

GENERAL AGREEMENT ON TARIFFS AND TRADE

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SUMMARY RECORD OF THE THIRD MEETING

Held at the Palais des Nations, Geneva
on Monday, 6 October 1952 at 3 p.m.

Chairman: Mr. Johan MELANDER (Norway)

Subject discussed: European Coal and Steel Community

The European Coal and Steel Community (L/38 and W.7/2)

Mr. SUTENS (Belgium), on behalf of the six countries members of the European Coal and Steel Community, made the following statement:

"I have the honour, in the name of the delegations of the six signatories of the Treaty of 18 April 1951 constituting the European Coal and Steel Community, to address you briefly on the request for a waiver from the rules of the General Agreement which these countries have introduced in order to permit the realisation and functioning of the new organisation.

"It is desirable from the beginning to limit the debate. There is no question of discussing the merits of the Schuman Plan. It is simply a matter first of listing the conflicts between the two international instruments, the General Agreement on one hand and the Treaty of 18 April 1951 together with the Convention containing the Transitional Provisions on the other; and secondly of defining the waivers necessary to reconcile these conflicts.

"With regard to the first point, a very complete and detailed note has been drawn up by the Executive Secretary, W.7/2. The six delegations have tried to provide adequate solutions to the questions listed in that note in their joint paper of 2 October, L/38. These two documents should serve as a basis for our discussions. I wish, however, to give some additional information on the subject of the draft Decision submitted to you.

"The preamble repeats the most characteristic passages of Title I of the Treaty and paragraph 15 of the Convention concerning the objectives of a common market and the harmonisation of customs duties.

"Paragraph I sets out the general rule defining and limiting the waivers requested. If this rule ended with the words 'perform the tasks assigned to them under the said instrument' it would indeed be a blank check. This authorisation is, however, followed by two conditions which limit the possibilities of action by the Community within the framework of the waivers to the possibilities of action which the Community would have if it were a member of the GATT. Let us take a concrete example. The Treaty provides that the High Authority may, in the case of an obvious crisis, recommend, in accordance with Article 74:3, the imposition of restrictions on imports. This Article does not provide for a procedure by which these restrictions may be imposed with regard to other countries. However, Article 74:3 in fact repeats the substance of Article XIX of the GATT which provides in detail for the procedure to be followed. Article I of the draft Decision submitted to you means that if the Community makes use of Article 74:3 of the Treaty it must, as regards procedure, conform to the rules of Article XIX of the GATT. In fact, the Treaty and the Schuman Convention were drafted in the light of the provisions of the GATT.

"Paragraphs II to VII define certain cases where the general rule above would apply.

"Paragraph II provides for the elimination of duties within the Community.

"Paragraph III concerns the extension by the French Government to other countries of the Community of the preferences it enjoys in the territories of the French Union and in Algeria.

"Paragraph IV concerns the elimination of prohibitions and restrictions within the Community.

"Paragraph V concerns Benelux. It is connected with paragraph 15 of the Convention containing the Transitional Provisions which states the principle of lowering, by means of negotiation, the duties on steel in countries adhering to the Community, with a view to harmonising these duties on the basis of the least protective tariffs in force in the Community. The least protective tariffs are those of Benelux. The three countries which compose the economic union have been given the right, in order not to impede the negotiations and pending their outcome, to establish tariff quotas in such a manner as to maintain the normal currents of trade to their territories at the original duties and to impose on the goods passing in transit over their territories the difference between the higher duties in force at the other frontiers and those in force in Benelux. The question to be examined here concerns only the duties bound by Benelux in the GATT.

"There are four such duties, three negotiated with the United States and one negotiated with Norway. Concerning these duties, authorisation is also requested to raise, in accordance with the last part of paragraph 15 of the Convention, the level of taxation by two points. Obviously, nothing is to be requested for duties that are not bound.

"Paragraph VI concerns the isolation of the Belgian market during the period of transition. An explanation of this delicate matter can be given to the working party.

"Paragraph VII extends the general rule of paragraph 1 to dumping, the application of the escape clause (abnormal imports), state trading and the cases of shortages.

