Int'l tobacco
— Romanz

Office of the Assistant Secretary for Health
and
Surgeon General
Office of Public Health and Science
Department of Health and Human Services

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FAX TRANSMISSION COVER SHEET

Date: 2-4-99

To: Tom Freedman

Fax: 456-7431

Re: (please see attached)

From: Jim O'Hara

YOU SHOULD RECEIVE 9 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (202) 690-7694.

2/4/fac
CC:
Heather
Samira
Elizabeth
Rose

February 3, 1999

Kathy
Pls send to
FYI copies to
RP & Tom
Friedman

TO: Paul Aceto, State - 647-2302
Connie Phlipot, State - 736-4853
Abe Avidor, USDA - 690-2079
Priscilla Joseph, USDA - 690-1171
Michelle Larkin, HHA - 205-8313
Michael Eriksen/Heather Selin, CDC - (770) 488-5767
Les Simon, USDOC - 482-3981
Brian Goggin, USDA - 720-1139
Laurie Curry, USDOC - 501-0787

FROM: Bruce Neuling, USTR

SUBJECT: Tobacco Demarche to Bucharest

Attached is a draft cable to the U.S. Embassy in Bucharest regarding Romania's excise tax on tobacco. It has been cleared by USTR's General Counsel's office and I believe it sums up the position the interagency group reached on Monday. Please get back to me by noon on Friday with your comments and clearances. My phone is 395-6153 and my fax is 395-4579. Thanks.

1. This is an action request--see paragraphs 3-6.

2. Washington agencies appreciate and have reviewed the ref a information on Romania's new excise tax on cigarettes, which imposes a rate that is significantly higher than the previous rate but also carves out a concession for cigarettes containing Romanian tobacco. After considering the tax in light of U.S. policy on tobacco exports (ref b), agencies have concluded that a USG response is both necessary and appropriate. We are concerned that the new tax discriminates against foreign tobacco in a manner inconsistent with Romania's obligations under the WTO, and we note that the tax is not intended to curb cigarette smoking but rather to raise revenue and support local tobacco producers. Although smoking may be curbed as an unintended result of the higher rates, the discriminatory aspect of the tax, by itself, will not contribute to this effect. Discrimination will only shift consumption from foreign to local tobacco while leaving total consumption unaffected. We believe that abolition of the concession for local tobacco would eliminate the WTO inconsistency while preserving and augmenting the anti-smoking effects, if any, of the higher rates.

3. Post is requested to communicate USG concerns to senior policy/political level officials in the Romanian trade and foreign ministries. Post should draw on the following points as appropriate:

-- We are concerned about the discriminatory nature of Romania's new excise tax on cigarettes.

-- As the tax is currently structured, cigarettes with foreign tobacoo are taxed at a higher rate than cigarettes with Romanian tobacco.

-- This discrimination is inconsistent with Romania's obligations under Article III.2 of the WTO agreement. This article prohibits internal taxes on imported products that are in excess of those applied to like domestic products.

-- We urge Romania to eliminate the discrepancy in the application of the tax and to bring the tax into conformity with your WTO obligations.

-- Abolishing the concession for local tobacco would achieve this result and would be sound public health policy as well.

-- Cigarette smoking has serious public health consequences. High taxes on cigarettes are an appropriate means to curb smoking. However, smoking will not be curbed by discrimination against foreign tobacco.

-- We hope this matter can be amicably resolved prior to the meeting next month of the WTO Agriculture Committee. We may raise the issue in that forum if there has not been satisfactory progress.

4. Secretary of Agriculture Glickman made similar points in a meeting with Romanian Agriculture Minister XXX in Washington on February 4. As appropriate, post can explain to GOR interlocutors that the USG opposes discrimination against U.S. tobacco but supports efforts

to curb smoking. From the USG's point of view, therefore, it is significant that the higher excise taxes might have anti-smoking effects even though this was not the GOR's intent in imposing them. Abolition of the local concession would bring the tax into conformity with WTO rules while promoting public health.

