

RESTRICTED

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Balance-of-Payments Restrictions

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## 1966 CONSULTATIONS UNDER ARTICLE XVIII:12(b) WITH BRAZIL

### Basic Document for the Consultation<sup>1</sup>

#### I. Legal and administrative basis of the restriction

The laws and decrees which are relevant to the Brazilian import control system include the following:

- (i) Decree Law No. 7,293, of 2 February 1945, which gives authority to the Council of the Superintendency of Money and Credit (SUMOC), administered by the Ministry of Finance, to decide on exchange policies;
- (ii) Law No. 1,807, of 7 January 1953, which lays down the basis for control of foreign trade and establishes the official and free exchange markets;
- (iii) Law No. 2,145 of 29 December 1953, which instituted the Foreign Trade Department (CACEX) of the Bank of Brazil and laid down general rules for authorizing imports;
- (iv) Law No. 3,244 of 14 August 1957, which establishes the new customs tariff, institutes a Customs Policy Council and introduces various changes in the import control system;
- (v) Decree No. 42,820, of 16 December 1957, which regulates all bases put into effect for foreign exchange system and control of foreign trade contained in (ii), (iii) and (iv) above;
- (vi) Law No. 4,131, of 3 September 1962 and Amendments (Law No. 4,390 of 29 August 1964) regulating the application of foreign capital and remittance of profits abroad;
- (vii) Instruction No. 263 of SUMOC dated February 1964, establishing a free market for exchange rates with some exceptions (imports of wheat, oil and newsprint, and some exports) (see BOP/44, annex);

<sup>1</sup> Statement supplied by the representative of Brazil.

(viii) Instruction No. 270 of SUMOC, of 9 May 1964, abolishing the preferential rate remaining after Instruction No. 263 (see BOP/44, annex);

(ix) Law No. 4,595 of 31 December 1964 (Banking Reform Law), structuring and regulating the National Financial System, thus creating the National Monetary Council and the Central Bank of the Republic of Brazil;

(x) Decree No. 55,762, of 17 February 1965, regulating Law No. 413/62, as amended by Law No. 4,390/64, governing investments of foreign capital and remittance of profits abroad (see Annex A);

(xi) Instruction No. 285, of December 1964, reducing the rate of the financial charge and import deposit on exchange contracts (Annex B);

(xii) Instruction No. 287, of January 1965, raising from US\$30,000 to US\$50,000 the weekly limit for closing of import exchange contracts (Annex C);

(xiii) Instruction No. 289, of January 1965, allowing the seller of exchange to the Bank of Brazil to repurchase part of the exchange for import purposes;

(xiv) Instruction No. 291, of February 1965, establishing new provisions for importing machinery and equipment (Annex D);

(xv) Resolution No. 9, of November 1965, of the Central Bank, abolishing previous exchange deposits and financial charges on imports, and reducing financial charges on financial transactions (Annex E).

## II. Methods used in restricting imports

All goods imported into Brazil are classified in two categories: the General Category and the Special Category. The former contains mainly raw materials, equipment goods, spare parts and some essential goods not produced in sufficient quantity, or under satisfactory conditions, in Brazil. Remaining commodities are in the Special Category. It should also be noted that second-hand goods may be included in the General Category, if they satisfy certain conditions.

Imports contained in the General Category are free from quantitative restrictions, but the purchases of exchange for their payment is limited to US\$50,000 in convertible currencies (and never more than US\$50,000 in bilateral agreement currencies), for each firm, per week. In order to obtain clearance from the Brazilian consular authorities abroad and to clear the goods through customs, the importer must first obtain a "certificate of exchange cover" issued by the Bank of Brazil, after the closing of an exchange contract by the importer with said Bank or an authorized bank, for no more than 180 days, for the full value of the import. At the time the importer closes the exchange contract for future liquidation with

the Bank of Brazil or a commercial bank, he must place, as a guarantee deposit with the respective bank, 25 per cent of the value of the foreign exchange, if the contract is concluded in convertible currencies. The commercial banks are required to transfer the guarantee deposit to the Central Bank of the Republic of Brazil. The following, however, are exempt from the obligation of a guarantee deposit: (a) transactions conducted under the clauses of foreign loans with maturity over a period of twenty years (at the moment, the Agency for International Development loans AID-512-L-034 and AID-512-L-055, of US\$150 million each); (b) transactions effected under the terms of Instruction No. 279 of the former SUMOC, (which enables industrial enterprises that export products of their own to use part of the foreign exchange proceeds for the importation of raw material, parts and equipment for their own use), and (c) financial operations under the terms of Instruction No. 289, of the former SUMOC, which allows foreign investors to enter into repurchase arrangements with the Bank of Brazil, allowing the seller of foreign exchange subsequently to repurchase equivalent foreign currency. The repurchase must be a spot or forward transaction in the free market with any authorized bank, or the Bank of Brazil, and does not involve an exchange rate guarantee.

