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TARIFF NEGOTIATIONS WITH BRAZIL

Tariff Negotiations Committee

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Communication by the Brazilian Government in answer to Questions asked
by Contracting Parties concerning Provisions of the Brazilian Tariff
Law No. 3244 of 14 August 1957

Note by the Executive Secretary

The secretariat has addressed to the Brazilian Government on behalf of a number of contracting parties several questions concerning various provisions of the Brazilian Tariff Law No. 3244 of 14 August 1957. The Brazilian Government gave the answers to these questions at a meeting held in Rio.

The text of questions and answers is reproduced hereunder.

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The Brazilian Government, having been informed of the questions raised on the new Tariff Law by several representatives of contracting parties, takes advantage of this opportunity to explain certain items which gave rise to some doubts. It would like to stress, however, that a solution regarding the Presidential vetoes is pending on a decision by the Brazilian Congress, and that the Law has not yet been regulated. The final decision on certain points of the mechanism of its application will, therefore, depend on regulations to be issued by the Executive in the near future.

The Brazilian Government reaffirms, however, its intention of following a liberal trend in enforcing the new Tariff, so as to allow, under present internal conditions and to the extent possible, the stabilization of import prices, while complying with all its international commitments.

The pertinent regulations, once published, will be immediately forwarded to the GATT secretariat in Geneva for communication to the other contracting parties.

ARTICLE 2 (See also Article 22(a))

Question. Article 2 provides that the ad valorem duty contained in the Tariff might be combined with its specific equivalent and that such specific equivalent should be readjusted every six months in order to continue to be equivalent with the ad valorem duty. It would be appreciated if more details could be obtained on the interpretation to be placed on that provision. It would be particularly important to know whether the intention is that the Customs Policy Council will establish specific equivalents for all ad valorem rates in the Tariff, and if not, what goods are likely to be singled out and why?

It would be useful to know if the basis for the calculation of the specific equivalent would be the Brazilian level of prices or whether the basis would be the world market prices for certain products such as wheat, cereals, metals, etc. It would also be useful to know whether the readjustments would be based on the price changes on world markets or, if this is not the case, on what basis the specific equivalent would be calculated.

Answer. The Law allows the Tariff Policy Council to combine ad valorem rates and/or duties with the specific equivalent, for some or all the positions of the Tariff.

It is, therefore, a power which may or may not be exercised as is clearly stated in article 2, which sets forth that the ad valorem rate may be combined with its specific equivalent.

Any decision about the products on which ad valorem rates will be combined with specific duties will be incumbent upon the Tariff Policy Council; at present, it is impossible to determine which these products, if any, will be, in view of the obvious difficulty of foreseeing the factors which may eventually influence the production and trade of Brazilian import merchandise.

As to the second question, the basis for calculation will be the same used for establishing the ad valorem duties, i.e. the CIF value (article 5 of the Tariff Law) converted into national currency, according to the provisions of article 10 of the same Law.

ARTICLE 3

Question. How is the power given under the article to the CPC to be exercised with respect to items which will in future be bound under the GATT? Is it the intention that the CPC will have the power to set aside bindings without prior congressional approval?

Answer. The Brazilian Government may only modify items which are eventually bound in the GATT, in accordance with the principles contained in that instrument. Therefore, the exclusive authority granted by the Law to the Tariff Policy Council (article 22(b)), as regards modifications of rates and/or duties as set forth in article 3, shall only be exercised according to the rules of the General Agreement.

Thus, although the Law grants the Tariff Policy Council exclusive authority to make changes in rates and/or duties, as established in article 3 (article 22(b)), in order to put in force any modification of rates and/or duties negotiated within the framework of the GATT, further negotiations will be necessary, the results of which shall be submitted to ratification by the Brazilian Congress.

ARTICLE 3, paragraph a

Question. Would it be possible to have a general definition of what is understood to be the "tariff's objectives" referred to in this paragraph as well as in paragraph e of article 3?

