

GENERAL AGREEMENT
ON TARIFFS AND
TRADE

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LES TARIFS DOUANIERS
ET LE COMMERCE

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Contracting Parties

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WORKING PARTY 7 ON BRAZILIAN INTERNAL TAXES

DRAFT REPORT TO THE CONTRACTING PARTIES

1. In the light of the discussion at the 9th and 10th meeting of the CONTRACTING PARTIES on the 25th and 26th April, the Working Party examined the question of internal taxes imposed by the Government of Brazil, in order to determine whether these were consistent with Brazil's obligations under the General Agreement.
2. Details of the taxes in question were furnished by the Brazilian Delegation in documents GATT/CP.3/WP.7/2, WP.7/2 Add.1 and WP.7/2 Add.2.
3. With the agreement of the Brazilian delegate the Working Party decided to adopt, as the basis for this examination, the text of Article III of the General Agreement as modified by the Protocol amending Part II and Article XXVI (drawn up at the second session of the CONTRACTING PARTIES) since, although at the time of examination Brazil was bound by the provisions of the original and not of the amended text, it was understood that the Government of Brazil intended to sign the Protocol in the near future.

4. The Working Party agreed that internal taxes relating to the products of contracting parties only were in question, and that Article III did not apply to taxes which discriminated between goods of national origin and like goods of which the only producing countries were not contracting parties.

5. The Working Party agreed that a contracting party was bound by the provisions of Article III in respect of all goods produced by other contracting parties whether or not the contracting party in question had undertaken tariff commitments in respect of the goods concerned.

6. The Working Party then considered the Brazilian Law 7404 of 1945. The Brazilian delegate agreed that the law imposed taxes which discriminated between products of national origin and like products supplied by other contracting parties, but pointed out that, during the period of provisional application, the application of the provisions of Article III of the Agreement was limited by the Protocol of Provisional Application in the sense that contracting parties were obliged to apply the provisions of Part II of the Agreement only "to the fullest extent not inconsistent with existing legislation". The Brazilian delegate informed the Working Party that any change in the rates of tax established by this Law could not have been effected by administrative action, but would have required amending legislation to be enacted by the Brazilian Congress. The Working Party therefore concluded that in view of the mandatory nature of Law-7404 the taxes imposed by it, although discriminatory and hence contrary to the provisions of Article III, were permitted by the terms of the Protocol of Provisional Application and need not be altered so long as the General Agreement was being applied only provisionally by the Government of Brazil.

7. The Working Party then examined Law No. 494 of 1948, and first considered these particular taxes established by it, relating to "Conhaque", alarm and wall or hanging clocks, and cigarettes.

8. With reference to Amendment No. 7 made to Brazilian internal taxes by Article I of Law No. 494 of 1948, the Brazilian delegate explained in Document GATT/CP.3/WP.7/2 Add 2 that this amendment concerned beverages containing aromatic or medicinal substances and going under the name of tar, honey or ginger "Conhaque" which were quite different from French cognac. He gave an assurance that the authorities responsible for administering the taxes were able to distinguish between those products (which were of strictly local origin and subject to a tax of 3.60 cruzeiros per litre) and cognac imported from abroad. He made it clear that home-produced beverages similar to the cognac produced abroad were subject to the tax of 18 cruzeiros per litre.

The members of the Working Party accepted this explanation, on the Brazilian delegate's giving an assurance that careful instructions would be sent to the authorities administering the taxes, concerning the distinction to be drawn between these various products.

9. As regards alarm and wall or hanging clocks, the Brazilian delegate agreed that the Law of 1948 had imposed a new discrimination which was not permitted by the terms of the Agreement even during the period of provisional application and agreed to recommend that the Law should be modified in this respect.

