

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Sixth Session

SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at the Palais des Nations, Geneva
on Thursday, 27 September 1951 at 3 p.m.

Chairman: Mr. Johan MELANDER (Norway)

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

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

Mr. LECKIE (United Kingdom) said they were greatly indebted to Mr. Philipps for his analysis of the scope and applicability of the articles of the Agreement which left very little to be said. His delegation had followed carefully the statements of the United States and Czechoslovakia; they regretted that relations had reached the present state, but thought that nothing could be gained by failing to recognise the situation. The draft declaration which provided for a reciprocal waiver of obligations was, in his opinion, a proper solution.

Mr. VARGAS GOMEZ (Cuba) stated that the Contracting Parties were confronted with a problem of a very complex nature which had political as well as economic aspects. It was a characteristic of a difficult international situation that restrictions on exports should be applied and intensified as the political situation deteriorated. While his delegation believed that the Contracting Parties were not competent to pass judgment on a political situation existing among states, it could not be denied that economic measures fell within their sphere of competence. Nor could the Contracting Parties overlook entirely the effects of political situations upon economic relations between countries. Article XXIII of the Agreement was proof of this; by its implicit recognition that political factors might acutely disturb the development of trade. This was the main consideration for his delegation in view of the fact that it was impossible in the face of certain political situations to demand the fulfilment of obligations of a commercial and economic nature. The state of affairs which existed between the two countries determined the enforcement of measures which, although they might in the circumstances be legitimate even within the framework of the Agreement, in fact frustrated fundamental obligations such as those, for example, of Article XI. His delegation therefore believed that the Contracting Parties should accept the facts, which were: that the existence of a difficult political situation between two contracting parties did not allow the free operation of the provisions of the General Agreement and

that such a difficult political situation actually existed between Czechoslovakia and the United States. It was not necessary to make an exhaustive analysis of the facts to accept this latter point. The United States request was, in itself, proof thereof. Once these two essential concepts had been accepted, it followed that the Contracting Parties had the necessary elements to take action under Article XXV:5(a) which foresaw "exceptional circumstances not elsewhere provided for in the Agreement". His delegation considered this would be the most acceptable solution because it would be less prejudicial to the operation of the Agreement. It would also be more desirable to suspend the obligations between the parties than to have to deal in the future with frequent cases of non-fulfilment by one or the other. It was not possible to conceive that nations which had found it impossible to hold even normal diplomatic relations could maintain without serious disturbance the complex activity of commercial and economic interchange.

Mr. BENAZZO (Italy) said that, in the opinion of his delegation, the discussion of the previous two meetings provided the impression that the Contracting Parties were not in a position to conciliate, as would have been desirable, the two opposing points of view. His delegation could therefore only express its profound regret with regard to the situation that had arisen and with the enforcement of measures which may be considered very serious. There did not seem to be any alternative, as had been pointed out by the representatives of France and the United Kingdom, to the recognition of the facts as set out in the documents before them and in the discussions which had taken place concerning the relations between the two contracting parties in question. It was in this sense that the Italian delegation would interpret and approve the declaration which had been proposed by the United States delegation.

Mr. THORP (United States) said he had listened to the charges and incomplete explanations of the representative of Czechoslovakia to which he would reply if he were prepared to take up the time of the Contracting Parties. It would be easy for him to explain the statement made by Secretary Acheson who had testified before Congress that certain action by the United States would constitute a violation of existing international obligations. He could point out that Congress had initially intended to demand the termination of certain agreements within ninety days; and Secretary Acheson had called attention to certain treaties requiring six months' notice for their termination. If the instructions to the United States Government had remained in their original form a violation of international obligations would have resulted, but as a result of Mr. Acheson's testimony the delay had been altered to read - "as soon as practical". No-one could claim that there was a violation of an agreement if it were terminated in accordance with its terms. The representative of Czechoslovakia had also referred to the refusal of passports to United States citizens as a means of restricting commerce between the two countries. The measure to which reference was made had been taken last June for the reason that the United States Government could no longer assure to its citizens the kind of protection in Czechoslovakia which is implicit in the issue of a passport.