Answer. The objectives of the new Tariff Law are exactly the same presented by the Brazilian delegation at the Eleventh Session of the CONTRACTING PARTIES and accepted by them when they granted the waiver requested by Brazil. These objectives were summarized by the Working Party which studied the Brazilian proposal, and are to be found in the annex to document GATT L/581 (pages 7/8 of the English text), chapters: "The Objectives of the Tariff Reform" and "The guiding principles for the establishment of the new Tariff."

ARTICLE 3 paragraph d

Question. The word "difficult" in this provision lends itself to a variety of interpretations. What is the nature of the difficulties which would result in the CPC invoking its power to increase import taxes against the offending country?

Answer. As regards the GATT members, the word "to hinder" (and not "difficult" as in the question) is understood as being the adoption of measures which might substantially impair Brazilian exports in a way not authorized by the General Agreement.

ARTICLE 3 paragraph e

Question. This article states that tariff rates can be altered in respect to products coming from countries which devalue their currency. This seems to suggest that the Brazilian authorities are of the opinion that countries will be ready to devalue simply in order to avoid the provisions of the tariff, which seems both unrealistic and unreasonable. How will this clause be interpreted in practice?

Reference is made to the frustration of the objectives of the tariff. It is difficult to anticipate the nature of an act which would frustrate the tariff objectives without detailed knowledge concerning these objectives.

Answer. This paragraph is intended to provide the Government with ways and means capable of maintaining the level of protection established for certain branches of production which may be seriously affected by a monetary devaluation of a competitive producing country or countries. Thus, the measure provided for in this paragraph is both reasonable and realistic.

As to the objective of the Tariff, the answer was given in the part concerning article 3(a).

ARTICLE 3 paragraph 1

Question. Does the 30 per cent limit provided for in this paragraph mean that this is the maximum extent to which reductions in duties may be made in the GATT negotiations? How is the limit of 30 per cent ad valorem to be construed? Does it mean that a rate of 50 per cent may be altered to any ad valorem rate between 20 and 80 per cent?

Answer. The 30 per cent limit refers to modifications of rates and/or duties which may be made exclusively by the Tariff Policy Council and does not apply to Tariff concessions to be negotiated in the international field.

The aforementioned limit, as established in article 3, paragraph 1, will be calculated on the CIF value, as defined in article 5. In this way, the example shown in the questionnaire is correct.

ARTICLE 3 paragraph 2

Question. How far is this right to modify the tariff in cases of dumping consistent with the most-favoured-nation clause contained in the GATT and in what circumstances does the Brazilian Government contemplate that it might unilaterally determine the existence of dumping practices?

There appears to be some inconsistency between article 3 and article 47, which provides that the limits within which the duties may be modified enter into force only two years after the date of publication of the Tariff Law.

Answer. The right to modify the Tariff, or rather one or more rates and/or duties of the Tariff, referring to products which are being "dumped", is evidently limited, so far as Brazil is concerned, and in relation to the other GATT members, by the provision of Article VI of that Agreement.

The Brazilian Government may consider that one or more products are being "dumped" if there is a "dumping margin" in their import price, such as defined in Article VI of GATT.

With regard to the second part of the question, there is no discrepancy between articles 3 and 47 of the Law. The 30 per cent ad valorem limits established in article 3, paragraph 1, will only come into effect two years after the new Tariff is in force in accordance with the provisions of article 47. Until then, the minimum and maximum limits of the corresponding chapter will apply, as, in effect, stipulated by article 3 of the Tariff Law.

ARTICLE 4

Question. This article provides that when national production of raw materials or any other basic product is still insufficient to cater for domestic consumption, duty exemption or reduction may be granted in respect of the complementary imports. Is it the intention that this article to a wide variety of products in the fields of both industrial raw materials and manufactured articles?

Answer. In accordance with what is clearly expressed in article 4, its provisions apply exclusively to raw materials and commodity products and in no way to manufactured articles.

As to the products which will enjoy the benefits of said provision, their selection will depend upon the conditions of internal consumption and of national production, which by their very nature are subject to fluctuations. It is for this reason that the Tariff Policy Council, in accordance with item "c" of article 22 of the Tariff Law, will establish annually the purchase quota of the articles, the national production of which proves to be insufficient to meet the needs of national consumption.