The guarantee deposit for contracts covering imports of fertilizers, insecticides and seeds, as well as for payments in agreement currencies, is of 20 per cent, that is, only 5 per cent lower than in the cases of contracts concluded in convertible currencies. For contracts covering imports of newsprint and paper stock for books, the deposit is 10 per cent. When the contracts are liquidated, deposits may be used for payment of foreign exchange.

The weekly limit of US\$50,000 in convertible currencies for each firm does not apply to imports included in the National List of Brazil for Latin America Free Trade Area countries, to imports in the Special Category, to certain imports for the use of Brazilian firms whose payments are made with the proceeds of exports of listed industrial products of such firms (Instruction No. 279), or to imports covered by foreign loans with a twenty-year repayment period or more (at present, the above-mentioned AID loans, imports of petroleum and its by-products, and imports of the firms which comply with the provisions of Portaria 71, with regard to price stability). The limits may be waived to importers who have customarily imported goods in average weekly amounts larger than said limits, and in some other very special cases.

Special Category imports are subject to global quotas, and are required to obtain an import licence from the Foreign Trade Department of the Bank of Brazil (CACEX). The importers must purchase a "promessa de licença" (promise of a licence) on the stock exchange, where such "promessas" are offered in global amounts for auction. Importers must also comply with the requirements established for obtaining a "certificate of exchange cover" for General Category imports, as already mentioned. The Special Category imports represent a minor proportion of Brazil's total imports, and the Government is currently transferring a considerable number of these products to the General Category (see below).

For a few particular imports, such as petroleum, wheat, maps, books, magazines and newspapers, as well as foreign-financed imports, special procedures are applied.

Exchange operations in convertible currencies for the import of merchandise and for financial transfers abroad are conducted at rates agreed to between the parties concerned.

### III. Treatment of imports from different sources

Brazilian authorities tend to rely less and less on bilateralism, specially when partner countries use only global restrictions, or none, on imports. In accordance with this tendency to multilateralize Brazilian trade, the payments agreement with Turkey was suspended in 1963, and expired on 12 August 1963. There remain therefore only five payments agreements in force with non-planned economy countries: Greece, Iceland, Denmark, Portugal and Israel.

The only remaining discriminatory exchange treatment between trade agreement currencies and convertible currencies is related to the guarantee deposit, which is 5 per cent less for agreement currencies. The 5 per cent special discount on exchange transactions under bilateral agreements was completely extinguished last year.

Besides these bilateral agreements, Brazil is earnestly engaged in the Latin American Free Trade Area (LAFTA), which was established under Article XXIV:5(a) of GATT, and which has greatly served to increase the trade between participating countries. Thus, the total imports (c.i.f.) from LAFTA countries increased from US\$360 million in 1961 (the year of the signing of the Montevideo Treaty), to US\$646 million in 1964. Total exports (f.o.b.) between member countries rose from US\$298 million in 1961 to US\$557 million in 1964. Total intra-zonal trade rose from an index of 100 in 1961 to 183 in 1964. It is hoped that this trend will continue, and that intra-zonal trade will lead to regional industrial integration and complementation.

Payments for imports originating from LAFTA countries are exempt from the guarantee deposit as well as the weekly limit of US\$50,000 for each firm.

Exchange cover for payments in agreement currencies is provided to commercial banks by the Bank of Brazil, at the same rate prevailing for convertible currencies. Agreement dollars are fixed at par value with the United States dollar.

### IV. Use of State trading or Government monopoly in the restriction of imports

Brazil is still maintaining Government monopoly over the importation of wheat, exercised by the Foreign Trade Department of the Bank of Brazil (CACEX), and of petroleum and its derivatives, which is exercised by PETROBRAS, a Government-owned oil concern.

This subject was dealt with in the course of the last consultation with Brazil, in November 1964, and has not undergone any modifications since.

V. Measures taken since the last consultation in relaxing restrictions

Brazil has made considerable progress since December 1964 in the relaxation of exchange restrictions.

In the last days of December 1964, the exchange rate was devaluated to 1,825/1,850 cruzeiros (buying and selling rates) per United States dollar. This measure was intended to raise the exchange rate to the level of its real external value.

Before the end of that same year, the financial charge on exchange contracts for imports of merchandises was reduced from 20 per cent to 10 per cent and the advance deposit was also decreased from 90 per cent to 50 per cent.