"In Part III special attention should be reserved for paragraph IX. The products to be listed in the Annex are those listed in Annex I of the Treaty of 18 April 1951 defining the expressions 'coal' and 'steel'. It will be necessary in the Declaration to have the list translated into the different tariff nomenclatures. This work is well advanced but not quite finished, and the results will be transmitted to you as soon as possible.

"Finally, Part IV provides that the present Decision may be amended and in time if necessary abrogated.

"Before the discussion begins on this item, and in order to assist this discussion, I wish to draw your attention to two essential points. Although the High Authority is invested in accordance with Article 9 of the Treaty, with a supra-national character, its action in the field of commercial policy is strictly limited and this is the only field which concerns us now.

"The principle of the relations between the High Authority and the sovereign states is set out in Article 71 of the Treaty:

" Unless otherwise stipulated in the present Treaty, the competence of the governments of the member States with respect to commercial policy shall not be affected by application of the present Treaty.

" The powers granted to the Community by the present Treaty concerning commercial policy towards third countries shall not exceed the powers which the member States are free to exercise under the international agreements to which they are parties, subject to the application of the provisions of Article 75.

" The governments of the member States will lend each other the necessary assistance in the application of measures recognized by the High Authority as in conformity with the present Treaty and with international agreements in effect. The High Authority may propose to the member States concerned the methods by which this mutual assistance shall be undertaken".

"The governments retain the power to negotiate commercial arrangements separately, but the High Authority has the right to oppose clauses of such arrangements concerning coal and steel if 'they impede the application of the Treaty'.

"Restrictive measures may be imposed on imports in the case of an obvious crisis and on exports in the case of shortages, but in both cases only with the approval of the Council of Ministers which represents in the Community the Authority of the governments. The administration of licensing measures remains in the hands of the governments, with the reservation that the High Authority may make recommendations which it deems necessary in order to safeguard the provisions of the Treaty.

"In tariff matters also governments retain the liberty to fix duties in accordance with national procedure. The High Authority has, however, a right of control to ensure the harmony of the different tariffs and that they remain within certain limits. These limits, moreover, must be approved by the Council of Ministers.

"There is, therefore, collaboration between the High Authority and the interested governments and the latter retain full responsibility in their international relations while the High Authority retains full responsibility in the execution of the Treaty and Convention.

"This collaboration will be particularly close when there are negotiations as to the relations of the Community with outside countries. Paragraph 14 of the Convention deals with this matter. Here the High Authority appears as the common mandate of the governments of the member states and acts upon instructions decided unanimously by the Council of Ministers, which is, within the organization of the Community, the guardian of the sovereign rights of the States.

"I have entered into some detail on these matters in order to make very clear the questions raised in paragraphs 37 and 38 of the note by the Executive Secretary. To think for one moment that there could be in the High Authority a commercial policy independent of and antagonistic to that of the member states would be to misunderstand this note. The Treaty has been drawn up in a way that makes such a divergence impossible.

"I wish also to draw the attention of members of the GATT to a second point. We are here to negotiate the terms of a series of waivers to the rules of the GATT, necessary to permit the realization and functioning of a new community. We are not here to negotiate the future relations of the Community with outside countries. These two questions should not be confused. They are different in their purpose and character. The purpose of the waivers requested is to create a common market and the

common market is one of the characteristics of the new Community. In this first stage, I repeat, there is only the question of allowing the realisation of what the Chairman, in his opening speech, called 'one of the most ambitious and courageous international experiments which has yet been attempted'. The members of the GATT have nothing to lose by permitting this achievement, with a reservation as to adjustments, which will come later, in their relations with the Community. The liberal character of the Community is clearly set forth in Article III of the Treaty. There, it is said that the institutions of the Community must 'further the development of international trade'. The article also specifies that the Community must 'promote the regular expansion and the modernisation of production as well as the improvement of its quality, under conditions which preclude any protection against competing industries except where justified by illegitimate action on the part of such industries or in their favour'.

"Paragraph XV of the Convention containing the Transitional Provisions is even more explicit and expressly states that negotiations to be carried out with other countries shall have as their purpose, in exchange for adequate concessions, the lowering of the duties on steel on the basis of a harmonisation with the least protective tariffs in force in the Community.

