

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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PANEL ON COMPLAINTS

BELGIAN FAMILY ALLOWANCES

Draft Report

I. EXAMINATION OF THE LEGAL ISSUES INVOLVED

1. The Panel examined the legal issues involved in the complaint submitted by the Norwegian and Danish Delegations regarding the application of the Belgian Law on the levy of a charge on foreign goods purchased by public bodies when these goods originate in a country whose system of family allowances does not meet specific requirements.

2. After examining the legal provisions regarding the methods of collection of that charge, the Panel came to the conclusion that the 7.5 per cent levy is collected only on products purchased by public bodies for their own use and not on imports as such, and that the levy is charged, not at the time of importation, but when the purchase price is paid by the public body. In those circumstances, it would appear that the levy is to be treated as an "internal charge" within the meaning of paragraph 2 of Article III of the General Agreement, and not as an import charge within the meaning of paragraph 2 of Article II.

3. According to the provisions of paragraph 1 of Article I of the General Agreement, any advantage, favour, privilege or immunity granted by Belgium to any product originating in the territory of any country with respect to all matters referred to in paragraph 2 of Article III shall be granted immediately and unconditionally to the like product originating in the territories of all contracting parties. Belgium has granted exemption from the levy under consideration to products purchased by public bodies when they originate in Luxemburg and the Netherlands, as well as in France, Italy, Sweden and the United Kingdom. If the General Agreement were definitively in force in accordance with Article XXVI, it is clear that that exemption would have to be granted unconditionally to all other contracting parties (including Denmark and Norway). The consistency or otherwise of the system of family allowances in force in the territory of a given contracting party with the requirements of the Belgian law would be irrelevant in this respect, and the Belgian legislation would have to be amended insofar as it introduces a discrimination between countries having a given system of family allowances and those which have a different system or no system at all, and makes the granting of the exemption dependent on certain conditions.

4. The Panel wishes to stress that this undertaking to extend an exemption of an internal charge unconditionally is not qualified by any other provision of the Agreement. The Panel did not feel that the provisions of paragraph 8(a) of Article III were applicable in this case as the text of that sub-paragraph referred only to laws, regulations and requirements and not to internal taxes or charges. As regards the exception contained in paragraph 2 of Article XVII, it would appear that it refers only to the principle set forth in paragraph 1 of that Article, i.e. the obligation to make purchases in accordance with commercial considerations and does not extend to matters dealt with in Article III.

5. The Panel then considered whether the fact that the General Agreement is applied only provisionally had a bearing on the Belgian obligations under Article I with regard to internal taxes. It recognised that the interpretative note to Article I allowed Belgium to observe those obligations "to the fullest extent not inconsistent with existing legislation", so long as Belgium was applying the Agreement pursuant to the Protocol of Provisional Application. The Belgian Law on family allowances dates back to 1930, and the provisions now applicable were enacted in a Royal Decree of 19 December 1939, with the exception of the provision fixing the rate of the levy, which was amended on 27 March 1951.

6. The Panel noted, however, that, in another case, the CONTRACTING PARTIES agreed that the Protocol of Provisional Application had to be construed so as to limit the operation of the provisions of sub-paragraph 1(b) of the Protocol to those cases where "the legislation on which [the measure] is based is, by its tenor or expressed intent, of a mandatory character - that is, it imposes on the executive authorities requirements which cannot be modified by executive action".⁽¹⁾

7. The Panel, although recognizing that the relevant provisions of the Belgian Royal Decree appeared to be of a mandatory character, noted that, as pointed out by the Danish and the Norwegian representatives and admitted by the Belgian representative, it had been possible for the Belgian executive authorities to grant an exemption to a country whose system of family allowances did not meet fully the requirements of the law. Even if it might be difficult for the Belgian authorities to take similar action in similar cases, the Panel did not feel that it has been proved to its satisfaction that the Belgian legislation fulfilled all the conditions laid down by the CONTRACTING PARTIES to justify an exception under the Protocol of Provisional Application.

(1) Basic Instruments, Vol.II, p. 62.

II. RECOMMENDATION

8. The Panel felt that the legal issues involved in the complaint under consideration are such that it would be difficult for the CONTRACTING PARTIES to arrive at a very definite ruling. On the other hand, it was of the opinion that the Belgian legislation on family allowances was not only inconsistent with the provisions of Article I (and possibly with those of Article III, paragraph 2), but was based on a concept which was difficult to reconcile with the spirit of the General Agreement and that the CONTRACTING PARTIES should note with satisfaction the statements made at the Sixth and Seventh Sessions by the Belgian representatives, and should recommend to the Belgian Government to expedite the consideration and the adoption of the necessary measures consistent with the General Agreement, including a possible amendment of the Belgian legislation to remove the discrimination complained of, and to refer to the CONTRACTING PARTIES not later than the first day of the Eighth Session.