

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES  
Sixth Session

## SUMMARY RECORD OF THE TWELFTH MEETING

Held at the Palais des Nations, Geneva,  
on Wednesday, 26 September 1951 at 3 p.m.

Chairman: Mr. Johan MELANDER (Norway)

Subject discussed: Termination of Obligations between the United States  
and Czechoslovakia.

### Termination of Obligations between the United States and Czechoslovakia under the General Agreement (GATT/CP.6/5 & Add.1 & 2)

The CHAIRMAN said that the meeting had before it the proposal by the United States for a Declaration on the suspension of obligations between the United States and Czechoslovakia. The Czechoslovak delegate had asked at the previous meeting to be allowed to raise a point of order.

Mr. TAUBER (Czechoslovakia) explained that he raised a point of order because his delegation did not consider this a suitable item for consideration by the Contracting Parties in that the substance of the matter was political. He referred to the statement submitted by the United States representative in August (document GATT/CP.6/5). Although not intending to enter into the substance of the paper at the present time, he wished to state that the reasons invoked by the United States were entirely political and were therefore, by the provisions of Article 86:3 of the Havana Charter, outside the scope of the Contracting Parties. Mr. Tauber referred to the Chairman's ruling based on Article XXV:5 that the item should be placed on the agenda. Again he did not wish to discuss at the present time whether Article XXV was of a nature to justify a debate on this item. Nevertheless, he believed that it was unlikely that the contracting parties would accept the economic pretexts alleged by the United States in this matter. The basis for the United States action was to be found in Law 1612, Section 5 of the Trade Agreement Extension Act, the sole aim of which was to find a means to intensify the hostile policy of the United States towards the Soviet Union and the popular democracies. The section which empowered the President to sever commercial relations with those countries was based entirely on political considerations. Mr. Tauber deplored the lack of scruples of the United States Congress in violating the international obligations of the United States and proceeded to quote from a Senate report.

The CHAIRMAN at this point asked the delegate from Czechoslovakia to limit himself to the actual point of order. A discussion had already taken place at the first meeting of the Session on whether the item should be included in the

Agenda. He did not consider that the Czechoslovak delegate was advancing any new arguments against its inclusion. However, on the understanding that the Czechoslovak delegate would address himself to whether there were new facts or arguments to justify the exclusion of this item from the Agenda, he would permit him to continue.

Mr. TAUBER (Czechoslovakia) reiterated that the United States motives were political and that political differences should be settled, in the spirit of Article 86 of the Havana Charter, before the competent organ of the United Nations. He considered it clear that the Contracting Parties had no jurisdiction to deal with this matter. Furthermore, it seemed to him difficult for the Contracting Parties to discuss whether the question was appropriate or not since they were not fully informed of all its aspects. Dr. Tauber's statement is reproduced in full in Press Release GATT/45.

The CHAIRMAN said that the Czechoslovak delegate had repeated the proposal that he had made at the first meeting for the removal of this item from the Agenda and that he did not appear to have produced any new argument in favour of his proposal. There being no support for the proposal to delete the item, he would rule that it remained on the Agenda.

Mr. THORP (United States), referring to the reference that had been made to Article 86:3 of the Havana Charter, thought it would be an interesting question to determine the extent to which a Charter article, not mentioned in the General Agreement, was applicable to the Contracting Parties; further, it should be recalled that this article had been interpreted at Havana as relating to particular controversies of which the United Nations or another appropriate international organ was already seized.

The United States proposed that the Contracting Parties, acting in accordance with Article XXV of the General Agreement, should set aside the commitments of the Agreement as applied between the United States and Czechoslovakia. He pointed out that the request was not a unilateral proposal but would free Czechoslovakia equally of its obligations towards the United States and was therefore consistent with the principles of equity and reciprocity underlying the Agreement. Furthermore, the terms of the proposal would apply exclusively to the relations between the United States and Czechoslovakia and would not affect the obligations between either government and other contracting parties in any respect.

Mr. Thorp explained the reasons why the United States felt compelled to take this step. His Government had known for some time that the economic system of Czechoslovakia was being manipulated in such a way as to nullify the economic benefits which the United States had expected from the General Agreement. Under ordinary circumstances, such actions would properly be the subject of a complaint by the United States under Article XXIII. His Government, however, felt that there could be no real remedy under the provisions of that Article at the present time because there was no reasonable anticipation of an improvement in United States commerce with Czechoslovakia so long as the present state of relations between the two countries existed. It seemed to him an elementary proposition that fruitful economic relations between any two countries and the value of commercial obligations must presuppose some reasonable degree of