"Nothing can be more contrary to the spirit of the terms of the Treaty than to represent it as a protectionist entity working within enclosed barriers and withdrawn from the world community. I hope that the CONTRACTING PARTIES will understand and, by permitting its achievement, collaborate with the work which most of them have greeted with sympathy."

Mr. SAHLIN (Sweden) considered that the questions raised by the request for a waiver required thorough consideration by the CONTRACTING PARTIES and particularly by those not members of the Community. Economic interests as well as questions of principle were involved. The establishment of the Community should, for many reasons, be welcomed as a courageous attempt by a small group of countries to push forward the long work toward a closer economic integration of the Western European countries. It was, however, precisely its limited character which conflicted with fundamental rules for multilateral commercial policy. The CONTRACTING PARTIES at this Session must safeguard these principles and avoid taking decisions which would weaken the Agreement as a universal instrument of commercial policy. The interests of third parties, protected under the Agreement, must be carefully considered. It would be premature to give a definite opinion lacking more detailed information concerning the Community and the extent of the waiver granted and his delegation reserved its position pending discussion by a working party.

Mr. LECKIE (United Kingdom) welcomed the establishment of the Community which was intended as a step towards the unity of nations. He did not wish, at this stage, to comment in detail on the waiver requested as this was a matter for a working party to deal with. It was necessary to make certain that any waivers granted would be adequate, but he believed that some of the waivers proposed went too far. This item opened an entirely new field for the CONTRACTING PARTIES and the United Kingdom delegation would do its best to co-operate with the Working Party to reach a solution satisfactory both to

members of the Community and non-members.

Dr. HEIMI (Indonesia) supported the view expressed by the Delegate of Sweden of the need for a thorough study of the whole problem by the CONTRACTING PARTIES before reaching a decision.

Mr. SINGH (India) said that his government was generally in favour of the coal and steel agreement, but on many matters of detail they wished to be informed. The economic effects of the project in particular would have to be studied before a decision could be taken.

Mr. SVEC (Czechoslovakia) said that the problem facing the CONTRACTING PARTIES in the case of the Schuman plan was of great importance for the entire Agreement. All the papers submitted and statements made on the subject had admitted that the plan conflicted with the fundamental provisions of the Agreement, i.e. with Articles I and XIII. The Schuman plan Community would establish a new preferential system among six countries and the CONTRACTING PARTIES had hitherto been extremely strict in their interpretation of the provisions regarding preferences. Furthermore it was admitted that the Schuman plan came under none of the exceptions provided in the General Agreement to the rule of non-discrimination. When the Agreement was drafted it was understood that certain exceptions to the rule of non-discrimination would be required and provision had been made for such exceptions. To allow at this time an exception never contemplated would be a clear infringement of the Agreement.

Mr. Svec noted particularly that the Treaty of the European Coal and Steel Community was signed in April 1951 and had come into force in July. Its provisions, therefore, including those which contravened the most important principles of the Agreement, were already in operation. Such action by six contracting parties could only detract from the respect and effectiveness of the Agreement since in signing the Protocol of Provisional Application all contracting parties undertook not to introduce new legislation nor to enter into new commitments in any way contravening their obligations under the Agreement.

Although the stated aim of the Community was the reduction of tariff levels and abolition of quantitative restrictions, it was apparent that this would apply only within the six countries since, according to the decision submitted for approval by the CONTRACTING PARTIES, certain tariffs would be raised and new quantitative restrictions introduced, vis-a-vis third parties.

It was said that the Schuman plan organisation accorded with the spirit of the General Agreement. Czechoslovakia had signed the Agreement in the belief that economic co-operation and "the elimination of discriminatory treatment in international commerce" was the only sound basis for peaceful co-operation among nations with differing economic systems. The aims of the Schuman plan, however, were incompatible with these objectives as could be seen from comments both in the press and by government representatives to the Community. In the view of his government the Plan was aimed rather toward preparations for a third war than toward peaceful reconstruction. For the

CONTRACTING PARTIES to approve such an organisation would be a tragic mistake.

