

GENERAL AGREEMENT
IN TARIFFS AND
TRADE

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LES TARIFS DOUANIERS
ET LE COMMERCE

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Third Session

Statement by the Head of the Czechoslovak Delegation
Mr. Zdeněk AUGENTHALER to Item 14 of Agenda (CP.3/2/Rev.2)

Request of the Government of Czechoslovakia for a decision under Article XXI II as to whether or not the Government of the United States has failed to carry out its obligations under the Agreement through its administration of the issue of export licenses.

Mr. Chairman, Fellow Delegates,

In your opening speech of this session, Mr. Chairman, you said that there are on our agenda, items, the discussion of which could easily be allowed to stray from the facts and figures of economics to the area of political debate and you have appealed to all of us not to stray in that direction.

I presume, Mr. Chairman, that you had in mind especially the item under discussion to-day and I will comply with your wish though it is not an easy task.

It is not easy because the USA Second Decontrol Act of 1947, in its findings of fact and declaration of policy, explicitly says under point 4 that it is the general policy of USA export control "to aid in carrying out the foreign policy of the United States", which means that political reasons are placed before the obligations of Article 92 of the Havana Charter which says "that the members will not have recourse to unilateral economic measures of any kind contrary to the provisions of this Charter."

I do not intend to question at this moment the extent to which the USA is able in the light of the provisions of the General Agreement on Tariffs and Trade, to maintain its export controls of goods which are not at all in short supply and are not war material, and I will turn directly to the administration of the export control.

Article I of the G.A.T.T. contains the paramount rule of General Most-Favoured-Nation-Treatment and specifies that with respect to all rules and formalities in connection with exportation any advantage, favour, privilege or immunity granted by any contracting party to any product destined for any other country shall be accorded immediately and unconditionally to the like product destined for the territories of all other contracting parties.

Article XIII of the G.A.T.T. clearly says that no prohibition or restriction shall be applied by any contracting party on the exportation of any product destined for the territory of any other contracting party, unless the exportation of the like product to all third countries is similarly prohibited or restricted. Paragraph 2 of the same Article provides as a matter of principle that in applying restrictions, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions, and paragraph 3 provides that the contracting party applying the restrictions shall provide, upon the request of any contracting party having an interest in the trade in the product concerned, all relevant information concerning the administration of the restrictions etc.

Exceptions to the Rule of Non-Discrimination are admitted in Article XIV for reasons of balance of payments difficulties, which is certainly not the case of the USA, especially as all imports from the USA into other countries are paid for in dollars. We must thus turn our attention to Articles XX and XXI.

Article XX, paragraph II in connection with the preamble to this Article says, that subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, a contracting party may take measures essential to the acquisition or distribution of products in general or local short supply, provided that any such measures shall be consistent with any multilateral arrangements directed to an equitable international distribution of such product, or with the principle of equitable shares of the international supply of such products, or measures essential to the control of prices by a contracting party undergoing shortages subsequent to the war, but these measures should be removed as soon as the conditions giving rise to them have ceased.

Article XXI, paragraph b (ii) allows a contracting party to take any action which it considers necessary for the protection of its essential security interests relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying military establishments.

I must apologize to you, Mr. Chairman, and to all my colleagues, that I started my statement by analysing the relevant provisions of the G.A.T.T., well known to all of you, but I thought it advisable to do so in order to put our problem in the right light.

Now let us see, what are the export controls of the USA and how they are administered. For this purpose I would like first of all to refer to the official publication of the US Department of Commerce - "Comprehensive Export Schedule" No. 26, issued on October 1st, 1948. On page 18 of this publication you will find, that for the purpose of export control, all foreign destinations are classified as follows:

- 1) All exports to Canada are free and no licenses are required. This is, in our opinion, the first discrimination against all other contracting parties, contrary to the basic principles of Articles I and XIII, paragraph 1.
- 2) Country Group "R" comprises practically all European countries and their adjacent possessions.
- 3) Country Group "O" comprising all foreign destinations other than Canada and those included in Group "R".