He had selected two cases at random but he was prevented from giving

a complete answer by his promise to the Contracting Parties to take up as little of their time as possible and by the logic of the declaration which did not ask the Contracting Parties to give judgment on the whole question but only on the fact that an exceptional situation had arisen.

He could rebut the assertions of the representative of Czechoslovakia for the sake of the record of the meetings; he could use the time of the Contracting Parties for the purpose of propaganda, but he was only concerned that the Contracting Parties should recognise the definite existence of exceptional circumstances which nullified the benefits of the Agreement. On this point he thought his arguments had best been proved by the representative of Czechoslovakia himself. One had only to examine the statements of the two delegations to see that the circumstances described therein were most certainly exceptional. This was recognised in the first two points of the proposed declaration and the remaining paragraphs followed automatically. The debate had been long and much of it was not related to the immediate consideration of the subject, and he suggested that, on the strength of his own declaration and that of the delegate of Czechoslovakia, a vote was now possible.

Mr. TAUBER (Czechoslovakia) in reply to Mr. Thorp, said that the latter had only touched on part of the question. Even the insertion of the clause "as soon as practical" in the Congressional decision did not prevent the United States from taking illegal action in breaking its obligations under the General Agreement. And as for the question of passports, he said he could show that American citizens who wanted to trade with Czechoslovakia had been refused passports. On a point of form, he wished to call attention to the fact that the word "termination" was used in the title of the document before them, whereas the text spoke of "suspension"; this divergence added to the general confusion.

The draft declaration asked the Contracting Parties to accept a unilateral statement presented by the United States delegation on a problem which they had not even had the opportunity of examining. This was confirmed, in fact, by the United States themselves who in the third paragraph of the draft declaration had inserted the clause "even though the Contracting Parties may not, in such a case, be competent to appraise the circumstances adduced". He had already proposed that the Contracting Parties should declare their incompetence in the matter. In the light of the statements of certain delegations, of Denmark in particular, and of France, it seemed opportune to raise the question again. His country had neither withdrawn tariff concessions from the United States nor most-favoured-nation treatment and that it was the United States which deprived themselves of the benefits of the Agreement by forbidding exports to Czechoslovakia.

With regard to the second paragraph of the declaration, to the effect that the Czechoslovak Delegation "had declared that the Government of the United States, through its actions, had nullified benefits which should have accrued to Czechoslovakia under the General Agreement", he wished to point out that his delegation had never made any such statement. Up to the present Czechoslovak products benefited in the United States from the tariff concessions incorporated in the General Agreement. These

advantages still existed and it was the United States which wanted to abolish them. If the United States wished to forego the advantages granted by Czechoslovakia it did not follow that they could compel Czechoslovakia to give up its rights. Moreover, the third paragraph of the draft declaration admitted that the Contracting Parties were not competent to appraise the circumstances, and yet asked the Contracting Parties to "take note", "declare" and "affirm", that is to say take a decision, on the strength of allegations which had not been proven. The Contracting Parties should not decide without a preliminary investigation and examination of evidence. In fact, the United States was asking the Contracting Parties to give legal sanction to an illegal act. According to the general principles of law no-one could invoke his own fault to accuse his victim, nor could anyone who was aware of his incompetence decide a case; any decision taken in such circumstances would have no validity.

The Contracting Parties were also asked to declare that the two governments should be free to suspend, each with respect to the other, the obligations of the Agreement. In fact, his Government had never asked for any exemption and had no intention of doing so.

Finally, Mr. Tauber referred to the final paragraph of the draft declaration which was to constitute an affirmation by the Contracting Parties that any measures taken by the United States or by Czechoslovakia would not modify their obligations under the Agreement towards other contracting parties; this, he submitted, would be contrary to the provisions of the Agreement. If tariff concessions exchanged by the two governments were suspended, the other contracting parties could not be assured of the benefit which they drew indirectly from these concessions by virtue of the most-favoured-nation clause. He therefore wished to conclude that the draft submitted by the United States had no relation to the Agreement and that its authors had recognised this fact by not being able to find any article of the Agreement to support their claim. Moreover, he reasserted that a case could not be decided by a body which ignored its substance and which was not competent to judge.