5. Articles III.1 and III.2 of the WTO agreement read in relevant part as follows:

Begin text:

1. The contracting parties recognize that internal taxes and other internal charges...should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

End Text.

In conversations with GOR officials, post can cite the text of Articles III.1 and III.2 and should discuss the excise tax in terms of the norms therein. The GOR should be encouraged to live up to its international obligations. Post should not suggest, however, that a decision has been made to bring a WTO case if the tax is not corrected. That decision would require a careful weighing of legal, diplomatic, and policy considerations that go beyond the immediate issues in this case.

6. Post should strive to obtain a considered response from the GOR prior to the next meeting of the WTO Agriculture Committee in Geneva on March XX. The U.S. is likely to raise the issue in Geneva unless we have received credible signs that Romania intends to bring the tax into conformity with WTO rules.

7. Post's assistance is appreciated.

February 3, 1999

TO: Paul Aceto, State - 647-2302
Brian Goggin, USDA – 720-1139
Michelle Larkin, HHS – 205-8313
Michael Eriksen/Heather Selin, CDC – (770) 488-~~5701~~ 5767
Les Simon, USDOC – 482-3981

FROM: Bennet Harman/Bruce Neuling -- USTR

Attached for your comments and clearance is a draft cable to the U.S. Embassy in Lima asking for background information concerning a Peruvian tax practice that Philip Morris believes discriminates against U.S. cigarette exports (copy of Philip Morris' letter also attached). Please get back to Bruce by COB on Thursday, if possible, with your reaction. His number is 395-6153.

Paul, Brian, Les: Please obtain clearances as needed from the country desks within your agencies. Thanks.

1. This is an action request–see paragraph 3.

2. Washington agencies are in receipt of a letter of January 21, 1999, from Philip Morris Peru S.A. to post's commercial section regarding a new tax policy instituted by Peru on imported cigarettes. According to the letter, Peru levies an excise tax on cigarettes of twenty-five percent, but the tax is not applied to imported cigarettes and domestic cigarettes in the same manner. In the case of domestic cigarettes, the tax is applied to the retail selling price net of the sales tax. For imported cigarettes, however, the tax is applied to a multiple of the importer's landed price (the CIF price plus the tariff). Although this is not explained in the letter, the multiple is apparently a device to equalize the excise tax burden on imported and domestic cigarettes, which otherwise would be skewed by the difference between landed and retail prices. According to Philip Morris, the Government recently increased the multiple from 3.0 to 6.08, an increase of more than one hundred percent. The order changing the multiple is in Supreme Decree No 003-99-EF of January 13, 1999. Philip Morris does not explain how the multiple is calculated or why it was changed. It does claim, however, that the multiple has been creeping up in recent years. The company is concerned that the new multiple results in discrimination against imported cigarettes.

3. To help determine whether USG action is appropriate, post is requested to confirm the above information and answer the following questions:

-- Why does Peru have one system for imported cigarettes and another for domestic cigarettes? Why are excise taxes not simply levied at the retail level for all cigarettes? Are other goods subject to a similar dual system? If so, have their multiples been adjusted?

-- How is the multiple of the landed price calculated?

-- Why was the multiple changed on January 13? How realistic is the current multiple as an approximation of the difference between landed prices and retail prices? Are retail prices six times higher than landed prices?

-- Is the CIF price denominated in foreign currency? If so, have adjustments in the exchange rate (i.e., the rate used to convert the CIF price to the landed price for purposes of calculating the tax) kept pace with domestic inflation?

-- What is Peru's bound tariff rate on cigarettes? What is the applied tariff rate?

-- What effect is the new multiple likely to have on U.S. exports to Peru?

-- What public health policies, if any, does Peru have to curb cigarette smoking? Is there any link between these policies and the system of administering the excise tax?

4. In conversations with GOP tax and other officials, post should take care not/not to suggest that the USG has determined that the new multiple or the system of administering the excise tax is discriminatory. Please consult reftel for further information on U.S. tobacco trade policy.