All commodities which may be exported under general license to Group "O" destinations may be re-exported from one country in that Group or from Canada to any other country in that Group, but the re-exportation from one country of Group "R" to other countries in that Group is prohibited unless a license is issued or amended accordingly. This is a second discrimination, this time against the countries of Group "R", so differentiated from the others.

- 4) But there is a further discrimination between countries of Groups "O" and "R". All commodities, whether included in the so-called Positive List or not, require a license for export to Group "R" destinations except shipments within the dollar-value limits of a general license. So far as exports to Group "O" countries are concerned, however, certain commodities on the Positive List do not require a validated license for export to certain Group "O" destinations, and if the commodity does not appear on the Positive List, then an export license is not required for shipments to a Group "O" country.
- 5) Now I would like to pay special attention to the unfortunate Group "R" - Europe. There is a further division, which does not appear from the published schedules, but which exists,

as I will show, and which is of a greatest importance to my own country. On November 4, 1948, the Honourable Willard L. Thorp stated in Committee 2 of the General Assembly in Paris the following: "Since March 1st, 1948, export control over short-supply items has been reinforced by the imposition of export licensing control over nearly all shipments to Europe. This control serves two primary purposes. The first of these purposes is to ensure that the requirements of the countries participating in the European Recovery Programme are met, so far as possible, in accordance with the purposes and provisions of the Foreign Assistance Act of 1948. The second of these purposes is to supplement the long-standing control of exports of arms, ammunition and implements of war by subjecting to close scrutiny shipments to Eastern Europe of other items which have military significance. In practice, this has meant that shipments to participating countries, other than shipments of products of short-supply list, have been licensed freely whereas shipments destined for non-participating countries have been carefully scrutinized 1) to ensure an adequate flow to participating countries of goods needed for their economic recovery and 2) to prevent the shipment to Eastern Europe of things that would contribute significantly to the military potential of that region."

I would like to point out that Mr. Thorp in his speech mentioned goods that would contribute "to the military potential".

As you all know, the notion "war or military" potential is an extremely elastic notion. It embraces the reserves of man-power, economic resources of a country and the extent to which both have been militarized, it embraces also the time

element, that is, not only the possibility of developing military strength but also the degree of actual preparedness, it embraces equally moral and mental forces of the people.

Practically everything may be a possible element of war potential, but if we accept this meaning, it would mean rooting out important sections of vital peace-time industry, narrowing the field of important research and changing the face of modern civilization and make peaceful co-operation impossible. War power stretches away from the actual organizations until it covers the whole nation and until, as Mr. Salvador de Madariaga said "the young mother, peacefully feeding her tender baby at her breast, is transfigured from an idyllic picture of motherhood into a grim amazon, pouring sinews of war into a recruit ready to take up a rifle on the twentieth year of hostilities". But the G.A.T.T. speaks only about "military establishments", which are something entirely different and that is why in our opinion the "war potential" has no place in our considerations.

Mr. Thomas C. Blaisdell, Acting Assistant Secretary of Commerce, made, on January 31st, a similar statement while giving evidence before the Congressional Committee investigating the Bill which prolonged the Department of Commerce's export controls on commodities in short supply. His statement shows that:

- 1) the United States regards the need for controls as greater than ever;
- 2) Sheer shortage is becoming a less frequent reason for refusing licenses;
- 3) Shipments to Eastern Europe are being stopped for reasons of foreign policy. As Mr. Blaisdell

said: "Except for commodities in short supply shipments to Western Europe are being licensed fairly freely, but shipments to Eastern Europe have been carefully restricted".

I assume that these statements are closely connected with the famous secret lists, A and B, the existence of which nobody has denied. I would be obliged to the USA delegates if they would, in accordance with Article XIII, paragraph 3, provide us with all relevant information concerning the administration of the restrictions and the distribution of such licenses.

For the moment I will consider only the statements I have quoted above. It can be seen from these statements that:

- 1) existing restrictions have been intensified since March 1st, 1948, that is since the entry into force of the G.A.T.T.;
- 2) The reason for intensifying the restrictions in most cases was not that of short supply;
- 3) Two main reasons for discrimination are invoked;
 - a) security reasons,
 - b) participation or non-participation of a country in the European Recovery Programme.

