

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
LIMITED B
GATT/CP.5/37
7 December 1950
ORIGINAL: ENGLISH

REPORT OF

WORKING PARTY "E" ON BRAZILIAN INTERNAL TAXES

1. The Working Party was asked to examine a draft law (No. 483-50) modifying the present legislation on consumption taxes which has been prepared by the Government of Brazil and submitted to its legislature, and to advise on the conformity of the draft with relevant provisions of the General Agreement and the Protocol of Provisional Application.
2. In commencing its deliberations the Working Party noted that during discussions of this question by the Contracting Parties the Brazilian Government had indicated (paragraph 17 of GATT/CP.3/42) that it was prepared to ask Congress to proceed as soon as possible with the amendment of all existing laws providing for different levels of taxation with respect to domestic and imported products, and in particular Law No. 494 of 1948, in order to bring them into conformity with Article III of the General Agreement. In a communication to the Executive Secretary (GATT/CP/72), following a further examination of the question at the Fourth Session, the Government of Brazil advised that a message had been sent to the Congress requesting action towards amending all existing laws which provide for different levels of taxation for domestic and imported products in order to bring them into conformity with Article III. The Working Party proceeded to examine the draft law, No. 483-50, in the light of the conclusions reached in previous discussions by the Contracting Parties, notably in GATT/CP.3/42.
3. The Brazilian Delegation informed the Working Party that the draft law was a first step in what would be a gradual process of removing all the discriminatory taxes. The draft law was intended to remove the new or increased discrimination between domestic and foreign products which had been introduced since October 30, 1947, and, in addition, although this was not required so long as the Agreement was being applied only on a provisional basis, it provided, on some commodities, for the removal of some of the discrimination which had existed prior to that date.
4. With reference to the removal of the margins of discrimination which existed prior to October 30, 1947, the Brazilian Delegation stated in GATT/CP.5/E/2 that its Government reserved the right to incorporate such margins of discrimination into the customs duties. The Delegation of Brazil advanced economic and legal arguments to support this view. The representative of Chile suggested that there might be justification in this case on various and particularly economic grounds for the conversion of the internal tax discrimination into customs duties. The representatives of France, Greece, the United Kingdom and the United States, on the other hand, pointed out that while a government would have the legal right to convert internal tax margins into customs duties in respect of tariff items not included in its schedule to the General Agreement, it would not have that right in respect of scheduled items except through the procedure of the Agreement for the modification of concessions. The Chairman expressed the view that the Working Party's terms of reference did not permit it to reach a conclusion on this matter. The majority of the Working Party agreed with his view, and felt that it would not be necessary to decide this issue in present circumstances. The representative of Brazil stated that in that event his Government would reserve the right to modify the draft law to retain only those provisions which are strictly necessary to eliminate the new or increased discrimination introduced since October 30, 1947.

5. The Brazilian delegation made available to the Working Party two documents (GATT/CP.5/e/2/Rev.1 and E/3) containing, respectively, a translation of the Draft law, and translations of extracts from laws and decrees at present in force in order that the amendments being introduced by the Draft law might be more readily understood. Nevertheless, members of the Working Party found some difficulty in understanding the full significance of many provisions of the Draft law and sought additional information and explanations from the representatives of Brazil.

6. On the basis of the information available to the Working Party in the form of written and oral statements, it appeared to the Working Party that the Draft law would, except in the respects noted below, remove the new and increased internal tax discrimination introduced since October 30, 1947, and bring Brazil's consumption tax legislation into conformity with the General Agreement as applied under the Protocol of Provisional Application. The exceptions are as follows:

- (a) The increase in the internal tax discrimination on playing cards resulting from legislation subsequent to October 30, 1947, (i.e., Decree pursuant to Law No. 494 of 1948) would not be removed by the Draft law. The Brazilian representative stated that his Delegation would recommend an appropriate amendment to take care of this.
- (b) Most members of the Working Party were of the opinion that on cigars, cheroots, snuff, shredded and cut tobacco and tobacco in powder (Sections 1, 3 and 4 of paragraph XXIV in Schedule D of the consolidation of consumption taxes) the margins of discrimination had been increased since October 30, 1947. The representative of Brazil did not agree but, nevertheless, stated that he was willing to propose the modifications necessary to eliminate the margins of discrimination which most members of the Working Party concluded had been introduced since October 30, 1947.

7. The Working Party noted that various provisions (paragraphs 8, 11, and 12 of Article I of the Draft law) would eliminate the discrimination in question only with respect to products imported from the contracting parties. The question was raised in the Working Party as to the treatment which would be accorded to products of the contracting parties which were not imported directly but came to Brazil in transit through a third country. The representative of Brazil assured the Working Party that products of any contracting party which entered Brazil after coming in transit through a third country would receive the same treatment as if the goods in question had been imported directly from a contracting party.

8. Finally, the Working Party considers that the review of draft legislation by the Contracting Parties with a view to determining whether such legislation is in conformity with the General Agreement in no way prejudices the right of any contracting party, subsequent to such review, to raise any question as to the consistency of such legislation with the provisions of the Agreement.