M. CASSIERS (Belgium) called attention to Article XXVII; he thought it would have to be decided whether the United States and Czechoslovakia, which, if the declaration were approved might be considered to have ceased to be contracting parties with respect to each other, could withdraw their concessions under this article.

M. PHILIP (France) did not think Article XXVII was applicable; neither country would cease to be a contracting party. The declaration would only authorise them to suspend concessions, and if the situation between the two countries should improve neither of them would have to accede again in order to make the Agreement effective between them.

Mr. TAUBER (Czechoslovakia) opposed a suggestion by the Chairman that a vote could then be taken on the declaration; no decision could be taken on the strength of a unilateral statement by the United States or on the basis of an alleged statement by Czechoslovakia which had never been made; moreover, the question raised by the representative of Belgium should be discussed, and he could not see how they could vote on a declaration which embodied no reference to an article of the Agreement.

The CHAIRMAN pointed out that the powers of the Contracting Parties to take decisions derived from paragraph 1 of Article XXV which provided for joint action by the Contracting Parties. Decisions could take different forms: several declarations approved at the Third Session had also contained no reference to an article of the Agreement.

Mr. TAUBER (Czechoslovakia) read the first lines of Article XXV:1 which requires meetings of the contracting parties from time to time "for the purpose of giving effect to those provisions of this Agreement which involve joint action".

M. PHILIP (France), pointing out that Mr. Tauber had only quoted half of the first paragraph of Article XXV, read the remainder of the paragraph ^{which called for} meetings of Contracting parties "with a view to facilitating the operation and furthering the objectives of this Agreement". He was surprised to note the change of attitude of the representative of Czechoslovakia who at the previous meeting had made a number of accusations against the United States, including the violation of all agreements, but now said that Czechoslovakia was enjoying the advantages of the Agreement and wanted them continued. With the aim of conciliating the opposing views he suggested an amendment to the second paragraph of the declaration which he would propose if it would assist the delegate of Czechoslovakia in accepting the declaration.

Mr. TAUBER (Czechoslovakia) said the proposed amendment would not help. At a previous meeting, in fact, he had shown that the United States measures affecting exports to Czechoslovakia had succeeded in reducing them by 65%. To M. Philip he replied that he had not read the portion of Article XXV:1 which related to the operation and the objectives of the Agreement because he did not think the United States proposal tended in any way towards the achievement of the aims set out in those lines.

The Declaration contained in GATT/CP.6/5/Add.2 for the suspension of obligations between the United States and Czechoslovakia was put to the vote by roll-call and was approved by 24 votes in favour, 1 against and 4 abstentions.

Mr. SAW OHN TIN (Burma) explained that he had abstained from voting because he had not received instructions from his government.

Mr. SAHLIN (Sweden) said that in the view of his government it was of great importance that the rules of the Agreement should be upheld and observed. The Swedish delegation, therefore, would have preferred to see the matter dealt with under Article XXIII which offered appropriate provisions. It appeared from the debate, however, that their views had had very little, if any, support and they regretted that it had not been possible to follow the course suggested by them. After careful consideration of the matter, therefore, his delegation had come to the conclusion that in the circumstances and in the light of the statement they had heard, they could accept the declaration submitted by the United States delegation.

Mr. SVEINBJØRNSSON (Denmark) said he had been instructed by his government to make clear to the Contracting Parties the reasons for his abstention. It had often been pointed out that the General Agreement was

an extremely complicated instrument and the present discussion had shown once more how difficult was its interpretation. His government had always held that the Agreement was to be considered a legal text, whose provisions had to be observed within the limits set by justifiable legal interpretations. The presentation of the views of the United States in GATT/CP.6/5 had given rise in their minds to some doubt as to whether the Contracting Parties were competent to take a decision. It was with satisfaction, therefore, that they had noted the statement of the United States delegate that they would not involve the Contracting Parties in the consideration of the substance of any political issue. His delegation had searched all possibilities of finding a provision which could form the basis of an acceptable solution, and they had come to practically the same conclusions as those reached by the Swedish delegation, namely that a solution could be found in Article XXIII which, he supposed, had been incorporated in the Agreement in order to provide general rules for the settlement of disputes such as the present one. The implication was that Article XXV:5(a) would not be applicable as it referred only to "exceptional circumstances not elsewhere provided for".

