GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

RESTRICTED

LIMITED C
GATT/CP.3/38

2 June 1949
ORIGINAL: ENGLISH

Contracting Parties
Third Session

Reply by the Vice Chairman of the United States Delegation, Mr. John W. Evans, to the Speech by the Head of the Czechoslovak Delegation under Item 14 on the Agenda

Mr. Chairman:

I am extremely sorry that the Contracting Parties are going to have to listen to a continuation of a debate that has exhausted both the subject and the delegates in other international organizations of which most of the Contracting Parties are members. The charges that have been made by the Czechoslovak Delegate in the paper that he read on Monday of this week are essentially those that were made by his delegation and that of the Soviet Union in the General Assembly of the United Nations in November 1948 and in four separate meetings of the Economic Commission for Europe, the most recent being the meeting that was concluded last week in Geneva.

On each of these occasions proposals by Czechoslovakia or other countries of Eastern Europe have been rejected by the organization concerned. It is a temptation, therefore, to dismiss the latest repetition of these charges as merely another move in a long political debate and to spare the delegates the necessity of listening once again to the answer that has satisfied their representatives in the past. My delegation is not yielding to that temptation because the Delegate of Czechoslovakia has, this time, framed his charges in terms of the provisions of the General Agreement on Tariffs and Trade, and we believe that the Contracting Parties are entitled to hear the answer, also cast within the framework of those provisions.

The United States is charged with violating the letter of the General Agreement in the administration of its export controls and, I take it, we are also charged with violating its spirit by attempting to stifle the peaceful economic life of Czechoslovakia. I am going to prove the falseness of both those charges with many more facts than may actually be required, for I am anxious to remove any doubt that may have been created by their endless repetition. But before I do so I must ask your patience while I clear away a great deal of extraneous material in the Czechoslovak paper - a mass of underbrush that has no bearing on the real charge but that may obstruct our clear view of the issue if not removed, and, at the same time, I will correct some substantial errors of fact in the Czechoslovak speech - errors of far greater substance than the error the French Delegate referred to in his remarks at last Monday's session.

The Czechoslovak Delegate has quoted the United States Second Decontrol Act. The sin he finds in that Act is that one of its purposes is "to aid in carrying out the foreign policy of the United States," and he concludes from this that the United States has placed "political reasons" before the obligations of Article 92 of the Havana Charter. Does the Czechoslovak Delegate believe that a country's foreign policy is necessarily inconsistent with the provisions of the Charter? If he does, we are tempted to ask whether, in such a dilemna, the Government of Czechoslovakia follows the dictates of the Charter or of its own foreign policy. Actually, delegates will recognize that the reference to foreign policy in the Second Decontrol Act means nothing whatever in terms of the present debate.

The Czechoslovak Delegate's quotations from the General Agreement on Tariffs and Trade are substantially accurate and hardly require comment except to point out that he has omitted to quote two exceptions provided in the Agreement that may very well be pertinent

to the present discussion: the exception in Article XXI (b)(i) relating to fissionable materials or the materials from which they are derived, and the exception in Article XXI (a) which exempts a Contracting Party from any requirement to furnish information the disclosure of which it considers contrary to its essential security interests.

The Czechoslovak paper then devotes a good deal of space to a quotation of a speech made by the Honourable Willard Thorp in one of the earlier international debates on this subject before the Economic Committee of the United Nations Assembly. The feature of Mr. Thorp's speech that the Czechoslovak Delegate considers damaging is the use of the words "war potential". It would be interesting to know whether the Czechoslovak Government ignores the war potential of commodities exported from that country. Certainly no Contracting Party could control the export of materials destined directly or indirectly for a military establishment, or of fissionable materials, without having regard to their war potential. I am sure that no delegate believes that the use of these words by an American statesman has the slightest bearing upon an accusation that the United States has in practice gone further in limiting its exports than is clearly permitted by the provisions of Article XXI. However, the Czechoslovak Delegation has, with the aid of a quotation from de Madariaga envisioned a frightening extension of the meaning of "war potential" and, without presenting any supporting evidence, has assumed that this is the interpretation of the words intended by Mr. Thorp. I believe that we may dismiss that quotation as having no bearing on the charges presented.

Before we can get down to actual facts it is apparently necessary to dispose of another quotation. Assistant Secretary of Commerce Blaisdell recently made a statement in support of the extension of the United States export control legislation. The Czechoslovak

Delegate has quoted one phrase of that statement. "Except for commodities in short supply, shipments to Western Europe are being licensed fairly freely but shipments to Eastern Europe have been carefully restricted." It is not difficult to guess what the Czechoslovak Delegate has evidently read into this quotation, but all it says is that we are carefully restricting exports to Eastern Europe. Certainly that is entirely within our rights, if that restriction is based on the exceptions in the General Agreement on Tariffs and Trade. And I believe that most of the delegates present will feel greater security for their own future because the United States is, in fact, making use of these exceptions.