Mr. Svec went on to consider the legal possibilities of reconciling the Schuman Plan with the provisions of the Agreement. According to the note circulated by the Executive Secretary the Plan came under none of the exceptions explicitly provided for. The only provision of the Agreement which could be used to permit the waiver requested by the six contracting parties was the general waiver under Article XXV:5(a). In the view of the Czechoslovakian delegation this provision was not applicable to the case. It was introduced into the Agreement (and the Havana Charter) in order to cover quite different situations. Mr. Svec referred to the report of the Preparatory Committee in London wherein it was clearly stated that this waiver was provided exclusively for exceptional cases of special economic difficulties not covered by any of the escape clauses and, furthermore, that certain obligations of the Charter might be waived by the Conference but only temporarily. This interpretation was supported by statements of the United States and French Delegates concerning the provision. Consequently it was clear that Article XXV:5(a) could be applied only when a contracting party operating under the rules of the Agreement was faced with exceptional circumstances not elsewhere provided for, such as floods, droughts, etc., which caused serious economic difficulty of a temporary character to the contracting party and, finally, that if these circumstances were fulfilled, a temporary waiver of some of the obligations of the Agreement could be granted. None of these conditions could be said to apply to the case of the Schuman Plan. The Community was deliberately created by the six contracting parties in such a manner as to contradict the most important provisions of the Agreement. It was not possible for the six contracting parties to invoke a situation created by themselves as an exceptional circumstance not elsewhere provided for in the Agreement. The difficulty facing them was not an economic difficulty but the legal one of extricating themselves from international obligations previously undertaken. Finally the difficulty was not a temporary one and it was not a temporary waiver that was requested. In view of all these reasons the Czechoslovak Government did not recognise the proposed waiver as justified.

Mr. THORE (United States) thought the paper prepared by the secretariat would assist the CONTRACTING PARTIES in the study of this problem. The six member States of the European Coal and Steel Community had drawn up the Treaty in full consciousness of its conflicts with the provisions of the General Agreement. Furthermore, it should be emphasized that the provisions which conflicted with the Agreement had not been put into force, as stated by another delegate, and that their implementation depended upon reaching a satisfactory settlement with the CONTRACTING PARTIES and receiving a waiver from the conflicting obligations under the Agreement.

The purposes of the Schuman plan Convention were to facilitate international commerce, increase employment and liberalise commercial relations among the six countries. It was apparent that such liberalisation would not only promote development within the countries concerned but would also improve their relations with other countries. The United States Government supported

the basic objectives behind the Treaty. The specific provisions of the plan should be carefully studied in the light of the basic purpose of the expansion of international trade. It should be noted that the Treaty provided for restrictions on imports from outside countries only in serious cases and such restrictions would be more limited in their scope than those applied by most contracting parties at the present time. Certainly countries outside the Community were entitled to see that the effects on third parties would be equitable and that their interests which were provided for in the General Agreement by the most-favoured-nation and non-discrimination clauses were preserved. There were two points which gave some concern to the United States delegation and which the working party should consider. Firstly the treaty provided for the transfer of some degree of sovereignty by the six countries to the High Authority but there was no provision in the proposed waiver for the High Authority to undertake the obligations of the individual contracting parties on behalf of the Community. Secondly there was the question of what would happen should balance-of-payments difficulties arise.

It seemed to Mr. Thorp that there should be no real difficulty in solving the various technical problems and that the most important point was that the CONTRACTING PARTIES should look on the new Community with sympathy and give it full support so that it might be able to fulfil the objectives of expansion of trade and production.

The CHAIRMAN considered that the question required more detailed study and proposed the establishment of a Working Party consisting of Austria, Belgium, Brazil, Canada, France, Germany, India, Italy, Luxembourg, the Netherlands, New Zealand, Sweden, the United Kingdom and the United States under the Chairmanship of himself and with the following terms of reference:

"To consider the request received from the six member States of the European Coal and Steel Community for a waiver under Article XXV of certain obligations under the General Agreement, and to report to the CONTRACTING PARTIES before the close of the Seventh Session."

In reply to a suggestion by Mr. SVEC (Czechoslovakia) the CHAIRMAN stated that the examination by the working party would be based on the discussion in the CONTRACTING PARTIES.

The appointment of the Working Party, as proposed, was approved.

The meeting adjourned at 6.30 p.m.