ARTICLE 4 paragraph 1 (See also article 22(c))

Question.

It would be useful to have an explanation of the mechanics of that operation. This article lays down the condition that, in order to obtain this reduction, the importer shall submit evidence of having bought a certain quantity of the product on the Brazilian market (for instance, in the case of aluminium). Can information be supplied at this time concerning proof of acquisition or refusal or incapacity of supplying? For example, is a forward contract proof of acquisition?

It would appear that, as a result of the provisions of article 4, the enforcement of the Tariff Legislation would depend on a decision taken by a non-governmental body, and it is suggested that this might not be entirely consistent with the provisions of the GATT. In this connexion, article 22 provides that the quota for the acquisition of raw materials or any basic product, and the corresponding exemption from or reduction of the duty, in accordance with article 4, should be established annually. It would be useful to know what procedure is contemplated in the case of sudden emergencies, like crop failures. Will importers always know in advance whether duty is payable or not? It is felt that the provisions of article 4 and article 22(c) are likely to lead to great uncertainty for traders and it would be helpful to have the procedure clarified.

Answer. At present it is not possible to give details on the mechanics of this operation, since the matter will be subject to regulation. Thus, it is too early to make any assertion regarding the bodies, governmental or not, which may be involved in the operation. In cases of sudden emergency, and within the limits of the powers conferred to it by law, the Tariff Policy Council has the faculty of taking any decision which it deems most convenient.

Nevertheless it is well to emphasize that those importers who do not wish to avail themselves of the reduction or exemption of the tax provided for in article 4, may import without proof of having acquired the given quota of national production.

As to the stipulation in advance of import conditions, article 22(c) requires that the purchase quotas of raw materials and commodity products, as also the corresponding reduction or exemption in tax, be fixed annually. The importer, therefore will have forward knowledge of the conditions under which the importation will be undertaken in the twelve months following the publication of these decisions of the Tariff Policy Council.

ARTICLE 5

Question. What method will be used by the Brazilian Customs officials to judge whether or not the value as shown on the invoice accords with the wholesale market price in the exporting country? Is it the intention that the documents will be visaed by Brazilian Consuls abroad prior to shipping and vouching as to the fair market price in the exporting country?

Answer. In order to estimate the "external value", the methods usually employed for such assessment will be used, and due attention will be given to the pertinent provisions of Article VII of GATT.

Brazilian Consuls will legalize import documents, but this will not necessarily imply the acceptance upon part of the Customs authorities of the values therein declared (article 38, paragraphs 1 and 2).

In accordance with the terms of current legislation, legalization of the documents referred to may be made up to the day before the arrival of the merchandise at the port of destination. The matter, however, will be covered by the forthcoming regulations.

ARTICLE 8

Question. Article 8 seems to imply that no reduction in the value of a used or second-hand product would be admitted for the collection of the ad valorem duty. On the other hand, circular No. 23 of the Finance Ministry provides in item 4 that only new products are included in the general category. Thus, used or second-hand articles are penalized both as regards the determination of their value and as regards the exchange premium to be paid at the time of importation.

Answer. The provisions of article 8 are subject to further regulation.

The inclusion of second-hand products in the special category was made with a view to the convenience of submitting their importation to the previous examination of the Foreign Trade Department (Carteira de Comércio Exterior) of the Banco de Brasil.

ARTICLE 9

Question. It would be interesting to have an explanation of the proposed functioning of this article. The view has been expressed that this method could raise no objection if it would refer only to average values applicable to staple products. Some guarantee would be needed, however, that these minimum values should not be set up in an arbitrary manner so as to raise the values for customs purposes in an artificial manner and inconsistently with Article VII, paragraph 2(a) of the GATT. It is felt, moreover, that where the fluctuations take place only on the internal market, there is no justification for the adoption of minimum values.

Answer. This provision is not intended to modify the protection levels appearing in the rates and/or duties; rather, its object is to solve the practical problems which will confront the customs authorities, for the effects of calculating the tax of merchandise subject to great price fluctuations in the international market.