Then comes an indirect quotation that must be disposed of, the Czechoslovak paraphrase of certain of the language in the Foreign Assistance Act of 1948, Section 112g. That Act provides authority for the Foreign Economic Administrator to determine that the needs of the devastated countries of Europe, participating in the European recovery programme, should be given precedence over exports to other European countries. And here I come to the first of a series of substantial errors in the Czechoslovak paper. For this paraphrase of the American legislation fails to include the following proviso, in the very section cited in the Czechoslovak paper:

"Provided, however, That such export may be authorized if such department, agency, or officer determines that such export is otherwise in the national interest of the United States." In the light of this provision it would seem to be necessary for the Czechoslovak Delegation to show that the Act had actually resulted in discrimination that would be contrary to the General Agreement on Tariffs and Trade, but he has not done so. So I submit, Mr. Chairman, that this is one more quotation in the Czechoslovak paper that may be dismissed as not bearing upon the charges being debated here.

Beginning on page 3 of the Czechoslovak paper you will find a summary of the filing requirements in our export control regulations, contained in the Comprehensive Export Schedule of the United States Department of Commerce. The Czechoslovak Delegate has derived from the distinction that is made between various categories of countries the conclusion that the administration of export controls involves a discrimination contrary to the provisions of the General Agreement. But such a conclusion ignores the clear right that any Contracting Party has - and a right which I am sure the Czechoslovak Government itself exercises - to make a distinction between different destinations in controlling the exportation of commodities covered by the exceptions provided in that Agreement.

And, here, Mr. Chairman, I come to the most substantial misstatement in the Czechoslovak paper. That paper says that "all commodities, whether included in the so-called positive list or not, require a licence for export to Group R destinations, except shipments within the dollar value limits of a general licence". This statement is simply not true. On the same page of the Comprehensive Schedule as other provisions summarized in the Czechoslovak paper appears a description of general licence "GRO", and the explanation that for all commodities on the so-called GRO list, no licence is required to any destination whatever. This omission in the Czechoslovak paper touches on a point of real substance. I will refer to this GRO list later. For the moment I want simply to point out that the failure to mention it in what purports to be a factual description of the United States export controls has hardly resulted in a fair presentation of the case.

Now, let me refer to one other major error in the Czechoslovak paper. In the final paragraph of that paper - and apparently so placed because it was expected to carry considerable weight with the

Contracting Parties - is the statement that the United States Department of State has failed to reply to a verbal note on this subject delivered to it by the Czechoslovak Ambassador in Washington.

Perhaps this statement was merely unintentionally misleading. For the Czechoslovak Delegate may have been using the word "reply" in a special sense of his own. But I am sure it has left many delegates with the impression that the United States has ignored the Czechoslovak representations. In any event I believe the Contracting Parties will be interested in the actual history of those representations. On December 3, 1948 the Czechoslovak Ambassador in Washington presented a note to the Acting Secretary of State, including a list of rejected licence applications.

A study of the list was then undertaken, but it presented unexpected difficulties. Out of the 100 applications on the list the Department of Commerce was unable to find any corresponding application for twenty-four. Twenty-one cases were definitely identified as having been already approved. In 33 cases there were differences, in amounts or other details, between the item on the list and the nearest identifiable application. Thus a great deal of time was consumed in attempting to reconcile the Czechoslovak note with the records of the Department of Commerce. The difficulty of this task was, of course, increased by the tremendous number of licence applications received, seldom running less than 20,000 a week. So far as I have been able to learn, a large part of the list still remains unidentified While this work was going on, however, many rejected applications for Czechoslovakia were re-submitted under our established appeals procedure, which I will describe later, and are being actively considered by the Appeals Board.

On March 4, 1949 the Secretary of State presented a note to the Czechoslovak Ambassador in which he further outlined the export control

policy of the United States, as had been requested, and stated that the re-examination of the cases listed by the Czechoslovak Ambassador was proceeding. On March 12, 1949, the Czechoslovak Ambassador acknowledged the receipt of this note and concluded his note with the following paragraph:

> "The Czechoslovak Embassy wishes to express its appreciation for the State Department's advice that in accordance with our request the list of export licence applications in the attachment to our note is being re-examined and that pending applications will be given careful consideration and licensing action will be undertaken even if only on a case-by-case basis. The Czechoslovak Embassy expresses the hope that the re-examination will result in early licensing actions in those numerous cases in which there is no question of short supply nor security involved."

