1. Since June 1957, when Germany no longer became entitled to maintain import restrictions for balance-of-payments reasons under Article XII, there has been continuing effort by the Contracting Parties to secure compliance by the Federal Republic with its obligations under the General Agreement. 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 consultations opened in Geneva on 19 January and continued to 31 January 1959. The contracting parties participating in the consultations were Australia, Austria, Canada, Czechoslovakia, Denmark, India, Japan, New Zealand, Sweden, Norway, the United Kingdom and the United States. The delegation of the Federal Republic included officials from the Federal Ministry of Economics and the Federal Ministry of Food, Agriculture and Forestry. At the request of the participating countries the Executive Secretary acted in a personal capacity as Chairman.

3. The consultation was conducted on the basis of an item-by-item examination of the products on which Germany now maintains import restrictions (MT/130/58/Rev.1). The examination was carried out within the framework of the provisions of the General Agreement. In the course of the examination particular attention was given to the reasons for the maintenance of the restrictions, the method of applying the restrictions, the effect of the restrictions on trade and the prospects for the relaxation or removal of the restrictions. It was agreed at the outset that discussion of the items covered by the agricultural Marketing Laws should be without prejudice to the views which had previously been expressed on the question whether the restrictions operated under the Marketing Laws were covered by paragraph 1(a) of the Torquay Protocol.

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4. The main points which emerged during the consultations are set out below.

**Prospects for Liberalization**

5. 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.

6. The participating countries referred to the liberalization measures which Germany had already indicated would be introduced on or before 31 December 1959. They noted that the German delegation had given no reason why these restrictions should not be removed at once and requested the Federal Republic to implement these measures without delay. The German delegate undertook to inform his Government of the views expressed and stated that for a number of items it was their intention to implement the proposed liberalization measures on 1 July 1959.

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

**Restrictions on Agricultural Items**

1. Justification by reference to Marketing Laws covering sugar, grains, fats and oils and meat

8. 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.

9. 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 competitive with the Marketing Law items or in order to protect domestic processing 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.
10. 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 production 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. They added that such possibilities could be examined after a decision had been taken on the implementation of the relevant provisions of the Treaty of Rome. They subsequently undertook to review the necessity for maintaining restrictions on the processed goods.

11. The German delegation stated that quotas applied under the Marketing Laws were allocated in a non-discriminatory fashion in accordance with the provisions of Article XIII. They further stated that they would be prepared to consult with countries on items of particular interest in accordance with Article XIII. The other consulting countries were not satisfied that in practice the administration of the restrictions fulfilled the requirements of Article XIII that, where it is not practicable to grant a quota covering the total trade in any items, individual quotas should be allocated to countries having a substantial trade interest in the product. They feel that substantial adjustments in the general administration of these restrictions would be necessary before the system could be claimed to be in line with the criteria of non-discrimination laid down in Article XIII.

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 list of products subject to the Marketing Laws was to some extent out of date and required revision; this could not, however, be undertaken at present because of the complicated problems created by the formation of the Common Market. Other participating countries could not accept the principle that the removal of protective restrictions should be made contingent on the development of policies in the European Economic Community.
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, and for seeds also by Article XI(2)(b). 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 XI 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. They also expressed the view that where the Federal Republic sought to rely on the provisions in Article XX, consideration should be given to the establishment of procedures which would enable external suppliers to comply with the laws and thus be freed from restriction on that ground alone.

(b) **Article XI**

15. The German delegate stated that restrictions were imposed on wine and grapes under a Decree issued pursuant to the Wine Laws. Since the Decree also provided for a restriction of domestic production, those 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 an established industry in the territory of a contracting party, the General Agreement provided in Article VI for remedies. The General Agreement did not, however, permit the use of import controls as a means to meet subsidization. These countries also noted that the use of restrictions to meet subsidized competition had the effect of penalising the non-subsidizing countries equally with those against whose subsidies the Federal Republic sought to protect itself. The German delegate explained that they had chosen to maintain import controls in these cases because of the unwieldiness of the machinery provided in their own domestic countervailing legislation but they undertook to inform their Government that in the view of their participating countries measures more compatible with the spirit of the General Agreement should be considered. The other participating countries also noted with regret that the Federal Republic was considering the liberalization of cheese and powdered milk items because of the increased imports which had resulted from liberalization within OECD. Leaving aside the question of principle involved in the reimposition of restrictions for these reasons, they noted that German exports of cheese in recent months had been substantial. The German delegate suggested in reply that as imports of cheese had increased while home production had declined, liberalization might be justified by reference to Article XIX.
(d) Protection of Industry against Possible Damage

17. In respect of a further group of products the German delegation explained that import licences were granted freely but that the control was maintained because of the possibility of sudden substantial increases in imports. The other participating countries pointed out that Article XIX provided that a country faced with the sudden importation of any product on such a scale and in such conditions as to cause or threaten serious injury to domestic producers might take protective action. They noted, however, that Article XIX provided safeguards for other countries whose interests were affected by such emergency action including consultation and compensation in appropriate cases. By maintaining the present unilateral control the Federal Republic deprived interested countries of these safeguards. It was also pointed out that action taken under Article XIX would be non-discriminatory, whereas the restrictions maintained by Germany in these circumstances were applied in a discriminatory fashion. Finally it was noted that the General Agreement did not permit the maintenance of import controls against the mere apprehension of possible damage.

(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. Without prejudice to the general question whether a waiver could be granted, these participating countries therefore took the view that it would not be appropriate for the frozen food items to be included in a waiver application of the kind described by the German delegation.

20. In a large number of cases the German representatives indicated that the restrictions were maintained solely as a means of protection - either of the domestic agricultural producer or of the agricultural processing industries. In a number of cases the restrictions were applied on a discriminatory basis in order to afford protection against more efficient competition from particular countries or particular areas of the world. On certain other products imports were only permitted from specific countries under bilateral agreements.
21. The other participating countries took the view that protectionist reasons lay behind the bulk of the German restrictions while the German representatives had indicated that for certain groups of products the restrictions were primarily maintained for other reasons, such as the protection of plant or animal life, the incidence of the Marketing Laws, and the possibility of sudden damage from a flood of imports. Even for many of these items the controls were administered in a highly protectionist manner and often on a discriminatory basis.

**Administration of Restrictions**

22. The participating countries noted that there was no provision in the General Agreement for the imposition of restrictions for protective purposes and that in accordance with German obligations under the Agreement, protective restrictions should be removed. In adhering to the General Agreement the Federal Republic like all other contracting parties had renounced the use of quantitative controls on imports for protective purposes except in certain limited and clearly defined circumstances. The continuation of protective controls by Germany in breach of her undertakings incidentally had the effect of nullifying tariff concessions previously granted and brought into question the whole balance of advantages in the General Agreement.

23. 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.

24. 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 if, 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.

25. 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.
Miscellaneous Observations

26. 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-OEEC 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.

27. Other delegations invited the attention of the German delegation to Article 234 of the Rome Treaty and stated that this should not be construed as authorizing Germany to give priority to its obligations under the Rome Treaty over those under the General Agreement. In reply, the German delegation gave an assurance that Germany had no intention of giving priority to its obligations under the Rome Treaty.

28. Further, the delegations of a number of countries were of the opinion that none of the explanations given by the German delegation could justify the further maintenance of discriminatory treatment against any country or any area and urged the Federal Republic to extend liberalization to all the Member countries of the General Agreement.