I shall return later to the question of security and begin with the second point.

The Foreign Assistance Act of 1948, Chapter 169, sec. 112 g provides that no export shall be authorized of any commodity from the USA to any country wholly or partly in Europe which is not a participating country, if the department, agency etc. determines that the supply of such commodity is insufficient, or would be insufficient if such export were permitted, to fulfil the requirements of participating country under this title. This law was passed on April 2nd, 1948, and signed

by the President of the USA on April 3, 1948, that is after the entry into force of the G.A.T.T. and in consequence should, in our opinion, contain no provisions which are clearly inconsistent with the G.A.T.T.

Now I would like to return to the question of national security. The G.A.T.T. contains in this respect a definition in Article XXI. For our part, it would suffice to mention only sub-paragraph b (ii) "relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment". But Mr. Thorp was speaking about "military potential" which is, in our opinion, an entirely different thing.

As a conclusion to this part of my statement I would like to point out that USA export controls:

- 1) are contrary to the basic principles of Article I requesting licenses for exports to some destinations and none to others;
- 2) are administering then these licenses contrary to the provisions of Article XIII.

Until this moment I have been speaking only about texts and paragraphs.

Let us see now what are the consequences of the USA's measures on the development of international trade. Czechoslovakia has ordered from US factories different materials and equipment, in our view none of them for a military establishment. There are, for example, equipment for dried milk production, electrodes, electric bulb wire, aluminium folios for 92 \$, X-ray tubes, enamelled copper wire, enamelled sets for pharmaceutical manufacture, different equipments for mines, melting equipment for Czechoslovak State Mint etc. We had to pay in advance for most of the goods ordered and now these goods are lying in US factories or warehouses and some 27 millions of dollars are blocked

in this way. We also know that the USA has handed over to other countries its secret lists of prohibited goods, that the United Kingdom has meanwhile introduced some similar restrictions on exports and that in the French National Assembly the Republican representative M. Chambeiron stated on May 17, 1949 in his interpellation, the following:

"On April 1st last a high official of the Quai D'Orsay stated, at a press conference, that the French Government proposed to follow the example of the United States and the United Kingdom and to restrict French exports by prohibiting the export of certain products. Two lists are reported to have been drawn up already We now learn that the Government contemplates prohibiting the export of machine tools".....

Mr. Chairman, Fellow Delegates, we have signed the G.A.T.T. confident that it would bring a certain sense of security and legality into international trade relations leading to an expanding exchange of goods and ensuring full employment. Instead we are faced with the greatest insecurity and with measures which are leading to an inevitable decrease in our trade with certain countries. How can our enterprises be expected to place their orders with the factories of those countries, in which, either through State intervention or the possibility of State intervention millions of our money remain, or may remain, frozen?

All of you know that unemployment is rapidly increasing in some countries. Is this the right way to fight against it, does it not mean that the USA is closing down itself its export markets?

For all these reasons we expect your decision to be just and fair, and to renew the badly shaken confidence, because otherwise it would allow each country to do to other countries practically what it wishes. The work we have done until now would be completely destroyed and a big question mark would be placed above the not yet existing ITO.

As soon as you would admit that a country may impose restrictions and special formalities on exports to some destinations and none to others, the Most-Favoured-Nation-Treatment would cease to exist and we would be in the midst of wildest economic warfare instead of peaceful cooperation.

Mr. Chairman, Fellow Delegates, we have brought this matter before you because we approached in accordance with Article XXIII, paragraph 1, already on December 2, 1948, the US State Department with a verbal note but until now we have received no reply.

COMPREHENSIVE EXPORT SCHEDULE No. 26

Part 3. Country Groups

For the purpose of export control, all foreign destinations, except Canada, are classified by the Office of International Trade into two country groups: Group O and Group R. (Exportations to territories and possessions of the United States, e.g. Alaska, Hawaii, Puerto Rico, Virgin Islands, Canal Zone, Guam etc. as well as to the Trust Territory of the Pacific Islands, do not require export licenses).

Country Group O

All foreign destinations, other than Canada and those included in Group R, are included in Group O.