Price fluctuations in the internal market may lead to the establishment of minimum values, only when no regular quotation in the international market is available. The contracting parties may, therefore, rest assured that these minimum values will not be established arbitrarily.

ARTICLE 10

Question. The view has been expressed that the system of conversion contemplated in this article would have the effect of incorporating the "agios" in the valuation of the goods for customs purposes. The system represents to a certain degree a simplification and an improvement as compared with the present practice, but remains inconsistent with the provisions of Article VII, paragraph 4(a) of GATT. It is recognized, however, that no objection was raised against that system during the Eleventh Session of the GATT.

The Finance Ministry has established a rate of Cr\$70,00 per US\$1.00 for the conversion into cruzeiros of the value (CIF) of the imported goods. This rate may be modified every month. As generally more than three months elapse between the time an order is made and the time the import is actually effected, it is practically impossible to determine the ultimate import costs and to quote a firm price for imported products.

As the rate of conversion of the external value will depend upon the exchange rates, the Brazilian Government would be in a position to influence the rate of conversion by increasing or reducing the exchange allotments to the one or to the other category of products. Can it be expected that the Brazilian authorities would assume certain undertakings in order to maintain as far as possible the stability of the value of imported goods?

Answer. The regime established by the present Tariff Law operates as a system of fluctuating exchange rates. The difficulty of determining the final cost of an importation and of quoting a firm price for an imported product is not a peculiarity of the Brazilian system, but rather, the natural consequence of any system of fluctuating exchange rate.

The rate of conversion, which is the same for both categories, may eventually influence the final price of the product. It is obvious, however, that the offer of foreign currencies in the import categories will be undertaken, not with the object of altering or maintaining that rate, but in accordance with exchange availabilities and the import needs of the country. The Brazilian Government is fully aware of the fact that price stability is of primary importance both to the foreign exporter and to the importing country.

ARTICLE 14

Question. According to the definition of this article the country of origin is understood to be that in which the merchandise was produced. It would be useful to know what would be the time of importation for the application of article 5 in the case of goods in transit.

Answer. In its present wording this question is incomprehensible.

ARTICLE 21

Question. Is it anticipated that the Customs Policy Council and its Secretariat will be constituted in the near future or is it likely that this body will not come into existence until shortly before February 1958, by which time it must have been created in accordance with article 32 of the Tariff Law? Are the Brazilian authorities of the opinion that it would be possible to commence negotiations at Geneva prior to the creation of the Council?

Answer. The Tariff Policy Council was set up on the 19th of this month, and the Brazilian Government has already notified the GATT secretariat that it will be ready to start tariff negotiations on 17 November next.

ARTICLE 22

Question. An importer may honestly make a mistake in the classification of the imported product. Before the checking was done in advance by CACEX, whereas now it will take place only when the goods arrive.

Answer. This remark does not seem to be connected with the text of article 22. However, it is correct in so far as it refers to products in the general category, and arises precisely from the fact that the import licence in this category has been suppressed. With the new analytic nomenclature adopted, it is to be hoped that few opportunities will present themselves which give rise to involuntary errors of classification.

ARTICLE 23

Question. It would be useful to know what is the relationship of the Customs Policy Council powers to the obligations of the Brazilian Government under the GATT.

Answer. See reply to the question on article 3.

ARTICLE 33

Question. This article establishes severe penalties for inaccurate declarations by the importer. It provides for a fine equal to 50 per cent of the duty to be levied where there is a difference of more than 5 per cent between the customs assessment of the value of the import and the declared figure. This does not apply to fraudulent declarations, which are subject to a penalty of 100 per

¹ Note by the secretariat: This should read "time of exportation".

cent. It therefore appears that if the manufacturer makes a special effort to reduce his price in order to enter the Brazilian market, he may be accused of making a false declaration since the domestic price of the commodity is higher. He thus may become liable for a fine of 50 per cent ad valorem, even though he has in fact saved foreign exchange for Brazil by reducing his prices. How will these penalties be levied in practice?