On 13 November 1965, the financial charge on imports was completely eliminated, and the financial charge on financial transfers reduced to 15 per cent (for those firms which accepted the obligations of Portaria 71, regarding price stability, the level was further reduced to 10 per cent). The advance deposit was also completely eliminated, both on imports and financial transfers.

Instruction No. 287, of 15 January 1965, increased the weekly limit for imports by individual firms from US\$30,000 to US\$50,000. Imports payable under the clauses of foreign loans whose payment period is above twenty years were exempted of this limit. The exemption also includes imports of products originating from LAFTA countries.

The guarantee deposit that was required in most cases in amounts up to 100 per cent of the value of the exchange contract, was also reduced to 25 per cent. Such deposit was completely eliminated for imports financed with external loans with a maturity of over twenty years or where the imports or raw material, parts, equipment, etc., for use of industrial enterprises are covered by the proceeds of the exports of the same enterprises.

In the implementation of its programme of liberalization of the exchange system, the Brazilian Government is determined to reduce progressively the Special Category of imports. To this effect, the Customs Policy Council, following instructions from the Monetary Policy Council, has transferred from the said Category to the General Category more than 600 items, consisting of raw material, ores, fertilizers, wood, chemicals, oils and resins, cellulose, pharmaceutical products, machinery and equipment.

In accordance with a recommendation by the Monetary Policy Council, a "working party" was created in the Customs Policy Council, with representatives from the various administrative bodies concerned, in order to study the transfer of goods from the Special to the General Category.

It should furthermore be noted that, as a measure designed to avoid multiple currency practices, the 5 per cent discount of exchange rate quotations for bilateral agreement currencies was eliminated.

On 16 November 1965, the exchange rate was devaluated a second time, to the level of 2,200/2,220 cruzeiros per United States dollar for buying and selling respectively.

#### VI. Effects of the restrictions

The restrictive effects of the Special Category on the imports of those products transacted under the conditions established for that category are related to the limitation of purchases due to the restricted amounts of foreign convertible currencies offered for auction, as well as to the higher price of said currencies vis-à-vis the prevailing price of the currencies acquired under the conditions adopted for imports classified in the General Category.

It should finally be mentioned that the exchange tax on import payments and the 210-day compulsory deposits relating to exchange contracts were eliminated, together with the basic rate of exchange tax on non-import payments, in order to minimize the impact of the November 1965 exchange rate devaluation on the cost of the imports, as well as to simplify the exchange system. The gap in the resources of the monetary authorities resulting from these measures will be covered by the increase in revenue from the fiscal programme.

In spite of the risk involved in drastically abolishing certain exchange and trade restrictions that act as a barrier against balance-of-payments deficits, the Brazilian authorities are firmly determined to eliminate the restrictions still in force and to pursue a policy conducive to the equilibrium of its external transactions. The effects of the remaining restrictions are, however, very slight in comparison with those which have already been eliminated.

ANNEX A.

Decree No. 55 762

Decree Establishing Profit-Remittance Regulation

(Signed 17 February 1965)

Article 1. For the purpose of the present Decr<sup>e</sup>, foreign capital is considered to be such goods, machinery, and equipment as have been brought into this country with no initial outlay of foreign exchange, intended for the production of goods or to be utilized in rendering services, as well as financial or monetary resources to be invested in lucrative activities if, in either case, the same pertain to individuals or legal entities resident, domiciled, or situate abroad. (Law 4,131, Article 1)

Sole paragraph. The Council of the Superintendency of Currency and Credit shall determine criteria for registration of such capital as represents types of investment by persons domiciled abroad to which the provisions of this Article are not applicable.

Article 2. Foreign capital invested in Brazil shall enjoy the same legal treatment and consideration as that given domestic capital, and any type of discrimination, unless provided for in Law, is hereby prohibited. (Law 4,131, Article 2)

Article 3. The following shall be registered in a special agency to be instituted by the Superintendency of Currency and Credit for the registration of foreign capital, whatever be its manner of entry into this country, as well as financial operations abroad:

- (a) foreign capital that has entered the country as investment, either direct or in the form of loans, whether in money or in kind; (Law 4,131, Article 3, Item a)
- (b) remittances abroad representing repatriation of capital or earnings, profits dividends, interest, or amortization on such capital, as well as royalties, payments for technical assistance or for any other account whatsoever concerned with the transfer of earnings abroad; (Law 4,131, Article 3, Item b)

- (c) reinvestments of profits on foreign capital; (Law 4,131, Article 3, Item c)
- (d) adjustments in the monetary value of corporate capital made in accordance with effective legislation; and (Law 4,131, Article 3, Item d)
- (e) foreign investments and the respective reinvestments of profits extant on 27 September 1962. (Law 4,131, as amended by Law 5,390, Article 5, Section 1)

Section 1. Registration shall contain such data as is necessary to identify the operation and the parties involved.

