CONSULTATION UNDER ARTICLE XXII

Consultation with the Federal Republic of Germany concerning the Maintenance of Import Restrictions

DRAFT AGREED MINUTE

1. At the Thirteenth Session of the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade it was agreed that contracting parties who considered that their interests under the General Agreement and their trade interests were adversely affected by the maintenance of import restrictions by the Federal Republic, should jointly consult with Germany under the provisions of Article XXII in order "to make a detailed analysis of the quantitative restrictions on imports still maintained by Germany and their trade effects, to serve as a basis for further consideration by the contracting parties of the possibilities of finding solutions within the framework of the GATT to the problems arising from the maintenance by Germany of such restrictions", and that a report should be made by the participating contracting parties to the Fourteenth Session.

2. The contracting parties participating in the consultations with the Federal Republic, which opened in Geneva on 19 January, were Australia, Austria, Canada, Czechoslovakia, Denmark, Finland, Greece, India, Japan, [the Netherlands], New Zealand, Norway, Sweden, the United Kingdom and the United States. The Executive Secretary acted in a personal capacity as Chairman at the request of the participating countries.

3. The consultation was conducted on the basis of an item-by-item examination of the products included in the German negative list (MGT/130/58/Rev.1). This examination was carried out in the light of the provisions of the General Agreement and covered such aspects as the reason for the restriction, the method of application, the effects on trade and the prospects for removal or relaxation.

Prospects for Liberalization

4. The delegate of the Federal Republic confirmed that the liberalization measures which his Government had previously indicated would be introduced on or before 31 December 1958, had been implemented.

5. The participating countries referred to the liberalization measures which Germany proposed to introduce on or before 31 December 1960 and expressed the view that there was no reason for these restrictions to be
maintained until the end of the year. They urged the Federal Republic to
implement these liberalization measures without delay and the German delegate
undertook to inform his Government of the views expressed.

6. In respect of a few items, the German delegation indicated that the
possibility of removing the restrictions would be reviewed but for the
remaining items in the negative list the German delegation were unable to
give any indication of when the restrictions might be removed.

7. The German delegation said that where an item was shown in the negative list as
having been liberalized to OECD countries, these measures also applied to
the dependent overseas territories of the United Kingdom.

Restrictions on Agricultural Items

I. Justification by Reference to Marketing Laws

8. The representatives of the Federal Republic and of the other partici­
pating governments agreed that discussion of items covered by the Marketing
Laws should be without prejudice to the views which had previously been
expressed on the question whether or not restrictions operated under the
Marketing Laws were covered by the reservation in paragraph 1(a) of the
Torquay Protocol.

9. The participating countries noted that the restrictions exercised under
the laws included some operated by Decree issued under discretion allowed
in Article 14 of the Grain Laws, and that this discretionary power might
require further examination.

10. For a number of products not covered by the Marketing Laws, the German
delegation indicated that the restrictions were associated with the Marketing
Laws. These items were restricted either because they were directly com­
petitive with the Marketing Law items or in order to protect domestic pro­
cessing industries which used materials covered by the Marketing Laws and
were thus placed at a disadvantage compared with overseas producers, as they
were compelled to buy this part of their raw materials at prices above the
world price. The participating countries questioned the need foreseen by
the German delegation for the indefinite maintenance of these restrictions,
particularly in view of the recent liberalization of certain items falling
in the same category, and expressed the view that in the total cost of pro­
duction of items within this group, the element which was directly attributable
to the high cost of the material controlled under the Marketing Laws varied
considerably, and considered that in some cases this might be negligible.
The German delegation stated that it was unlikely that it would be possible
to remove the restrictions from items related to Marketing Law items within
the near future.
11. The delegates of certain participating countries disagreed with the German statement that quotas applied under the Marketing Laws were allocated in a non-discriminatory fashion in accordance with the provisions of Article XIII, since many of the quotas were subject to bilateral negotiation. The German delegation stated that they would be prepared to consult with countries on items of particular interest in accordance with Article XIII:2(d).

12. Reference was made to the import levy which is imposed in the Federal Republic on wheat and it was pointed out that the extent to which the Marketing Laws involved an increase in import charges beyond those charged when the duty had been bound, was contrary to Article II:1(b). The participating countries noted that this was in breach of an obligation under Part I of the General Agreement and that therefore the legal argument about the reservation in the Torquay Protocol did not apply to this case.

13. The German delegate stated in reply to a question that it was not general practice to examine the degree of protection given to Marketing Law items to find out if this were really essential, but it was recognized by the Federal Republic that the Marketing Laws were, to some extent, out of date and required revision; this could not, however, be undertaken at present because of the complications created by the formation of the Common Market.

II. Other Explanations

(a) **Article XX**

14. The German delegation stated that restrictions on the import of certain livestock and seeds were imposed for reasons covered by paragraph (b) of Article XX. The other participating contracting parties agreed that an exception to the rules of the General Agreement was provided for in Article XX(b) for restrictions imposed for reasons of animal or plant health, but they did not examine in detail the applicability of the provision in Article XX to these particular restrictions. They noted, however, that in certain cases there appeared to be an additional element of protection and sometimes of discrimination in the administration of the restrictions.

