

16 November 1955

Working Party 6 on Article XVIII Applications

ARTICLE XVIII/IMPORT RESTRICTIONS ON LEAF TOBACCO, CIGARS,  
CIGARETTES AND OTHER TOBACCO, BY THE REPUBLIC OF HAITI

Draft Report of the Working Party

1. The Working Party was charged:

- (a) with the examination of the application of Haiti for a renewal of the release that had been granted by the CONTRACTING PARTIES on 27 November 1950 with respect to the measure under which importers are required to obtain licences for the importation of leaf tobacco, cigars and cigarettes;
- (b) with consideration of the suggestion made by the representative of Haiti to the CONTRACTING PARTIES in the meeting of 3 November to the effect that the Haitian measures relating to these products are not in contravention of the terms of the Agreement and that the previous release had, in fact, been unnecessary.

The Working Party considered that it should first consider item (b) as that examination might make further consideration of Haiti's request unnecessary.

2. In considering how to proceed, however, the Working Party decided that it was neither feasible nor appropriate for it to attempt to establish all the relevant facts with respect to the Haitian licensing system and the operation of the Tobacco Régie, and that its function should be simply to examine, with the representative of Haiti, the provisions of the Agreement that might be relevant in order to assist Haiti in determining whether it should withdraw its application.

3. The Working Party ascertained from the representative of Haiti that there was a distinction between leaf tobacco on the one hand and cigars, cigarettes and other tobacco on the other. In the case of the former, the limitation applied to imports is designed to reinforce but not to alter the limitation imposed by the domestic mixing regulation, and in the case of the latter, importers act simply as agents for the Régie and receive licences for the full extent of the market demand as determined by the Régie.

LEAF TOBACCO

4. The Working Party therefore decided firstly to examine the position in relation to leaf tobacco, and the following notes reflect the discussion of the Articles which the Working Party considered relevant.

Article XX:I(d)

5. With regard to Article XX:I(d) the representative of Haiti stated that the measure was necessary to secure compliance with the Law of 16 February 1948, which established the Tobacco Régie (CP.3/40) and that it was "not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade". In the light of this statement the Working Party considered that Article XX:I(d) would be applicable to the measure if the basic regulations were not in conflict with any provision of the Agreement.

Article II:4

6. Since leaf tobacco is not included in Haiti's Schedule No. XXVI, it was decided that the provisions of Article II:4 would not in any event apply.

Article XVII

7. As the representative of Haiti informed the Working Party that the import licences issued by the Régie may be used for purchases from any source, it was considered that the measure did not conflict with the provisions of Article XVII calling for non-discriminatory treatment.

Article XI

8. The representative of Haiti declared that the licensing system served solely to enforce the internal quantitative regulations of the Régie and did not impose any additional limitation of the quantity that may be imported. The Working Party therefore took the view that in these circumstances Article XI would not apply, that the import restriction should be considered under the terms of the exception in Article XX:I(d) and that the internal regulation to which it relates should be considered under paragraphs 5 and 6 of Article III.

Article III:5 and 6

9. The representative of Haiti stated that the only quantitative protection afforded to domestic leaf tobacco was through an internal quantitative regulation under which the Régie determined the proportion of tobacco which the domestic manufacturers must obtain from domestic sources, and that the internal regulation was operated in conformity with the Law of 16 February 1948, and in particular with Article 17 thereof. He also stated that the Law had been in force on one of the optional dates specified in paragraph 6, namely, 24 March 1948, and that although it had been amended on 13 September 1948, the only provision in the law affected by that amendment was Article 16 which dealt with the collection of excise taxes. The representative of Haiti also informed the Working Party that the provisions of paragraph 6 were fully complied with in that the regulation in force on the base date had not been altered to the detriment of imports. In these circumstances the Working Party did not see anything in paragraphs 5 or 6 of Article III which required a release under Article XVIII for these measures.

CIGARS, CIGARETTES AND OTHER TOBACCO EXCEPT LEAF TOBACCOArticles XI and XVII

10. With regard to cigars, cigarettes and other tobacco, the representative of Haiti informed the Working Party that importers act as agents of the Régie and that import licences represent in effect orders by the Régie; further, that the Régie only determines the extent of the market demand and the Law requires that licences be issued to the full extent of such demand. The Working Party considered that under these circumstances there would be no infringement of the provisions of Article XI, whatever may have been the situation at the time of the conclusion reached by the Working Party in their report adopted by the CONTRACTING PARTIES on 27 November 1950 (CP.5/25). It was further considered, in the light of the Haitian representative's statement, that the licensing measures in regard to these items were non-discriminatory, and that there was no contravention of the obligations imposed by Article XVII.

Article II:4

11. Since cigars, cigarettes, and other tobacco are not bound in Haiti's Schedule No. XXVI, the Working Party decided that the provisions of Article II:4 did not apply.

Conclusion

The Working Party considered that on the basis of the information supplied by the representative of Haiti, and in the light of the foregoing notes of the discussion there was a prima facie case that the measures maintained by Haiti affecting the importation of leaf tobacco conformed with the exception in Article XX:I(d); with regard to the measures concerning cigars, cigarettes and other tobacco, there was no restriction and that therefore these measures are not such as to require a release under Article XVIII, notwithstanding the conclusion reached by the Working Party in their report adopted by the CONTRACTING PARTIES on 27 November 1950.