Country Group R

The following destinations comprise Group R:

Aegean Islands (including the Dodecanese Islands)	Germany
Albania	Gibraltar
Andorra	Greece (and its Mediterranean Islands)
Austria	Hungary
Belgium	Iceland
Bulgaria	Ireland
Czechoslovakia	Italy (and its Mediterranean Islands)
Denmark (except Greenland)	Latvia
Estonia	Lichtenstein
Finland	Lithuania
France (including Corsica)	Luxembourg
French North Africa (including Algeria, Tunisia and French Morocco)	Malta, Gozo, and Cyprus Islands
	Monaco
	The Netherlands
Norway	Switzerland
Poland and Danzig	Tangier (including the International Zone)
Portugal (including Azores and Madeira Islands)	Trieste, Free Territory of
Roumania	Turkey (Asiatic and European)
San Marino	Union of Soviet Socialist Republics (European and Asiatic)
Spain and Possessions (including Balearic Islands: the Canary Islands; Spanish Morocco; Ceuta; Melilla; Ifni; Rio de Oro; Spanish Guinea, including Rio Muni and Fernando Po; Annobon, Corisco and Elobey Islands.	United Kingdom of Great Britain and Northern Ireland
Sweden	Vatican City
	Yugoslavia

Canada

Licenses are not required for the export of articles, materials, supplies, or technical data to Canada.

THE PROBLEM OF DISCRIMINATION
IN INTERNATIONAL TRADE

Statement by Willard L. Thorp^{x/}

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Since March 1st, 1948, export control over short supply items has been reinforced by the imposition of export-licensing control over nearly all shipments to Europe. This control serves two primary purposes. The first of these purposes is to ensure that the requirements of the countries participating in the European Recovery Programme are met, so far as possible, in accordance with the purposes and provisions of the Foreign Assistance Act of 1948. The second of these purposes is to supplement the long-standing control of exports of arms, ammunition, and implements of war by subjecting to close scrutiny shipments to Eastern Europe of other items which have military significance.

In practice, this has meant that shipments to participating countries, other than shipments of products on the short-supply list, have been licensed freely whereas shipments destined for non-participating countries have been carefully scrutinized (1) to ensure an adequate flow to the participating countries of goods needed for their economic recovery and (2) to prevent the shipment to Eastern Europe of things that would contribute significantly to the military potential of that region.

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x/ Speaking before Committee 2 of the UN Assembly in Paris on Nov. 4, 1948.

U.S. Department of Commerce
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OIT-318A

Secretary of Commerce Charles Sawyer announced late to-day that, effective immediately, validated licenses will not be required to export any fats (including fatback and butter) and oils and oil bearing seeds to destinations outside the Group "R" countries in Europe and adjacent areas. Commerce officials emphasized that validated licenses are still required for shipments to the Group "R" countries.

Today's action is the latest of a series of steps relaxing controls on fats and oils. Export controls on inedible fats and oils were removed on February 7, as a result of a survey undertaken at the request of Mr. Sawyer. At the same time, quotas of lard, soyabean and cottonseed oil were increased by 105,000,000 pounds.

This afternoon the International Emergency Food Committee of which the United States is a member, agreed that fats and oils should be removed from a system of world allocation. Earlier to-day Secretary Sawyer had deferred action pending this decision of IEFC.

The decision of the IEFC made practical the action of the Department of Commerce, which authorizes the shipment of all fats and oils to all parts of the world, except the Group "R" countries, without obtaining validated licenses.

Following is a list of the fats and oils removed to-day from the Positive List of commodities under export control:

follows the list of goods.

Import into CZECHOSLOVAKIA

From	% of the Czechoslovak total import		
	1947	1948	Reduction 1947/48
U.S.A.	10.2	4.8	- 53%
United Kingdom	11.7	10.1	- 14%
France	3.5	2.5	- 29%
Netherlands	5.8	5.4	- 7%
Belgium	4.6	3.1	- 33%
Norway	2.3	1.2	- 48%
Denmark	2.8	1.3	- 54%
Italy	4.0	2.4	- 40%
Greece	0.9	0.9	0
Sweden	6.9	5.3	- 23%
Participating countries of ERP in Annex	42.5	32.2	- 24%