Section 2. Registration of reinvestments, as mentioned in item (c) above, shall be required in the case of legal entities situate in Brazil but affiliated with foreign enterprises or controlled through the possession of a majority of shares by individuals or legal entities resident or situate abroad. (Law 4,131, Article 3, Sole paragraph)

Section 3. Remittances abroad shall be subject to the registration of the enterprise with the Superintendency of Currency and Credit and proof of payment of any income tax that may be due. (Law 4,131, as amended by Law 4,390, Article 9, Section 1)

Article 4. Registration of capital shall be made in terms of the foreign currency actually brought into the country and, in cases of financed imports or investment in the form of capital goods, in terms of the currency in the domicile or principal place of business of the creditor or investor, as the case may be or, in special instances, in the currency of the place of provenance of the assets or financing, if prior permission to do so has been granted by the Superintendency of Currency and Credit.

Article 5. Foreign capital entering the country in the form of capital goods shall be registered at the price given in the commercial invoice, all regulatory procedures being observed.

Sole paragraph. Registration shall be at the f.o.b. value if the investment does not include the expense of freight and insurance.

Article 6. After registration, the Superintendency of Currency and Credit shall furnish the interested party with a certificate attesting to the same.

Article 7. Remittances abroad shall be processed through presentation of the respective registration certificate, as issued by the Superintendency of Currency and Credit.

Section 1. Banks engaging in exchange operations relative to the transfer provided for in this Article shall note on the said certificate whatever details may be required by the Superintendency of Currency and Credit.

Section 2. The Banking Control of the Banco do Brasil S.A. (FIBAN) shall verify the correctness of the operations referred to in this Article, as may be required by the Superintendency of Currency and Credit.

Section 3. All other remittances abroad, at any title or under whatsoever reason, shall be regulated by SUMOC's Council.

Article 8. Income earned by enterprise established in Brazil for the account of persons resident or domiciled abroad that has been re-applied to the same enterprise by which it was earned or to other sectors of the national economy shall be considered as a reinvestment. (Law 4,131, as amended by Law 4,390, Article 7)

Article 9. Application for registration of foreign investments shall be made within thirty (30) days of the date of entry of the same and shall be free of any tax or charge. Registration of reinvested profits shall be made with an equal period of time, counted from the date on which the cognizant authority of the enterprise approved the respective entry in the books of account. (Law 4,131, Article 5)

Article 10. Registration of reinvestments shall be made, simultaneously, in terms of cruzeiros and the currency of the country to which the profits might have been remitted. (Law 4,131, as amended by Law 4,390, Article 4)

Section 1. For the purposes of this Article, the conversion into foreign currency shall be made at the average rate of exchange obtaining between the date on which the earnings were calculated, or appeared in the balance, if treating of a legal entity, and the date of the actual reinvestment. (Law 4,131, as amended by Law 4,390, Article 4)

Section 2. The average rate of exchange shall be calculated on the basis of the quotations, during the period under consideration, in the exchange market to which the reinvested profits might have been remitted abroad.

Article 11. Foreign capital invested in the production of goods and services of a sumptuary nature, as defined in Executive Decree after hearing by the National Economy Council, is limited to an annual remittance of profits abroad of eight per cent (8%) of the capital registered with the Superintendency of Currency and Credit. (Law 4,131, Article 2)

Section 1. Profits in excess of the limit established in this Article remitted abroad shall be considered as repatriation of capital and the amount of the same deducted from the respective registration, thus governing the amount of future remittances. It shall be permissible, however, to reinvest the said profits in the same enterprises should it be a producer of goods or services, or in activities considered of interest to the national economy and so declared in an Executive Decree after consultation with the National Economy Council. (Law 4,390, Article 2, Section 1)

Section 2. In the cases provided for in Article 28 of Law 4,131 of 3 September 1962, remittance of profits on such capital as is referred to in this Article shall be limited to a maximum of five per cent (5%) per annum of the sum total of registrations made in the manner prescribed in Article 3. (Law 4,390, Article 2, Section 2)

Article 12. The total of profits and dividends actually remitted to individuals or legal entities resident, domiciled, or situate abroad shall be subject to an additional income tax whenever the volume of remittances in a given three-year (3-yr.) period, beginning in 1963, may exceed twelve per cent (12%) of the registered capital and reinvestments. (Law 4,131, as amended by Law 4,390, Article 43)