Please slug reply for USTR attn. B.Harmon and B.Neuling. Post's assistance is appreciated.

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Action
VO'
CJ

Philip Morris Peru S.A.
Los Telares 165, Urb Vulcano Ate-Vitarte
Lima. Peru Tel (511) 349 - 1800 Fax 349 - 0103

January 21, 1999
FIN-008-99

Ms. Ursula Odlaga Iannone
Commercial Attaché
Embassy of the United States of America
Lima

Dear Ms. Odlaga:

The Government of Peru has recently instituted tax policies that we believe violate the national treatment provisions of the World Trade Organization (WTO). We need your assistance to resolve the matter and provide the following as background on the issue.

Since 1996, Philip Morris Latin America Exports (PMLAE) has exported Marlboro cigarettes from its manufacturing facilities in the United States to Peru. Philip Morris Peru S.A. (PMP) was established in July of 1996 for the purpose of managing the importation and distribution of Marlboro cigarettes.

Excise Tax

One of the fundamental principles of indirect taxation is that the incidence of the tax cannot discriminate on the basis of the origin of the goods. This norm has been embodied in international trade agreements, such as GATT, as well as regional trade accords, such as the Andean Pact. The Government of Peru explicitly supports this principle through its membership in GATT, that was approved by the Uruguay round and which the Congress ratified through Low No 26407 of December 16, 1994. In addition, Peru is a member of the Andean Pact, which was created by the Treaty of Cartagena on May 26, 1969 and ratified by Executive Power on October 14, 1969 in Law No 17851.

From the outset of its operations in Peru, PMP has faced unequal treatment in the application of the excise tax (Impuesto Selectivo al Consumo (ISC)), which unfairly benefits domestic producers. To determine the taxable base for the excise tax on imported cigarettes, the Government applies a "Multiplier" to the importers landed price, in this case CIF plus an external tariff of 12%.The multiplier is set by the Ministry of Economy and Finance and in the past few years it has crept slowly upward until finally resting at 3.0 as approved by Ministerial Resolution No 189-97-EF/15 of October 7, 1997. This taxable base is subject to the excise tax of 25%.

For cigarettes produced in Peru the excise tax is applied to the retail selling price net of sales tax (Impuesto General a las Ventas – IGV). On several occasions the cigarette importers have expressed our dissatisfaction with this difference in tax treatment to the Ministry of Economy and several congressmen.

Philip Morris Perú S.A.
Page 2
January 21, 1999

Supreme Decree No 003-99-EF

On January 13, 1999 the Government of Peru issued Supreme Decree No 003-99-EF, which abruptly increased the multiplier for determining the excise tax on imported cigarettes from 3.0 to 6.08; an increase of more than 100%. The decree applies only to imported cigarettes and there is no concurrent change in the taxable base for domestically produced cigarettes.

The result of this discrimination is an injurious discrepancy in the tax burden borne by importers as compared to that of the domestic producers. In addition, the sharp increase in the multiplier will require Philip Morris Perú S.A. to raise its prices to a level at which it can no longer compete with the domestic producers.

The net effect of applying this higher multiplier for imported cigarettes is to create a protectionist barrier. This function falls more appropriately on external customs duties, which are governed by international treaties and other laws. Using this multiplier to determine the taxable base for imported cigarettes only appears to be a clear attempt to circumvent these laws in order to provide domestic producers a competitive advantage in the form of lower tax incidence.

The inevitable conclusion we draw from our analysis of effects of Supreme Decree No 003-99-EF is that this is a clear case of discrimination against imported products. As a result of this decree, cigarettes produced by American companies in the United States and exported to Peru will be subjected to a higher tax burden than the domestically manufactured products.

It would be appreciated if you can bring to the attention of Peruvian authorities their national treatment obligations under the WTO and ask that they immediately rescind Supreme Decree No 003-99-EF.

