

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.7/47

29 October 1952

Special Distribution

## WORKING PARTY 4 ON THE EUROPEAN COAL AND STEEL COMMUNITY

### Statement by the Czechoslovak Delegation at the Tenth Meeting of the Seventh Session

The Czechoslovak Delegation is in full accordance with the previous Delegations which have shown their concern with the problem of the compatibility of the Schuman Plan Organisation and the General Agreement.

In all documents and statements, which we have received and heard, the Schuman Plan Organisation is presented to us as a Community, the aim of which should be identical with the objectives of the General Agreement, and the operation of which is not contrary to the rules of GATT. My delegation studied the whole scheme and all its implications very thoroughly and we came to the same conclusion as the Delegation of India and Indonesia, namely that the problem, we are facing in this case, is of principle importance for all the contracting parties and for the whole General Agreement.

I would like to deal first with the question whether the operation of the Schuman Plan is in accordance with the rules of GATT. This question does not seem to be difficult as all the papers and statements we have received admit that the Schuman Plan conflicts with the main principles of the General Agreement, i.e. with Articles I and XIII, i.e. with the most-favoured-nation principle and with the rule of non-discrimination. These two principle rules are just the backbone of the whole Agreement; Article I imposes the most-favoured-nation principle upon all contracting parties with the exception only of preferences, which were already in force, and up to now we have been very careful that no new preferences should be introduced or old preferences increased. It might be recalled that at our last meeting we adopted the same attitude towards the Italian-Libyan preferential system.

The Schuman Plan Community, which we are requested to approve of now, in fact establishes a new preferential system among the six member countries.

Article XII imposes upon all contracting parties the rule of non-discrimination and the articles which follow contain a very carefully worded system of exceptions from this Rule. It is admitted that the Schuman Plan cannot be regarded as coming under any of these exceptions. It is not a customs union, not a free trade area, nothing which is permitted under our Agreement. The Netherlands Delegation expressed the opinion that "there would hardly have been any problems to consider ... if at the time of drafting the General Agreement the concept of the Schuman Plan had been known." We cannot agree with such an interpretation of the main rule of the General Agreement. The framers of the Agreement drafted and worded certain rules and they foresaw that there would be in the future the need to make exceptions. They therefore

agreed upon rules how to admit such exceptions and not to break the principle. These rules therefore have to be followed and anything which goes beyond these rules, goes in fact against the General Agreement.

In this connection I would like to emphasize that the Schuman Plan Organisation which we are discussing now is no longer a scheme or a draft, but was signed in April 1951 and has already, in July 1952, come into force. All the provisions of this Treaty, contravening the most important principles of our Agreement have already been signed and put into operation by the six contracting parties adhering to the Schuman Plan. We are afraid that this attitude of the six contracting parties will not add to the respect and vitality of our Agreement. The honorable representative of Belgium speaking on behalf of the six countries adhering to the Schuman Plan has proposed that we should simply prepare an inventory of incompatibilities between the Schuman Plan and GATT. Such an attitude seems to suggest that both the Schuman Plan and the General Agreement are equal instruments. I regret, Mr. Chairman, that we cannot agree with such an attitude towards the General Agreement. The two instruments concerned are not of equal status as the General Agreement is a universal instrument for all of us, while the Schuman Plan is only an instrument of six of the contracting parties. According to the Protocol of the Provisional Application of GATT all the contracting parties undertook the obligation not to introduce any new legislation and not to enter into any new commitments which would in any way contradict their obligations under GATT. I remember how strict we were in the interpretation of this rule e.g, when examining in the past the Brazilian internal taxes and the new legislation proposed for the Brazilian Parliament. The six contracting parties however signed their treaty and put the Schuman Plan Organisation into operation without taking any account of their commitments under GATT and now, they simply propose that their commitments be waived. What would then remain of our General Agreement if all the contracting parties approached the problem of their international obligations in the same manner? Next session we could have a similar proposal before us regarding the so-called Green Plan covering the agricultural products, and finally the rules of GATT will remain only on paper.

The six contracting parties try to convince us that they aim at the reduction of tariff levels and at the abolition of the quantitative restrictions. It may be so, as far as their internal relations are concerned. However, as far as all other contracting parties are concerned, i.e. the parties which signed the General Agreement, I am sorry to state that I have found just the opposite effect: the Belgian tariffs are expected to be raised, their bindings to be deconsolidated, new quantitative restrictions to be introduced, new escape clauses to be introduced and we are expected subsequently to legalise all these measures.

I would like now to deal with another aspect of our problem with the Schuman Plan. An aspect which is far more important for us. We are told that the Schuman Plan Organisation fully corresponds to the spirit of our General Agreement and that therefore we should approve of it. What is actually the spirit of GATT? In the preamble of GATT, it says, that the contracting parties wish to contribute "to the elimination of discriminatory

treatment in international commerce." When Czechoslovakia signed the General Agreement (it was on 21 March 1948), we did so in the firm belief that economic co-operation of the nations, especially the exchange of products, was the only sound basis for the peaceful co-operation among nations with different economic systems. Let us examine now the Schuman Plan Organization in the light of this spirit of the General Agreement as we understand it.