Article 13. The Council of the Superintendency of Currency and Credit shall determine what are to be the necessary substantiating documents to be required for the registration of foreign capital and respective reinvestments, including those already extant. (Law 4,131, as amended by Law 4,390, Article 5, Section 2)

Article 14. Individuals and legal entities wishing to make transfers abroad for the account of profits dividends, interest, amortization, royalties, and technical, scientific, and administrative assistance and the like must present to the Superintendency of Currency and Credit whatever contracts and documents may be deemed necessary to justify such remittances. (Law 4,131, as amended by Law 4,390, Article 9)

Article 15. Remittances of interest on loans, credit and financing shall be considered as capital amortizations in the proportion that they exceed the rate of interest set forth in the respective contract and its registration, and the Superintendency of Currency and Credit may question and reject the portion of the rate that is in excess of that effective in the financial market located in the place of origin of the loan, credit or financing for the same type of operation on the date the same was made. (Law 4,131, Article 6)

Article 16. Applications for registration of contracts for the purpose of making financial transfers in payment of royalties for the use of patents, trade marks, and other industrial property shall be accompanied by documents substantiating the existence and effectiveness in Brazil of the respective privileges, as granted by the National Department of Industrial Property, as well as the pertinent certificate indicating that the same have not expired in the country of origin. (Law 4,131, as amended by Law 4,390, Article 11)

Article 17. Registration of contracts involving transfers for the account of royalties or technical scientific, and administrative assistance and the like shall be made in the currency of the country in which the beneficiary of the said remittances is domiciled or situate.

Sole paragraph. In exceptional cases, having the national interest in view, the Superintendency of Currency and Credit may authorize remittances in a currency other than that indicated in the registration.

Article 18. Amounts due and payable as royalties for the use of patents and trade marks or for technical, scientific, and administrative assistance and the like may be deducted in income tax declarations in order to determine taxable income, to a maximum of five per cent (5%) of the gross receipts for the product manufactured or sold. (Law 4,131, Article 12)

Section 1. Co-efficients for types and lines of productive activities, arranged in groups in accordance with their degree of essentiality shall be fixed and periodically revised by act of the Minister of Finance. (Law 4,131, Article 10, Section 1)

Section 2. Remittances exceeding the limits established in this Article shall be considered as profit (Law 4,131, Article 13)

Article 19. The Superintendency of Currency and Credit may, whenever it considers necessary, verify the effectiveness of the technical, scientific, and administrative assistance, or similar aid rendered enterprises in Brazil, or require proof of the actual utilization of the patents and industrial property for which royalties are paid if in either circumstance, they necessitate remittances abroad. (Law 4,131, as amended by Law 4,390, Articles 10 and 11)

Article 20. Remittances for the account of royalties on patents and trade marks paid by branch or subsidiary established in Brazil to its home office abroad shall not be permitted, nor shall royalties be remitted to enterprises holding the majority of stock in the Brazilian firm. (Law 4,131, Article 14)

Sole paragraph. For the purposes of this Decree a subsidiary of a foreign enterprise is considered to be any legal entity, doing business in Brazil, in which at least fifty per cent (50%) of the voting shares pertain, directly or indirectly, to an enterprise situate abroad.

Article 21. Individuals and legal entities domiciled or having their principal place of business in Brazil are hereby required to declare to the Superintendency of Currency and Credit, in the manner prescribed by the Council of that agency, whatever goods, chattels, and assets they possess abroad, including bank deposits, except, in the case of foreign nationals, those that were in their possession at the time of their entry into the country. (Law 4,131, Article 17)

Article 22. Individuals and legal entities domiciled or having their principal place of business in Brazil must, further, advise the Superintendency of Currency and Credit of the acquisition of any new goods, chattels, and assets abroad, indicating the resources used for the same. (Law 4,131, Article 19)

Sole paragraph. The advices mentioned in this Article should be sent within a period of twelve (12) months from the date of acquisition.

Article 23. On or before 31 January of each and every year, individuals and legal entities domiciled or having their principal place of business in Brazil must advise the Superintendency of Currency and Credit of the sum total of their bank deposits abroad, as of 31 December of the preceding year, explaining any changes in the same. (Law 4,131, Article 19, Sole paragraph)

Article 24. Individuals asking to rectify their respective declarations of assets for the fiscal years 1963 and 1964 on or before 30 April 1965 in order to include therein goods, chattels and assets held abroad and previously omitted shall not suffer any penalty whatsoever. (Law 4,506, Article 82)

Article 25. Exchange operations shall be transacted through banking establishments authorized to engage in such activity, through the intermediary of an official broker, where required by Law, and both shall be responsible for the proper identification of the client as well as the correct classification of the information given by the same, in accordance with the rules and regulations established by the Superintendency of Currency and Credit. (Law 4,131, Article 23)

Section 1. The printed form, prepared in conformity with a model approved by the Superintendency of Currency and Credit, which is to be used in each and every operation, shall be signed by the client and stamped by the banking establishment and the broker concerned, and shall compulsorily carry the notice given in Article 23 of Law 4,131 of 3 September 1962.