Answer. In the example given no fine should be levied. The import duty will be estimated on the basis of the external value of the merchandise (article 5), and not of the respective price. Nevertheless, it is worth mentioning that the interpretation given in the question to the manner in which the fine of 50 per cent will be assessed, when applicable, is incorrect. This fine is not severe, inasmuch as it will be levied only on the increase of the duty resulting from the difference between the value or quantity verified in the act of Customs clearance and that declared by the exporter. Thus the fine does not incide on the total of the duty to be paid. Only in the case of deliberate fraud would the fine (100 per cent) be levied on the total of the duty to be paid (article 34).

ARTICLE 48

Question. For what period is it likely that the combination of the tariff with exchange control measures designed to select imports in relation to the exigencies to the country's economic development shall be deemed indispensable by the Brazilian authorities?

It is provided in this article that goods may be transferred from the general category to the special category; this applies in particular to goods the supply of which on the internal market is considered as satisfactory. If an import duty is bound on a product which is in the general category, and if this product is transferred later to the special category, the increase in the actual incidence will be substantial. What are the measures contemplated by the Brazilian authorities to avoid that tariff concessions might be nullified in this way?

Answer. For obvious reasons, no forecast can be made at this time as to the period during which it is deemed indispensable to maintain the present policy of conjugation of the Tariff with exchange control measures.

Although the natural tendency is the gradual transfer of the products from the special to the general category, inasmuch as balance-of-payments difficulties might arise in such a way as to make it advisable to transfer merchandise from the general to the special category, it is admitted that such a transfer would indeed unfavourably affect the cost of the product. Nevertheless, it is to be borne in mind that the special category was created for the purpose of protecting the balance of payments, and its establishment accepted by the International Monetary Fund and agreed to by the CONTRACTING PARTIES when conceding Brazil's waiver in 1956.

ARTICLE 49

Question. Does this paragraph mean that the CPC has the power to shift an article from the general category to the special category without prior congressional approval?

Answer. Yes. The Customs Policy Council may switch import products, whether from the general to the special category, or from the latter to the former, always in accordance with the principles set forth in paragraphs 1 and 2 of article 48.

ARTICLES 50 AND 53

Question (article 50). An explanation of "cost of exchange" would be desirable. Is this the cost of exchange to the Government or the general category bids at the exchange auctions?

The impact of article 50 concerning importations at a lower exchange cost than that referring to the merchandises in the general category, in combination with article 52, is not clear. This applies, for instance, to the importation of fertilizers, insecticides and other products mentioned in paragraph 1(b) of article 50.

Will the practice of auctions e.g. for fertilizers be continued or will the auctions be replaced by special allocations of exchange? If so, on what conditions is the exchange to be allotted?

Question (article 53). This article provides that the minimum "agio" is applied only for auctions of inconvertible currencies. However, a minimum "agio" of Cr\$25.00 has been established for convertible currencies on 10 and 11 September.

It is stated that the minimum "agio" would be computed on the basis of a percentage of the total average cost of currencies of free or limited convertibility. It would be useful to know what is the percentage to be used and for what period the average cost is going to be computed, and generally on what basis the new calculations would be made.

Answer (articles 50 and 53). The questions relating to articles 50 and 53 are substantially of exchange nature, and the steps taken were already approved by the International Monetary Fund. However, for the purpose of information, the following clarification can be given about these two articles.

The expression "cost of exchange" contained in article 50 refers to the foreign monetary unit cost to the importer, which results from the par value declared to the International Monetary Fund added to that of the average premium (agio) of the general category.

The first paragraph of article 50 enumerates the products which are not included in the auction system and may be imported at an exchange cost lower than those included in the general category, but not, however, at less than the cost of the foreign monetary unit to the Brazilian Government, as defined in the answer below referring to article 53.

The Tariff Law permits the distribution of quotas for the importation of fertilizers, without, however, discarding the possibility of special auctions.

The "cost of exchange" referred in article 50, paragraph 2, is the price of the foreign monetary unit for the Government, and is represented by the parity declared in the International Monetary Fund added to the average of the bonuses paid to the exporters. Hence the confusion between the minimum premium (agio minimo) and the basis of CR\$25.00 per US dollar or its equivalent in other currencies, which served as a starting point for the auctions of convertible currencies or those of limited convertibility. These CR\$ 25.00 are not a minimum premium but rather the average, per dollar or equivalent in other currencies, of the bonuses paid by the Government to the exporters. Any exchange rate which would be formed by the parity added to an amount less than CR\$ 25.00 would, in fact, mean that the rate had been subsidized by the Government.