I prefer in this respect, Mr. Chairman, to limit myself strictly to quotations and not to enter into any polemics, which the other contracting parties might consider out of place. The head of the Western German Delegation negotiating the Schuman Plan in Paris, Professeur Hallstein, declared that, "for Germany, the Schuman Plan has the advantage that the production of steel will be increased over the limit of 11.1 million tons and all the other restrictive measures applied by the Allies after the war against Germany and against German cartels will be abolished" (Secofi 24.III. 1951). At the occasion of the signature of the Schuman Plan, the same official representative of one of the members of the Schuman Plan, that is, of one of the framers of this organisation, declared that "coal and steel are two industries which represent the key to the western european war economy". I might continue quoting other western authorities including the candidate of the Republican Party for the highest office in the United States. However I believe that it is clear that the Schuman Plan does not aim at the peaceful reconstruction of Europe, but at the preparation for a new war.

These aims of the Schuman Plan are, in all respects, incompatible with - and directly contrary to - the objectives of the General Agreement, i.e. to the principle of international co-operation. We would therefore consider it a tragic mistake if the CONTRACTING PARTIES would approve of such an organisation.

Let us now examine whether there is a legal possibility to reconcile the Schuman Plan with the provisions of GATT. In this respect I would like first to refer to the statement of the Netherlands Delegation (Doc. L/17) which document itself admits the legal incompatibility between GATT and the Schuman Plan. Further on we have the note of the Executive Secretary (Doc. W.7/2) stating that the Schuman Plan does not come under any of the exceptions explicitly provided for in GATT.

The only provision of the General Agreement which both documents recommend be applied and which the six contracting parties of the Schuman Plan suggest be used in their joint note of 2 October 1952 (Document L/38), is the general waiver of the GATT rules according to Article XXV:5(a). We have studied carefully this provision of the general waiver and we have come to the firm conclusion that this provision is not applicable for the case given. It reads, that, "in exceptional circumstances not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party." There are still among us some representatives, belonging to the original framers of the Havana Charter and of the General Agreement. They will certainly recollect that this general waiver was introduced to cover situations substantially different from the one now created by the Schuman Plan.

In the Report of the first session of the Preparatory Committee in London in 1949 (page 25 of the French text, section C, point 2), it is quite clearly stated:

- a) that the waiver was agreed upon, exclusively "for exceptional cases, when a member has special difficulties which are not covered by any of the escape clauses" ;
- b) that the Conference may waive some obligations of the Charter but only temporarily.

That was expressly stated by the originator of this provision, Mr. Kellogg of the United States Delegation (Document E/PC/T/C.V./PV/9/page of the English text. The French representative M. Palthey (in the same document page 9) when proposing the application of this general waiver in respect of all provisions of the Charter (which proposal was accepted) declared the following:

"All we suggest is, that a temporary waiver of the obligations may be granted in particularly exceptional cases, if the strict obligations of the Charter would impose economic difficulties upon some country and I repeat if these difficulties were temporary."

The sense of the provision of Article XXV:5(a) of the General Agreement is therefore quite clear: It can be applied only under the following conditions:

- a) that a contracting party which is following the rules of the Agreement, is faced with exceptional circumstances not elsewhere provided for in the Agreement (such as floods, droughts, etc.);
- b) that these circumstances cause a serious economic difficulty to this contracting party that however this difficulty is of temporary character;
- c) that finally, under these circumstances, a temporary waiver of some obligations of the Agreement could be granted.

In the case of the Schuman Plan, however, these conditions are not at all fulfilled:

a) the six contracting parties themselves created the Schuman Plan Convention. This Convention - and they have admitted this in their own statements and proposals - is in conflict with their commitments under the General Agreement, contradicts the most important provisions of the General Agreement, (i.e. the most-favoured-nation principle of Article I and the rule of non-discrimination of Article XIII) and in fact undermines the spirit of GATT, the spirit of the world economic co-operation on the basis of equality and without any discrimination.

How can the six contracting parties now invoke this situation as an exceptional circumstance not elsewhere provided for in GATT? How can they request a general waiver of their commitments under the General Agreement having as the only justification of such a request the mere fact that they have deliberately violated these commitments ?

b) Coming to the further conditions it should be emphasized, that the difficulty which the six contracting parties are facing here in this question, is not of an economic character, but of a legal character. That is the difficulty of getting rid of the international obligations, which were undertaken.

c) Finally: It has to be stressed that the difficulty is not of a temporary character as what we are requested for is not a temporary relief, but a general waiver for 50 years.

These are the reasons why we cannot recognize the proposed waiver as justified.

We must not establish, Mr. Chairman, a different procedure for big nations and for small ones. Tomorrow or after-tomorrow we shall deal for example with the item: Nicaragua - El Salvador Free Trade Area and we shall very strictly examine and review - as we have already done last year - whether all the conditions of Article XXIV are fulfilled. And we will be right in doing so. Cannot we apply at least the same attitude in the case of the Schuman Plan which is far more dangerous to the principles of our General Agreement?

We are convinced, that if the CONTRACTING PARTIES really wish the provision and principles of the General Agreement to be followed and not to be broken, that they cannot, in any way, approve of the Schuman Plan; but, on the contrary, that they will find and will have to state that the six contracting parties were in conflict with their commitments under the General Agreement when entering into a Convention, which is contrary to the General Agreement.