Section 2. Book-keeping entries of enterprises buying or selling exchange must conform precisely to the data given in the printed form mentioned in the foregoing paragraph.

Article 26. Operations that do not fall clearly within the items specified in the classification code adopted by the Superintendency of Currency and Credit or under the general headings "miscellaneous" or "other", may be transacted solely through the Banco do Brasil S.A. (Law 4,131, Article 23, Section 1)

Article 27. The banking establishments shall forward to the Superintendency of Currency and Credit (control and registration of foreign capital) within the stipulated periods one (1) copy of the printed form relative to the operations mentioned in item (b) of Article 3 on which the bank shall declare and have signed by the proper authority that the operation has been liquidated and the respective remittance made, giving the date thereof.

Sole paragraph. Banking establishments shall also forward notes covering cruzeiro remittances made abroad.

Article 28. Notwithstanding the circumstances or exchange system in force, financial remittances devolving from registration made with the Superintendency of Currency and Credit may not enjoy more favourable conditions than those conceded transfers for payment of imports in the general category, as mentioned in Law 324<sup>4</sup> of 14 August 1957. (Law 4,131, Article 34)

Article 29. The Council of the Superintendency of Currency and Credit may determine that exchange operations relative to movement of capital must be transacted, in whole or in part, in the financial exchange market, apart from the import-export exchange market, whenever the situation so recommends. (Law 4,131, Article 27)

Article 30. It shall be the responsibility of banking establishments authorized to engage in exchange operations to report daily to the Superintendency of Currency and Credit data on the sum total of exchange sales and purchases, and the purposes thereof, in accordance with the classification established. (Law 4,131, Article 28)

Article 31. Whenever economies in exchange reserves should prove recommendable, the Council of the Superintendency of Currency and Credit may issue instructions authorizing the fee, strictly cash in nature, to be collected on imported merchandise and on the value of imported products to a limit of fifty per cent (50%) of the value of any financial transfer, whatsoever, including those for the expense of international voyages. (Law 4,131, Article 29)

Article 32. The sums collected as a result of the fee mentioned in the foregoing Article shall constitute a cash fund in cruzeiros, to be maintained by the Superintendency of Currency and Credit on hand and shall be utilized, whenever it be deemed necessary exclusively in the purchase of gold and foreign currency to be added to reserves and exchange funds. (Law 4,131, Article 30)

Article 33. The Treasury and public credit establishment, both Federal and State, including mixed-capital corporations controlled by the same may guarantee foreign loans obtained by enterprises the majority of whose voting stock pertains to individuals or legal entities resident, domiciled, or situate abroad solely upon authorization by Executive Decree. (Law 4,131, Article 37)

Article 34. Enterprises in which the majority of the voting stock pertains to individuals or legal entities resident, domiciled, or situate abroad and branches of foreign companies shall not have access to credit granted by the agencies and establishments mentioned in the foregoing Article until they have effectively commenced their operations. (Law 4,131, Article 38)

Sole paragraph. Projects considered of major interest to the national economy, as manifested in special authorization by the Executive, shall be exempt from the stipulation of this Article. (Law 4,131, Article 38)

Article 35. The credit establishments and agencies mentioned in Article 33 may grant loans, credit and financing solely to new investments to be made in the fixed assets of an enterprise the majority of whose voting stock pertains to individuals or legal entities resident, domiciled, or situate abroad when such enterprises are engaged in essential activities and their operations undertaken in regions of prime economic national interest, and defined and indicated in an Executive Decree, after hearings by the National Economic Council. (Law 4,131, Article 39)

Section 1. The provisions of this Article are also applicable to public investment funds created by Law. (Law 4,131, Article 39, Sole paragraph)

Section 2. The credit establishments and agencies mentioned in Article 33 may re-lend to the enterprises mentioned in this Article resources accruing from loans, credits, and financing placed at their disposition by foreign governments, their agencies, and international authorities. In the event of exchange risk, the grantors of the credit may require that the same be assumed by the financier abroad or by the enterprise benefiting from the ultimate operation.