10. As regards cigarettes the Working Party found that under the Law of 8538 of 1946 the difference between the highest tax charged on cigarettes of national origin and the tax charged on imported cigarettes was 2.70 cruzeiros, whereas under the Law of 1948 the tax on imported cigarettes was at the same level as the highest tax on cigarettes of national origin, and in both cases the tax had been raised to 8.00 cruzeiros. The delegate of Brazil assured the Working Party that only cigarettes corresponding to the highest quality produced locally were

imported from abroad. In the light of these explanations the Working Party found that the law of 1948 had not imposed a new discrimination, but indeed had abolished an existing discrimination.

11. The Working Party then considered as a whole the remaining taxes imposed by Law No. 494 of 1948. In all these cases the rates of tax on the domestic product had been increased, and the differential of 100% on the rate imposed on imported products had been retained, with the result that the absolute difference between the two rates had been increased although the proportionate relationship had been retained. The Brazilian delegate, supported by one other member of the Working Party, took the view that, since this proportionate relationship had already been established by the Law of 1945, any increase in the absolute difference in the rates was permitted during the period of provisional application, so long as this proportion was retained.

12. The other members of the Working Party, however, took the view that the Protocol of Provisional Application limited the operation of Article III only in the sense that it permitted the retention of an absolute difference in the level of taxes applied to domestic and imported products, required by existing legislation, and that any subsequent change in legislation should have the effect of narrowing, and not increasing, the absolute margin of difference. To take a case in point the Brazilian law of 1945 required the tax on domestic liqueurs to be Cr\$ 3 and the tax on imported liqueurs to be Cr\$ 6. The law of 1948 had raised the tax on domestic liqueurs to Cr\$ 18 and the tax on imported liqueurs to Cr\$ 36. These members of the Working Party felt that while the Brazilian Government were entitled to raise the tax on the domestic product to Cr\$ 18, the new tax on imported liqueurs could not in these circumstances exceed Cr\$ 21 if the increase were to be compatible with the requirements of Article III and the Protocol; it was evident that

the structure of the law of 1945 (which imposed a margin of 100% on imported products) could have been modified when the rates had been altered.

13. The Brazilian delegate adduced the further argument that the object of Article III was to prevent the protection of domestic products by the use of discriminatory taxes, and that therefore unless it could be shown that the effect of the Law of 1948 had been to increase the protection of the national product, the Law could not be held to be incompatible with the provisions of Article III. In support of this argument the Brazilian delegate said that paragraph 2 of Article III should be read in the light of paragraph 1 and of the interpretative note to paragraph 2.

14. Several members of the Working Party on the other hand took the view that the interpretative note to paragraph 2 of Article III modified the second sentence only of that paragraph; that taxes on imported products in excess of those on like domestic products were inherently protective and therefore in all cases contrary to Article III, and that the second sentence, as explained by the interpretative note merely referred to certain other instances in which protective results might occur.

15. The Brazilian delegate advanced the view that unless damage to other contracting parties could be demonstrated, a breach of Article III could not be alleged. In this connection he suggested that where there were no imports of a given commodity or where imports were small in volume, the provisions of Article III did not apply.

16. Other members of the Working Party argued that the absence of imports from contracting parties, during any period of time that might be selected for examination, would not necessarily be an indication that they had no interest in exports of the product affected by the tax, since their potentialities as exporters, given national treatment, should be

taken into account. These members of the Working Party therefore took the view that the provisions of Article III were equally applicable whether imports from other contracting parties were substantial, small or non-existent.

17. In conclusion the Working Party noted that the Brazilian Government had already called the attention of the Brazilian Congress to all existing laws providing for different levels of taxation with respect to domestic and imported products, in order to bring those laws into conformity with Article III of the General Agreement. The Working Party also accepted the statement by the Brazilian delegation that the Government are willing to send a further message to the Congress asking it to proceed as soon as possible with the amendment of all such laws and in particular the law of 1948.

18. It was understood that in view of the constitutional procedure of Brazil such action by the Brazilian Congress, even in respect of the law of 1948, could not have an effective result before 1st January, 1950.

19. In view of these statements the Working Party recommend to the CONTRACTING PARTIES that no further action in this matter be undertaken at the present session, but that at the next session the question should be reviewed in the light of action taken by the Brazilian Government by that date.