase the supply permanently is to increase exports to the United States. So convinced has the Government been of the necessity to break down the barriers to all exports to the United States - not only foodstuffs - that, for a while, as became known, we risked breakdown of the whole of the Geneva negotiations. Of all of the bilateral negotiations conducted at Geneva, those with the United States of America are considered to be by far the most important. A substantial trade with the United States is vital to a successful outcome of the whole project from the Australian point of view. The United States, with its rapidly expanding population and its high spending power, does provide great possibilities as an additional market to the United Kingdom, for our primary products, if the conditions of entry of such products are reasonably favourable." One of those products is butter, and, since the negotiation of the concession in 1947, we have not been able to export one pound of butter to the United States, even though we have had supplies available and have wished to engage in this trade.

The Commonwealth Government has now, on three occasions, engaged in consultations on dollar import restrictions and balance-of-payment difficulties and, in the present series, there has been a change of emphasis from finance to trade. Balance-of-payment problems are always difficult and, while I do not envisage that they could have been eliminated, I do think that our dollar import restrictions might have been less severe if, on the other hand, there had not been the restrictions and prohibitions, such as applied to dairy products, to bedevil the way of our exporters seeking to earn hard currency in the principle dollar market. My concern is admittedly with the measures that prevent importation of butter, cheese and dried milk products from Australia, but I think it also desirable to stress the wider implications of the matter. They point to the interest which all contracting parties, including the United States, should have in the elimination of measures that are not permitted by any of the provisions of the GATT.

There appears to be little doubt that the United States Government has, in respect to the measures now under discussion, departed materially from the spirit and the terms of the General Agreement and its underlying concept of the reduction of tariff barriers with a view to ensuring a freer flow of trade. Admittedly, they reduced the tariff rates on these particular commodities, but imposed restrictions and prohibitions against their entry which, from our point of view, have completely stopped the flow of exports to their country.
The question is whether some action could not have been taken by the Government of the United States to have solved this trade problem. I have studied with care Section 104 of the Defense Production Act as amended and approved on 30 June 1952. I have noted particularly Sub-Section A of that Section. It does appear that the United States' dairying industry would not have been damaged materially, particularly during the last twelve or eighteen months, if action had been taken to allow the importation of butter, not only from Australia, but also from other supplying countries, and particularly those countries which did directly negotiate the butter concession with the United States Government at Geneva in 1947. The Geneva concession itself seems to bear witness to the practicality of such a procedure, because it was in the nature of a tariff quota, which would seem to indicate that even at that stage due regard was had for the softness of this American industry. The concession reduced the duty but it applied that reduction to only 60 million pounds annually, of which 50 million had to be imported in the five months ending the 30 March.

In view of the importance I have indicated we attach to the Geneva negotiations with the United States, I wish to emphasize that the important consideration is the preservation of a balance by the maintenance of those concessions to which we attach importance, not the establishment of a balance in defection from the provisions of and the concessions negotiated under the Agreement.

The failure of the Government of the United States to take action to rectify the nullification of a concession must cause my Government to raise the question whether understandings reached in 1947 and embodied in subsequent tariff and preference concessions can continue to operate unchanged. The initiative in the taking of action to alleviate the position still remains with the Government of the United States, and I would again urge upon the United States Government the lifting of these restrictions, so that countries in balance-of-payment difficulties may be given the opportunity to earn badly needed dollars. The alternative is the less satisfactory course of compensatory measures being taken by my Government.

Earlier in my remarks, I referred to the fact that the United States Government is continuing its restrictive import policy on dairy products in contravention of the provisions of GATT. Therefore, it has not been possible for my Government to give detailed consideration to any compensatory measures which it may ultimately determine it is necessary for it to take to redress the balance.

In this respect, my Delegation has noted the provisions of Article XXIII and suggests the distinct possibility of a Special Meeting of the CONTRACTING PARTIES to give the necessary authorisation to my Government for the suspension of such obligations or concessions under this Agreement as they determine to be appropriate in the circumstances.
Statement by Mr. Raymond Vernon, United States Delegation

There is very little, I think, that needs to be said by the United States in response to the statements of the other delegations which you have just heard.

I think I need not emphasize to the Contracting Parties the rôle which the United States has played in the liberalization of world trade since the end of World War II. In fact, part of the reason why these dairy product restrictions have attracted the attention they have in the world is because they have represented a marked deviation from the general policies which the United States has followed, rather than because they represented our typical policies. But I need not labour this general point before the Contracting Parties.

At the Sixth Session, the United States Delegation readily acknowledged that Section 104 of the Defense Production Act required us to take measures in conflict with the provisions of the GATT. As a result, our delegation undertook on behalf of the Executive Branch of our Government to make every effort to end this conflict. Despite these efforts, our legislation still remains in force.

Nevertheless, as a result of these efforts, it has been possible for the United States to reduce the impact of these restrictions in some quarters. For some products, we have been able to eliminate import restrictions altogether; for others, we have found it possible to enlarge existing quotas substantially. This liberalization of our import restrictions was not intended to, and in our view did not introduce discrimination in our existing restrictions, since the liberalization took place in well-recognized cheese types without regard to source.

As far as we are concerned, however, our objective still is what it was at the Sixth Session, namely, the complete elimination of these restrictions. We recognize the right of other contracting parties to withdraw concessions reasonably necessary to restore the balance of the Agreement and we would have no objection to the withdrawal of concessions, which, on examination, prove to be of that kind. However, we would not feel that this case was closed simply because other contracting parties had withdrawn such concessions. The withdrawal of concessions can hardly be called a remedy when the objective of the Agreement is to hold down restrictions which conflict with the expansion of trade. Our aim, therefore, is the removal of the United States restrictions which gave rise to this case, and the removal of any measures of compensation which other contracting parties may have taken in the meantime.