Article 36. Credit, finance and investment companies may place on the Brazilian capital market only voting shares and stock issued by enterprises controlled by foreign capital or subordinate to companies having their principal place of business abroad. (Law 4,131, Article 40)

Article 37. Infringement upon the provisions of Law 4,131, reserving the specific penalties stipulated therein, shall be subject to fines varying between twenty (20) and fifty (50) times the highest minimum wage in force in the country. (Law 4,131, Article 58)

Article 38. The fines imposed by Law 4,131, save for the cases mentioned in Article 45, shall be levied by the executive director of the Superintendency of Currency and Credit and appeals, having a suspensory effect, may be made to the Council of that agency. Appeals shall be entered within a period of sixty (60) days from the date of receipt of the respective notice, and the said period may be extended by the executive director.

Section 1. The fines applied shall be paid over together with a return issued by the Superintendency of Currency and Credit to any of the collectors of the Ministry of Finance, within the same period mentioned in this Article.

Section 2. Should the appeal be denied, another notice will be dispatched, allowing a period of thirty (30) days for making the payment due.

Section 3. Upon expiration of the period referred to herein, motion shall be made for judgment.

Section 4. Any participation whatsoever in the fine or added charges is hereby prohibited, and the whole shall be paid over to the Treasury.

Article 39. Goods, chattels, and assets, including bank deposits, abroad pertaining to individuals and legal entities domiciled or having their principal place of business in Brazil that are not declared to the Superintendency of Currency and Credit shall be considered the product of illicit gains and, as such, cause for criminal action for their recovery or compensation by assets in Brazil. (Law 4,131, Article 18)

Sole paragraph. Goods, chattels, and assets in Brazil may be seized by the Treasury as required to compensate for those existent abroad. (Law 4,131, Article 18)

Article 40. Banking establishments that fail to comply with the provisions of Article 30 shall be subject to a fine of up to thirty (30) times the highest minimum wage in force in the country, tripled in the event of a further infringement. (Law 4,131, Article 25)

Sole paragraph. The said fine shall be levied by the Superintendency of Currency and Credit and appeal without suspensory effect, may be made to the Council of the Superintendency of Currency and Credit within a period of fifteen (15) days from the date of intimation. (Law 4,131, as amended by Law 4,390, Article 25, Sole paragraph)

Article 41. A false declaration of identity on the printed form referred to in Section 1 of Article 25 shall constitute an infringement for which the banking establishment, the broker, and the client shall be liable for a fine equivalent to thrice (3x) the value of the operation, each and every one. (Law 4,131, Article 25, Section 2)

Article 42. The furnishing of false information on the printed form referred to in Section 1 of Article 25 shall constitute an infringement for which the client alone shall be liable to a fine equivalent to one hundred per cent (100%) of the value of the operation. (Law 4,131, Article 23, Section 3)

Article 43. The incorrect classification of information furnished by a client on the printed form referred to in Article 25, Section 1, in accordance with the rules and regulations fixed by the Council of Superintendency of Currency and Credit shall constitute an infringement for which both the banking establishment and the broker shall be liable for a fine of from five to one hundred per cent (5-100%) of the value of the operation. (Law 4,131, Article 23, Section 4)

Article 44. In the event of a further instance of any of the infringements mentioned in Article 41 and 43, the executive director of the Superintendency of Currency and Credit may, with the referendum of the Council of that agency, institute proceedings to propose to the Minister of Finance that the authorization given the banking establishment and broker in question to engage in exchange operations be cancelled. (Law 4,131, Article 23, Section 5)

Article 45. Any intention to defraud the custom or exchange authorities resulting from the under or over invoicing of imported or exported goods and merchandise, if discovered in the regular administrative process, and with the right of defense assured the accused, shall make the responsible party answerable to the Superintendency of Currency and Credit for a fine of ten (10) times the value of the amount over or under invoiced or the penalty of being forbidden to export or import for a period of from one (1) to five (5) years. (Law 4,131, Article 15)

Article 46. The Ministry of Foreign Relations and the Superintendency of Currency and Credit may prepare jointly studies and suggestions to enable the Federal Government to enter into agreements for administrative co-operation with foreign countries, looking to an interchange of information on fiscal and exchange matters relative to remittance of dividends, royalty payments, payments for technical, scientific, and administrative assistance and the like, the price of imported assets, film rentals, machinery, etc., as well as any other data that may serve as the basis for taxation. (Law 4,131, Article 16)

Article 47. The Customs Policy Council shall have the right to increase or reduce by as much as thirty per cent (30%) the duties on machinery and equipment, in consideration of the peculiarities of the region to which the same are being sent, the concentration of industry in the area in which they are to be utilized, and the degree of utilization of machinery and equipment prior to the said import. (Law 4,131, Article 49)