tolerance, respect and good faith between them. This was lacking between the Governments of the United States and Czechoslovakia at the present time. Since the negotiations which had taken place between the two countries in 1947, Czechoslovakia had radically altered its entire economic system and the general attitude of its government towards the United States. Since that time the relations between the two Governments had steadily deteriorated and had by now fallen below the minimum degree of tolerance and respect which was essential to the effective discharge of the obligations of the Agreement. It was in these circumstances that the United States asked that the obligations be formally dissolved. He emphasised that his proposal introduced no new principle of international law. Clauses for the termination of international commitments had almost always been included in bilateral commercial agreements and treaties. In so far as the General Agreement was concerned no country's right to withdraw entirely from the Agreement would be questioned. The fundamentals of the United States proposal, envisaging a situation where two countries continued to be parties to the Agreement although the Agreement was not applied between them, was already accepted in Article XXXV. Unfortunately Article XXXV was not incorporated in the Agreement at the time the United States and Czechoslovakia became contracting parties and it was not until after that time that the Government of Czechoslovakia fundamentally altered the nature of its relations with the United States.

The United States did not wish to inject political disputes into the debates of the Contracting Parties and did not therefore ask the Contracting Parties to discuss any of the political issues between the two countries nor to decide on the right or wrong of any of the causes or issues. The United States asked the Contracting Parties only to recognise the evident fact that, irrespective of the merits of any political issue, the incompatibility between the two Governments was at the present time so fundamental that the commercial policy obligations under the Agreement could not be fulfilled and should, of right and in honesty, be suspended. His Government considered that, in taking such action, the Contracting Parties would not create a precedent for controversies between governments on well-defined or specific issues. The present case referred to the general state of relations between two governments extending to all matters, and this was clearly an "exceptional circumstance" which would not pertain to other situations less fundamental and sweeping in character.

The full text of Mr. Thorp's statement is to be found in Press Release GATT/46.

Mr. NATADININGRAT (Indonesia) thought the Contracting Parties should decide whether Article XXV was the most appropriate article under which this matter should be decided.

The CHAIRMAN said that although no reference was made in the United States proposal to any particular article their statements apparently envisaged action under Article XXV.

Mr. PERERA (Ceylon) considered that, since the Contracting Parties were governed by a document, the quotation of an article was desirable.

The CHAIRMAN pointed out that there was no requirement that a resolution or declaration of the Contracting Parties refer to a particular article of the Agreement. The Contracting Parties, by virtue of Article XXV were empowered to make such a Declaration.

Mr. SAHLIN (Sweden) stated that the draft declaration was based on very broad considerations. He considered that Article XXIII contained appropriate conditions to settle such a matter, particularly the preamble to paragraph 1 and sub-paragraphs (b) and (c). Certainly it would be preferable to settle the matter in accordance with a specific article of the Agreement.

Mr. ARGUROPOULOS (Greece) wished to add some considerations to those put forward by the United States delegate. The Czechoslovak delegate had argued that it was not permissible for the Contracting Parties to invoke political considerations. Certainly there could be no disagreement on the fact that only economic arguments were relevant but it should not be forgotten that economic effects were often the result of political causes. In studying the effect it was often difficult to remain silent on the cause. In relations with Czechoslovakia, countries were faced with a system of state-trading where all commercial dealings were subordinated to the general policy of the government. There was no freedom in commerce and the laws of supply and demand did not operate. He gave as an example the trade between Greece and Czechoslovakia which, before the war, had been very active. Attempts had been made since the war to resume commercial relations and a commercial treaty had been signed in 1947. Trade between the two countries, in spite of the treaty, had however diminished steadily. The marked decrease was not due to any decline in the demand for Greek goods, but rather to the fact that licences for import of Greek goods or for the export of goods to Greece were denied by the Czechoslovak authorities. This was not surprising since most Greek goods were of little interest to a country whose economy was entirely subordinated to its political interests. There seemed to Mr. Argyropoulos an element of opportunism in the attitude of the Czechoslovak Government. Commercial principles were invoked only when they would be useful to the Czechoslovak political interest, and they could hardly complain if other countries also acted in their own interests. He agreed with the arguments advanced by the United States and fully supported the proposal.

Mr. DHARMA VIRA (India) said that very important issues were raised by this matter and his Government had considered it with great care. He referred to Article 86:3 of the Havana Charter. Although Chapter VII of the Charter was not specifically included by reference in Article XXIX of the Agreement, it had surely been the general intention that the principles of the Charter should be guiding ones for the Contracting Parties. If political differences were allowed to affect commercial treaties, the binding force of international agreements would be very seriously weakened. It seemed to him, however, that if any two contracting parties had arrived at a state where trade between them was impossible, then the Agreement itself could hardly be expected to function between them. It would be difficult to compel them to do something with which they totally disagreed and the only result would be increased friction that would defeat the purpose of any attempt at settlement. Such a course would be unrealistic and impracticable.