The Danish delegation would hesitate to accept a decision which might signify approval of the right of a contracting party to free itself from obligations under an international convention by claiming that unspecified exceptional circumstances, which the Contracting Parties did not deem themselves competent to appraise, prevented the contracting party concerned from complying with its obligations. Further, they had found difficulty in understanding some of the paragraphs in the declaration, and they would have liked to see a reference to an article of the Agreement.

Mr. NATADININGRAT (Indonesia) said that he had abstained because he had no instructions from his Government.

Mr. TAUBER (Czechoslovakia) protested against the declaration by which the Contracting Parties authorized the United States to free itself from its obligations to Czechoslovakia. His delegation considered this action illegal and contrary to all the principles of international law and to the letter and spirit of the Agreement. This illegal act was the result of pressure exercised by the United States on the contracting parties. The United States Government, instead of making use of its commercial relations for the development and strengthening of pacific collaboration between nations with respect for the principles of sovereignty and equality of countries, preferred to violate the principles of international law and international agreements and to abuse its connections to interfere in the internal affairs of other countries. Czechoslovakia had always attached fundamental importance to respect for international obligations and it had always observed obligations undertaken. For this reason, his Government could not accept the validity of this illegal action, and would adhere strictly to the provisions of the Agreement. No one could oblige them to denounce an international agreement and they would not follow the example of the United States. For this reason they asked the Contracting Parties, in accordance with Article XXIII:1(a), to recognize their right to withdraw the concessions which they had negotiated with the United States; by freeing the United States from their obligations under the Agreement, the Contracting Parties had made themselves accomplices of the United States in the nullification of the benefits which his country

derived from the Agreement. He wished to repeat that they protested vigorously against the illegal decision of the Contracting Parties and they contested its validity.

Mr. THORP (United States) said that he would refrain from engaging in political argument; in spite of the provocation, he would refuse to be drawn into an irrelevant discussion.

M. CASSIERS (Belgium) said that he understood very well that the representative of Czechoslovakia should protest against their decision in the interest of his country. The Contracting Parties had been confronted with a difficult legal problem of a kind which had not been foreseen when the Agreement was drafted, and they had had to find a solution to a practical problem. It was their job to make the Agreement work, and he wanted the representative of Czechoslovakia to know how much he regretted that such a decision should have had to be taken. It followed from their action that Czechoslovakia and the United States were no longer contracting parties with respect to each other, but he thought the fact must be welcomed that both countries remained contracting parties with respect to all others. It was not true that they had acted under pressure: rather they had taken a course which was in the interest of the Contracting Parties who wanted to see both governments remain in their midst. Nor was there any violation of the letter and the spirit of international law or of the Agreement and he in his turn wished to protest against such an assertion by the delegate of Czechoslovakia. It was possible to engage in long discussions on which article or general principle was applicable to the case, but he thought it was reasonable that in exceptional circumstances obligations should be waived between two contracting parties. He would also add that in 1948 the need for some such provision had been realised and Article XXXV had been added to the Agreement. It might seem illogical that two parties to an agreement should not be bound as between themselves but no one could deny the practical advantages, and the Contracting Parties had adapted this principle to the case in question. Furthermore, the Contracting Parties were a sovereign body and their decisions, when taken in conformity with formal requirements, were valid.

Mr. ARGYROPOULOS (Greece) also protested against the assertion of the representative of Czechoslovakia that the vote of the Contracting Parties was the result of pressure from the United States. The vote of his delegation was given after full consideration.

Mr. DHARMA VIRA (India), calling attention to his country's well-known independence of action in international affairs, also protested against the allegation of pressure. His Government had accepted the proposal because in the circumstances it appeared to be the only practical step.

Mr. TAUBER (Czechoslovakia), referring to his request that his Government be freed under Article XXIII to withdraw the concessions initially negotiated with the United States, asked that a decision be taken by the Contracting Parties on this point.

The CHAIRMAN suggested that the Czechoslovak delegation should, if it so wished, request the Contracting Parties to consider this point. The Contracting Parties would decide whether to place it on their agenda.

The meeting adjourned at 7 p.m.