Now, I submit that this exchange presents a quite different impression than delegates have probably obtained from the concluding paragraph of the Czechoslovak Delegate's speech. And I can tell you, from my personal experience that the case presented by Czechoslovakia has, subject to the consideration of national security, received more than usual attention. One of the fixed features of any system of export controls is that no one is ever satisfied with what he has received. We have a backlog of thousands of complaints from exporters who believe they were not fairly treated. And many of the governments represented around this table - governments which have co-operated with efforts of the United States to help rebuild the war damaged world - have made representations to us asking for more favourable treatment. None of these appeals has received more serious attention than the cases submitted by Czechoslovakia.

And now, Mr. Chairman, I believe I have cleared away enough of the extraneous material in the Czechoslovak paper to enable me to come to

the heart of the matter. If delegates have followed me by striking out those portions of that paper that contain no actual substance they will find that two points remain to be dealt with. One is the general accusation that we are favouring Western Europe over Czechoslovakia in the administration of controls on short supply items, and by implication, that we are doing so in an arbitrary manner that is in conflict with the opening paragraph of Article XX. The second is that in the operation of our security controls we are exceeding the scope of the security exceptions in Article XXI. I propose to deal with these two substantive charges in that order.

The first, of course, has not been supported by any facts as to the actual volume of applications validated but simply by statements of policy made by United States spokesmen. It is true, of course, that the United States has adopted the policy of using its export controls to promote the success of the European Recovery Programme and has co-operated closely with the Organization for European Economic Co-operation. This is clearly in harmony with the letter and the spirit of the General Agreement. In fact, Article XX requires that any controls exercised to promote the distribution of commodities in short supply shall be consistent with any multilateral arrangements directed to an equitable international distribution of such products. I am sure that the Czechoslovak Delegate would not contend that the OEEC lost its right to conduct such an international arrangement because Czechoslovakia, at the last minute, refused to participate in its formation.

But, in actual practice, it has hardly proved necessary to promote European recovery by withholding goods from Czechoslovakia. For that country has not come to the United States for those goods that have been in the shortest supply. Those goods in general are the goods that have been placed on our so-called "positive list". At no time have we denied a licence to Czechoslovakia on a positive list commodity. Furthermore, the denials of non-positive list commodities have been of a kind that clearly come within the security exceptions of the General Agreement.

That brings me to the second of the two basic charges, that concerning the operation of our security controls. I shall be glad to comply with a substantial part of the request made by the Czechoslovak Delegate that we provide Czechoslovakia with all relevant information concerning the administration of these restrictions and the distribution of licences "in accordance with Article XIII, paragraph 3". I must point out, however, that Article XXI, as I have mentioned earlier, provides that a Contracting Party shall not be required to give information which it considers contrary to its security interests. The United States does consider it contrary to its security interest - and to the security interest of other friendly countries - to reveal the names of the commodities that it considers to be most strategic.

First, let me make clear that the designation at any particular time of such a group of commodities is a matter of administrative convenience and that, in practice, each application for an export licence is considered separately by an interagency committee, in which the type of product, the stated end use and the named consignee are all taken into consideration. Thus, while all commodities of potential use by a military establishment are subjected to particularly careful scrutiny, not by any means all licences for such commodities are denied.

For the most part, such commodities are confined to highly specialised sub-divisions of broader statistical classifications. The size, type, horse-power, or other factors which give them military significance are considered. But even with these qualifications, the commodities we have considered to be in this category fall within about two hundred of the approximately three thousand statistical classifications in the United States export schedule. And even then, action is based, as I have said, on examination of each case.

The only evidence in the Czechoslovak paper that purports to show that actual denials of licences to Czechoslovakia have covered commodities of no military significance is the list of examples beginning on the bottom of page 8 of that statement. Unfortunately, the description of these commodities is highly misleading, and in a number of cases we have been entirely unable to identify the applications to which the example refers. However, I think the following facts will be of interest.

The Czechoslovak statement refers to the denials of licences for electrodes, x-ray tubes, and tungsten wire, (referred to as "electric bulbs wire"). While it is correct that some licences for these commodities have been denied, we have approved licences to Czechoslovakia since March 1, 1948 for $436,000 worth of electrical equipment.

The Czechoslovak statement refers to the rejection of applications for mining machinery. It happens that mining machinery can be of widely different types and of different end uses. We received from Czechoslovakia an application for a substantial quantity of mining drills which were stated to be for coal mining. However, manufacturers and mining engineers who were consulted agreed that the type specified was never employed in mining coal but was designed for the deep exploration of mineral deposits. It happens that, while this application

was being considered, the American press published an announcement of the discovery of an important uranium deposit in Czechoslovakia. I am sure it is not necessary for me to refer again to the exception in the General Agreement with respect to commodities relating to fissionable materials. But in case the Czechoslovak statement has left the Contracting Parties with the impression that the United States has attempted to deprive Czechoslovakia of machinery for its normal, peaceful activities, I am sure they will be glad to learn that since March 1, 1948 we have approved licence applications for machinery to Czechoslovakia amounting to $6,033,000.