I would be pleased to discuss this matter with you further and to supply supplemental materials if needed.

Sincerely,

Sergio Muñiz Mantero
Finance and Administration Manager

Zoltan Lukac
General Manager

Lm

USAID Int'l tobacco

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and
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FAX TRANSMISSION COVER SHEET

Date: 2-9-99

To: Thomas L. FREEDMAN

Fax: (202) 456-7431

Re:

From: JIM OHARA

YOU SHOULD RECEIVE 5 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (202) 690-7694.

With this USAID Policy on Tobacco, the Agency joins the national and international communities in an effort to address the negative health effects and development problems exacerbated by tobacco growth and consumption.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT
BUREAU FOR GLOBAL PROGRAMS, FIELD SUPPORT AND RESEARCH
OFFICE OF HEALTH AND NUTRITION
WASHINGTON, D.C. 20523-3700

February 1, 1999

FAX TRANSMISSION

TO: JoDe Walp

Phone: (770)488-1145 Fax: (770)488-1147

FROM: John Borrazzo
Phone: (202)712-4816 Fax: (202)216-3702

NUMBER OF PAGES (including this cover page): 4

Duff Gillespie asked that I pass you a copy of the attached USAID policy on tobacco. This was approved by USAID Administrator Brian Atwood on January 25th. Best regards.

USAID Policy on Tobacco

1. **Policy:** By this guidance, USAID recognizes the health burden that the use of tobacco products places on transitioning and developing country populations and that, without action, this burden is expected to greatly increase. USAID also recognizes the role of tobacco production and trade in the economic development of many of these countries, and thereby appreciates the immediate need to identify alternative cash crops and related opportunities. This Policy on Tobacco is designed to support sector goals and objectivas as articulated in the Agency Strategic Plan and other U.S. Government (USG) policies. This Policy also supports other international community policy and programmatic efforts to curb tobacco production, processing, marketing and use.

While USAID is unable to undertake a large-scale anti-tobacco effort due to staffing, programmatic, and financial constraints, USAID will undertake the following anti-tobacco actions related to policy dialogue and programming:

a) USAID will contribute to significant discussions related to anti-tobacco policies and programs through its participation in international and national fora, including those convened by multilateral organizations such as UNICEF, World Health Organization, Food and Agriculture Organization, and the European Union; USG agencies such as the Department of State, Department of Commerce, Department of Agriculture, Department of Health and Human Services and the Centers for Disease Control; and through bilateral discussions such as those under the U.S./Japan Common Agenda. USAID will encourage and support anti-tobacco efforts by these partners and other relevant governmental and non-governmental organizations.

b) USAID will strengthen appropriate linkages between global anti-tobacco efforts and relevant performance goals articulated in the Agency Strategic Plan. Missions, Regional Bureaus, and Central Bureaus have the latitude to design and implement high impact anti-tobacco activities to attain objectives in health, education, agricultural development, and economic growth consistent with the Agency Strategic Plan and other USG policies related to tobacco.

c) USAID will not support the growth of tobacco as a cash crop nor will it support agribusiness activities contributing to tobacco production, promotion, and use. By the end of calendar year 1999, USAID will cease support for tobacco growth and related activities that promote tobacco production and use. In countries in which tobacco is a major cash crop and an important source of income for low-income farmers, USAID may work with local agricultural interests to identify crops that are economic alternatives to tobacco and may support the introduction or expansion of these alternative crops.

The above guidance supersedes previous USAID policy guidance on tobacco. Additional programmatic guidance related to phase-out of support for activities related to tobacco production, processing, marketing and other tobacco-related activities and identification of alternative crops will be provided to concerned operational units.

2. **Rationale:** Tobacco use results in a tremendous health burden worldwide, and is a growing problem in transitional countries and the developing world. There are 1.1 billion smokers in the world today, and it is estimated that the number will grow to 1.6 billion by the year 2025, mostly because of demographic shifts, increased incomes, and increased smoking by women. By 2025 ...
percent of all ...