Article XXV:5 (a) laid down a procedure by which obligations could be waived. Although no specific "exceptional circumstances" were mentioned in this article, the fact that the relations of two contracting parties were such that neither was able to deal with the other appeared to his Government to be an exceptional circumstance that would come under its terms. His Government did not feel that they could stand in the way of a contracting party wishing to take action in such special circumstances. He referred to the declaration proposed by the United States and considered that the use of the word "suspension" rather than "termination" was of great importance. He also noted that the declaration envisaged reciprocal action and would not affect the obligations of either the United States or Czechoslovakia with other countries. The proposal appeared to take a practical view of the situation and he would support it. He wished it to be clear, however, that his delegation was not taking sides on the system of economic administration in either country and that they would greatly deprecate any such attempt by the Contracting Parties. They were interested only in reaching a practical solution of the problem.

Mr. SVEINBJØRNSSON (Denmark) considered that this was a matter of such great importance that as many delegates as possible should have the opportunity to express their views and have the time to communicate the substance of the debate to their respective governments. He hoped also to hear from the Czechoslovak delegate. When the question of placing this item on the Agenda had first been discussed he had agreed to its inclusion as he felt unable to judge before there had been some discussion of the matter. His country, when it had first considered the matter, thought it was perhaps largely political but the Contracting Parties had since decided that the item should be discussed. He thought it would be profitable to deal with the matter under some specific article and was particularly anxious to hear the Czechoslovak delegate on this subject since his statements hitherto had been confined to the impossibility of discussing the matter at all. Above all contracting parties should be concerned that whatever decision was taken on this matter should not damage the Agreement.

Mr. NATADININGRAT (Indonesia) supported the Danish proposal that time should be allowed for communication with governments.

Mr. TAUBER (Czechoslovakia) wished to speak first with reference to the statement by the United States delegate. The United States delegate claimed that the request of the United States was based on the idea of mutuality and had referred to Article XXXV. If a contracting party were given the right to withhold application of the Agreement to an existing contracting party, a dangerous precedent would be created and one which would, in fact, undermine the fundamental principles of all international treaties. There was a great difference between states who refused to undertake obligations to another state at the time of entering into an agreement and states which had undertaken obligations with another state which they later wished to violate. In any event the contention by the United States that Article XXXV was not in effect at the time when Czechoslovakia became a contracting party was incorrect. Czechoslovakia became a contracting party on 21 April 1948 and Article XXXV was inserted into the General Agreement by a protocol dated 24 March and effective from 15 April of that year. Furthermore, at that time the economic policy of Czechoslovakia was quite clear. It was not Czechoslovakia that had changed its policy in the interval and abandoned the principles which had been laid down

for commercial policy in 1946 but rather the United States. The United States Congress itself called this action economic cold war. It was contrary to every principle of the Agreement and Mr. Tauber was convinced that no contracting party could identify itself with such a policy.

The United States in 1947 had asked and obtained from Czechoslovakia concessions on certain products. Later the United States Government forbade the export of many of these products to Czechoslovakia. The question of discriminatory application of export licences had already been raised by his Government at Annecy. Naturally the action by the United States had reduced the volume of exports of the United States to Czechoslovakia and diminished the value of the concessions obtained by the United States, but the situation had been entirely created by the United States and they could not reasonably complain that Czechoslovakia had caused it.

The United States delegate had referred to Article XXV. Mr. Tauber wished to point out that the words "exceptional circumstances" had been defined in the Report of the First Session in London and again at the Second Session of the Preparatory Committee by the United States delegate, Mr. Kellog, and French delegate, Mr. Palthey. It was clear from these definitions that "exceptional circumstances" referred to such natural catastrophes as floods, for example, which would place the country involved in grave economic danger. Czechoslovak imports into the United States hardly fell into such a category. The United States proposal resulted entirely from their own action in forbidding exports and thereby depriving themselves of the benefits of the tariff reductions for which they now wished to compensate by withdrawing their own tariff concessions.

Article XXIII had also been mentioned in the discussion. If the United States wished to base their action on Article XXIII they should firstly have made written representations to the Czechoslovakian Government through diplomatic channels, as other governments have done in similar circumstances. The document submitted by the United States did not fulfil the requirements of the Article. Had this approach produced no satisfactory adjustment the Contracting Parties should then have investigated the matter. His Government was ready to discuss all the questions raised by the United States in the paper submitted by it but could not allow that these matters, which were purely political, had any relevance to Article XXIII. In the case that an investigation were agreed to under Article XXIII then the Contracting Parties would have to consider the case in detail.

He wished finally to refer to the remarks made by the Greek delegate and to state firstly that most of the imports from Greece into Czechoslovakia in the past had been of pyrites and since then Greece had been deprived of the right to export this item. That was hardly the fault of Czechoslovakia. Secondly, Czechoslovakia had never deprived Greece of most-favoured-nation treatment.

The meeting was adjourned at 6.35 p.m.