My point in presenting these facts is to show that our controls for security reasons have been highly selective. We have had no desire to deny licence applications where the product was for a peaceful use. But we have, admittedly, been handicapped by the difficulty of obtaining accurate information. I have already referred to the case of the mining drills, where the technicians were convinced that the end use could not be as stated in the application. There have been many similar cases. One of the most interesting had to do with a number of applications for ball bearings, which were stated to be for use in the manufacture of agricultural machinery. Experts who examined the specifications, however, were convinced that the size, type and degree of precision specified showed them to be destined for use in aircraft, or other military applications.

The Czechoslovak statement, while appealing to the provisions of the GATT, also appeals to our sense of sportsmanship by referring to the fact that some of the licence applications denied covered products that had already been ordered from United States factories and on which advance payments had been made. This is another way of saying that Czechoslovak importers - and for that matter American manufacturers and exporters - have suffered hardship because the United States found it

necessary to intensify its security export controls on March 1, 1948. I am sure that delegates will know where to place the responsibility for the deterioration in international relations that made that intensification necessary. But this does not alter the fact that there have been hardships and that undoubtedly some of the sufferers were innocent bystanders. In the administration of its export controls, therefore, the United States has recognized that, with respect to both short supply controls and security controls, hardships will occur. And in order to reduce these hardships to a minimum we have established an elaborate and expensive procedure under which any applicant may bring a rejected application before a board, which considers all aspects of the case and which may reverse the earlier decision unless the essential interests of the country are such as to outweigh the hardship involved.

This appeals procedure has been invoked on behalf of 38 licence applications for Czechoslovakia. As of March 25 of this year, the Board had found it necessary to deny 7 of these appeals. It had approved one, and the remainder were still pending. Once again, I submit that if it were the intent of the United States arbitrarily to deny licence applications to Czechoslovakia, without careful consideration, this procedure would hardly have been made available.

Now I should like to turn for a moment to a more general accusation, expressed or implicit, in the Czechoslovak paper; that is, that the United States has tried to stifle the general flow of goods to that country and thereby prevent the conduct of its peaceful economic objectives. Apparently in support of that accusation, the Czechoslovak paper presents in an appendix figures to show that the percentage of total Czechoslovak imports coming from the United States has dropped substantially since 1947 and 1948. At least, I assume that this was the purpose, rather than to show that Czechoslovakia is discriminating against United States exporters. There is no evidence given to show

that this relative drop of imports from the United States was also an absolute decline. Nor does the Czechoslovak Delegation indicate what portion of such a decline might be attributable to the actions of Czechoslovakia and her Eastern neighbours in attempting to maximize their own trade with each other. The implication, however, is left that an absolute decline in United States exports to Czechoslovakia resulted from our export controls. The Contracting Parties will probably be interested, therefore, in the facts.

Annual exports from the United States to Czechoslovakia in the 2 years 1937 and 1938 averaged something less than 19 million dollars. In the 6 months from August 1948 through January 1949 (the latest period for which figures are available) the United States validated export licences to Czechoslovakia amounting to $12,838,274 - or at an annual rate of over 25 million dollars. Most of the export licence denials that have been appealed or protested by Czechoslovakia are in the field of machinery. The average annual export of machinery to Czechoslovakia in 1937-1938 was $2,909,000. In the same 6 months' period referred to above export licence validations of machinery for Czechoslovakia amounted to $3,943,043 or at an annual rate of over $7,600,000.

If any further evidence is needed that the United States is not interested in stifling trade with Czechoslovakia, consider the significance of the GRO list. This is a list of nearly 1000 commodities on which no licence is required for shipment to any destination. It includes those commodities, not in short supply, the military use of which is so unlikely that we do not consider it necessary even to look at the end use or the consignee. Commodities are being added to this list as rapidly as it can be determined that they are entitled to this treatment. Since the beginning of this conference more than 500 items have been added to the list, a fact

which received considerable comment in the press but which, apparently, did not reach the attention of the Delegation of Czechoslovakia.

I believe, Mr. Chairman, that we have fully answered the Czechoslovak charges. I believe that, particularly in view of the absence of any documentation of those charges, we have gone a good deal further than was required. We have shown that our export controls in general have not reduced Czechoslovakia's normal imports from the United States. We have shown that our security controls are selective and are within the specific exceptions provided by the GATT. I hope we have also shown that those controls are as essential to the security of other nations as to that of the United States.

We have also refrained from making counter charges that would, we are convinced, be far more justified than the charges made by the Czechoslovak Delegate - charges that might be difficult to prove but that could certainly be supported by more facts than have been presented by him.

We believe we have played fairly with the Contracting Parties and hope that they will now dismiss the accusation of Czechoslovakia on the grounds that it is unsupported by the facts.