(b) **Article XI**

15. The German delegate stated that restrictions were imposed on wine and grapes under the German Wine Law. Since the Wine Law also provided for a restriction of domestic production, these restrictions were justified under Article XI:2(c)(i) of the General Agreement.
(c) Protection against Subsidized Imports

16. The German delegate explained that import control on certain items was designed to protect the domestic industry against possible damage from subsidized imports. The other participating countries noted that where dumping or subsidization causes or threatens material injury to industries in the territory of a contracting party, the General Agreement provided remedies. The General Agreement does not, however, permit the use of import controls as a means to meet subsidization. The German delegation explained that the machinery for introducing countervailing duties was so unwieldy as to make the imposition of these duties an impractical solution, but they undertook to inform their Government that in the view of these participating countries measures more compatible with the spirit of the General Agreement should be considered.

(d) Protection of Industry against Possible Damage

17. In respect of a further group of products, the German delegation explained that import controls were operated in a non-restrictive fashion, but were maintained because of the possibility of sudden substantial increases in imports. Other participating countries pointed out that the General Agreement provided under Article XIX that a country faced with sudden importation of any products on such a scale and under such conditions as to cause or threaten serious injury to domestic producers might take protective action. It was also pointed out that action taken under Article XIX would be non-discriminatory, whereas the restrictions maintained by Germany in this case were applied in a discriminatory fashion.

(e) Negotiations of Minimum Price Agreements within the European Economic Community

18. In the case of a number of fruit and vegetable items, the German delegate said that these were to be the subject of consideration with a view to establishing a minimum price system under the Rome Treaty and it was essential for Germany to reserve the right to impose restrictions on these products until the relevant decision had been made within the framework of the Community. The removal of the restrictions at this date would prejudice the possibility of applying the agricultural provision of the Rome Treaty. Accordingly the Federal Republic was considering seeking a temporary waiver from the provisions of the General Agreement in respect of these items, and it was hoped that this request would be treated sympathetically since trade in the items concerned was largely confined to the European area.

19. The participating countries did not examine in detail the German case but pointed out that problems which affected fresh fruit and vegetables (for which the minimum price system had been evolved) did not apply to frozen foods and, in this case at least, it seemed likely that restrictions would be simply for the purpose of protecting the domestic processing industry. In the view of these participating countries, therefore, it would not be appropriate for these items to be included in a waiver application of the kind described by the German delegation.
(f) Restrictions maintained for other Protective Reasons

20. It was noted that the Federal Republic would be unable to consider liberalization or the extension of liberalization beyond OEEC countries in a number of cases because:

(i) domestic producers were unable to compete with low-priced imports from overseas; or

(ii) liberalization for OEEC countries had resulted in strong competition from these countries and domestic producers could not face the increased competition which would result if liberalization were extended.

It was also noted that there was no provision in the General Agreement for the imposition of restrictions for protective purposes.

21. The participating countries noted with regret that the Federal Republic was considering the deliberalization of cheese and powdered milk items because of the increased imports which had resulted from liberalization within OEEC and it was hoped that the Federal Republic would bear in mind in considering deliberalization, the fact that German exports of cheese in 1958 had been substantial. The German delegate stated in reply that as imports of cheese had increased while home production had declined deliberalization might be justified by reference to Article XIX.

Administration of Restrictions

22. In several cases where an item had been liberalized from OEEC countries only, the German delegation stated that control on imports from other areas was applied so liberally as to amount to de facto liberalization. Several participating countries disagreed that quotas were provided to meet all the demands and expressed the view that, as the German delegation claimed, the system of de facto liberalization by means of open licensing or global quota was not an effective restriction to trade, but was simply designed to maintain a degree of control for possible future use, it should be removed as safeguarding action was specifically provided within the General Agreement.

23. It was observed in discussion on the allocation of bilateral quotas that this system did not allow countries who did not take part in bilateral agreements to gain access to the German market, and the view was expressed that countries which had ceased to have balance-of-payments difficulties should take steps to discontinue bilateral agreements which encouraged the use of quotas for bargaining purposes.
General Observations

24. In discussion on tuna fish, in which the delegate of Japan said that his country had a substantial interest, the German delegate stated that restrictions on fish were necessary to protect the industry which was not yet able to face competition, and that in the case of tuna fish there was in addition the fear of sudden increases in imports which made only a system of de facto liberalization possible for non-OECD countries. The delegate for Japan pointed out that there was in his country a system of control to prevent sudden increases in exports, and urged the German Government to consider full liberalization in view of the safeguards which were provided in Article XIX.

25. It was pointed out by participating countries that it was only complete freedom from restriction which enabled new markets to be developed and that if a trader found that quantitative restrictions, no matter how liberally applied, existed in a potentially new market, there was a disincentive to export. It was felt therefore that restrictions should be regarded by Germany as an exception rather than the rule, and that the contracting parties had a right to expect such deterrents to trade to be removed consistently with Germany's GATT obligations.