GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

RESTRICTED

LIMITED C
GATT/CP.3/WP.7/2/Add.3
31 May 1949
ENGLISH
ORIGINAL: FRENCH

Contracting Parties
Third Session

WORKING PARTY 7 ON BRAZILIAN INTERNAL TAXES

Note by the French Delegation in response to the Statement by Brazil in GATT/CP.3/WP.7/2/Add.2.

WORKING PARTY 7 ON BRAZILIAN INTERNAL TAXES

Position of the French delegation

At the meetings of Working Party 7, the Brazilian delegation has argued that the French objection regarding the internal taxes levied on foreign goods imported into Brazil was without foundation.

The French delegation wishes therefore to clarify its position as follows:

The principle laid down in Article III, paragraph 2, is that internal taxes should be applied at the same rate to imported products as to national products, and it is evident that the final aim of the General Agreement is the suppression of discriminatory internal taxes.

However, Article III is in Part II of GATT, and under the Protocol of Provisional Application is applicable only "to the fullest extent not inconsistent with existing legislation". In other words, discriminatory internal taxes existing at the date of the Protocol may continue to be applied.

On the other hand, the Protocol does not authorise a Contracting Party to intensify discriminatory measures temporarily permitted pending the final application of the General Agreement.

The French delegation feels this to be the true sense of the expression "to the fullest extent not inconsistent with existing legislation".

Applying these principles to Brazil, it must be concluded that:

1) the discriminatory margins provided for in Brazilian legislation enacted in 1945 and still in force at the date of the Protocol, may continue to be applied; this is in fact the conclusion reached by Working Party 7;

2) the new law of 1948, which increased the 1945 discriminatory margins after the date of the Protocol, is not in accordance with the terms of the Protocol.

No doubt the Brazilian delegation argues that under the 1945 law the internal taxes levied on imports must be increased by surtaxes expressed as a percentage[1] and that the law of 1948 is not at variance with the Protocol, since the percentages at present applied are exactly the same as were fixed in 1945.

The French delegation feels however that when in 1948 Brazil modified the 1945 law with the object of increasing the rates of her internal taxes (as she was fully entitled to do) she should, to comply with the provisions of the above-mentioned Protocol, at the same time have revised the percentages fixed in 1945 in such a way that the discriminatory margin expressed <u>in absolute figures</u> would not have shown any increase. The findings of the Working Party have made it clear that the Brazilian Congress could have done this.

Actually, we find that the discriminatory margin, which in 1945 was 3 cruzeiros per litre on whisky, armagnac, cognac, etc., is today 6 cruzeiros.

These conclusions reached by the French delegation are, moreover,

---

(1) For example, in the case of gin, whisky, armagnac, cognac, etc. the surtax applicable is 100%.

based not only on the general sense of the Protocol and of Article III of GATT; but also on the Interpretative Notes ad Article I, paragraph 4.

The French delegation does not contest the fiscal nature of the 1948 law. But it is clear that the discriminatory margins in question do have a protective effect. The Brazilian representative admitted frankly that originally they were semi-protective measures (see CP3/SR.10 page 2, fifth paragraph). It cannot be argued that they have ceased to be so as a result of increases made in them subsequently. On the contrary, there is no doubt that they still constitute an added indirect protection for Brazilian economy.

The Interpretative Notes ad Article I, paragraph 4, of the General Agreement, binds margins of preference at an absolute figure. How could an action prohibited in regard to customs duties be permissible in regard to internal taxes, when the latter - as in the present instance - perform a function similar to that of customs duties and more particularly when the general principle laid down by GATT for the levying of internal taxes is that of national treatment?

The French delegation is of the opinion that the discriminatory margins on internal taxes should be considered as bound at an absolute figure in the same way as the margins of preference on customs duties.

It is clear that if these principles are not respected, certain stipulations of the General Agreement will become a dead letter.

The discriminatory margins, as has already been seen, are six times greater today than they were in 1945 and should the French thesis not be admitted, there will be nothing to prevent the Brazilian Government increasing them still further in the future, thus departing further and further from the aims of Article III of GATT which the Contracting Parties nonetheless undertook to attain during the period of provisional application "to the fullest extent not inconsistent

with existing legislation". Import taxes could rapidly become prohibitive.

The new Brazilian law is, also, contrary to the provisions of Article II of GATT. In return for corresponding concessions accorded, Brazil lowered and bound her customs duties on products subject to discriminatory taxes (gin, whisky, and liqueurs). It cannot be denied that, by raising the discriminatory taxes which were in force at the time of the Geneva negotiations, Brazil is partly annulling the effect of those concessions. In which case, the question arises whether a Contracting Party may, by enforcing a system of discriminatory taxation, annul previously accorded concessions on customs duties.

This statement of facts makes sufficiently clear the damage that the Brazilian law of 1948 may cause to France and to other Contracting Parties in a similar position to France.(1)

On this account, the French delegation requests Brazil to reconsider her system of internal taxes with a view to bringing the discriminatory margins back to the level existing at the date of signature of the Protocol of Provisional Application of GATT.

Furthermore, the French delegation maintains its request for the total suppression of the discriminatory internal taxes levied in Brazil since 1 January 1949 on imported watch-makers' and clock-makers'

---

(1) For example, France obtained a binding of the Brazilian customs duty (on liqueurs) at the rate of 9.24 cruzeiros per kg. legal weight. At that time, the internal tax was 3 cruzeiros per litre of liqueur on the national product, and 6 cruzeiros per litre on the imported product. At the present time, it is 6 cruzeiros per litre on the national product and 12 cruzeiros per litre on the imported product. In 1947, the discriminatory margin amounted to approximately one-third of the customs duty. Today, it amounts to about two-thirds of the duty. The protection given to the national products has thus been very considerably increased by a procedure forbidden by GATT.

wares. It would point out, in this connection, that concessions and bindings in connection with the duties on these articles were likewise obtained from Brazil and that the discriminations in question have the effect of depriving the French watch-making industry of part of the advantages and facilities accorded it.