ARTICLE 54 paragraph 2

Question. What period and what currencies have served as a basis for the adoption of a rate of CR\$70.00 (which seems to be high) for the conversion of foreign currencies for the purpose of duty collection?

Answer. The rate was based upon the average rates of the US dollar, or its equivalent in other currencies, in the first two import categories for the period January/June 1957.

ARTICLE 60 paragraph 1

Question. What will be the basis for the calculation of the fine. Will the rate of conversion be the one in force on the day of purchase of the exchange certificate or the day on which the fraud would be discovered?

Answer. The basis for calculation of the fine will be that defined in article 60, paragraph 1 of the Tariff Law. As to the second question, the matter will be covered by regulations to be drawn up by the Executive.

ARTICLE 66

Question. It is recognized that the replacements of the various additional import charges by a single clearance tax of 5 per cent, is a substantial improvement. It would, however, be useful to know more precisely how this tax is going to be collected. For instance, is that tax to be computed at the rate established in article 10 (i.e. CR\$70.00, for the time being)? Is it to be added to the ad valorem duty for the purpose of conversion of the foreign currency or is this computation to be made on the total value of the merchandise after conversion into cruzeiros?

Answer. The tax of 5 per cent will be assessed on the value of the imported merchandise, which has served as a basis for calculation of the import duty. The foreign currency will be converted at the same rate applied to the calculation of the duty in question.

OTHER REMARKS

Question 1. Additional question concerning article 53. The text of the law refers to the total average cost of free or limited convertibility. Does this mean that the minimum "agio" for the inconvertible currencies may be related to either of the other two currencies rather than to an average of them?

Answer 1. The additional question concerning article 53 refers exclusively to exchange matters, and therefore the preliminary observations made with reference to the previous questions on articles 50 and 53 are pertinent.

It can be added, however, that the basis for the determination of the minimum premium (agio) for non-convertible currencies, will be a percentage of the average cost of exchange for convertible currencies and currencies of limited convertibility.

Question 2. It has been pointed out that the new Brazilian Tariff appears to be extremely protectionist; and, in particular, that a number of rates contained in the draft submitted to the GATT has been substantially increased. Further protectionist provisions are contained in article 3, paragraphs a to c, which enables the authorities to increase the rates by a maximum of 30 per cent (when there is an important economic interest or when the national industry produces similar goods), as well as in article 4, which provided for the purchase of a given quantity of similar domestic goods (see also note 15 to chapter 10 and note 45 to chapter 27).

Answer 2. As to the assertion that the new Brazilian Tariff seems to be of an extremely protective nature, and, in particular, that a number of rates contained in the draft submitted to the GATT has been considerably increased, it can be stated that no additional protective margin has been introduced, but that the protection previously embodied in the multiple rate of exchange system has been transferred to the import duties.

As regards the difference noted between the rates in the draft submitted to the GATT and those included in the present Tariff Law, it may be mentioned that that draft was necessarily of a provisional nature, as was fully emphasized at the time it was presented to the CONTRACTING PARTIES. Further analysis of the draft which led to some readjustments in the final tables, and discussion of the bill in Congress, resulted not only in the increase of some rates, the level of which was considered inadequate, but also, in numerous instances, in the reduction of other rates. The Tariff draft was simply revised in the light of further economic indexes, and fresh studies made after the original text of the draft was made public.

In so far as paragraphs a and b of article 3 are concerned, it should be restated that the Tariff Policy Council will also have powers to reduce the rates fixed in the Tariff, by 30 per cent, thus proving that the provisions in question are not of a protectionist nature. Neither should an essentially protectionist intention be attributed to article 4, inasmuch as the fact that the Brazilian Government may grant exemption from a reduction on import duties, implies a trend towards a greater liberalization in the field of international trade.