Sole paragraph. When machinery and equipment is shipped from the region to which it was originally sent, the interested parties shall be required to pay the tax authorities an amount corresponding to the reduction given at the time the import was made if the said equipment is transferred to an area for which that reduction would not have conceded. (Law 4,131, Article 49, Sole paragraph)

Article 48. In the case of registrations solicited, but neither conceded nor denied, the Superintendency of Currency and Credit may authorize, on or before 29 August 1965, remittance abroad for the account of profits, dividends, interest, amortization, royalties, and payments for technical, scientific, and administrative assistance and the like on the basis of a performance bond executed by the directors of the interested enterprise. (Law 4,131, as amended by Law 4,390, Article 9, Section 2)

Section 1. Should the said remittances not be in accordance with the certified value of the registration subsequently issued, the Superintendency of Currency and Credit shall take such steps as the case may require to compensate for such excesses either by making the adjustment at the time of registration or by requiring that the responsible parties make restitution of the excessive foreign exchange transferred.

Section 2. The Council of the Superintendency of Currency and Credit shall require of the interested parties any substantiation that it may deem necessary before authorizing such transfers. (Law 4,131, as amended by Law 4,390, Article 9)

Section 3. Proof of payment of income tax due shall be required for the remittances abroad provided for in this Article. (Law 4,131, as amended by Law 4,390, Article 9, Section 1)

Section 4. The Superintendency of Currency and Credit shall make an annual report, prior to the expiration of the period mentioned in this Article, to the Minister of Finance and opine as to the necessity or not of extending the effective period for this concession. (Law 4,131, as amended by Law 4,390, Article 9, Section 3)

Article 49. Whenever any grave imbalance is shown in the balance of payments or should there be serious reason to anticipate such a state of affairs, the Council of the Superintendency of Currency and Credit may, for a limited period, impose restrictions on imports and on the remittance of earnings on foreign capital abroad, and for such purpose, may authorize the Banco do Brasil S.A. to exercise a monopoly or quasi-monopoly on exchange operations. (Law 4,131, Article 28)

Section 1. In the circumstances provided for in this Article, remittances for the account of repatriation of capital shall be prohibited and remittance of profits limited to ten per cent (10%) per annum or a maximum of five per cent (5%) for the investments referred to in Article 11, and in both cases calculations shall be based upon the value of the investment or reinvestment as registered with Superintendency of Currency and Credit. (Law 4,131, as amended by Law 4,390, Article 28, Section 1 and Article 2, Section 2)

Section 2. Advice of earnings in excess of the percentage established by the Council of the Superintendency of Currency and Credit should be given that Superintendency and, should the restriction mentioned in this Article be extended for more than one fiscal year, that agency may authorize the remittance, in the following fiscal year, of the amounts corresponding to the excess, if profits earned do not reach the said limit. (Law 4,131, as amended by Law 4,390, Article 28, Section 2)

Section 3. In the cases mentioned in this Article, the Council of the Superintendency of Currency and Credit may limit the remittance of amount paid for royalties and technical, scientific, and administrative assistance and the like to a maximum annual cumulative value of five per cent (5%) of the enterprise's gross receipts. (Law 4,131, Article 28, Section 3)

Section 4. Further, in the cases mentioned in this Article, the Council of the Superintendency of Currency and Credit is hereby authorized to hand down instructions to limit expenditures of foreign exchange on international voyages. (Law 4,131, Article 28, Section 4)

Section 5. There shall not be, however, any restrictions on remittances of interest and amortization as stipulated in duly registered loan agreements. (Law 4,131, Article 28, Section 5)

Article 50. The Superintendency of Currency and Credit may authorize the following:

- (a) conversion into investment of the principal of loans registered or of any sums whatsoever, including interest, that may be remitted abroad; and
- (b) registration as a loan, at a term and with interest approved by the Superintendency of Currency and Credit, of interest on registered loans, profits on registered loans, profits that may be remitted on registered capital, and of any other sums that may be remitted abroad.

Section 1. The conversions mentioned in this Article may be conditioned to the realization of exchange operations on paper.

Section 2. The Superintendency of Currency and Credit is hereby authorized to authorize and adopt special procedure to permit rapid examination of applications for the conversions mentioned in this Article, without prejudice to applications made for regular registrations.

Article 51. The Council of the Superintendency of Currency and Credit may fix special conditions for transfers involving the entry of new resources, of equal or lesser value than the said transfers, for the account of working capital or for the acquisition of equipment produced in Brazil.

Article 52. Re-investment of profits and transfers or cession of capital, credits or contracts by and between individuals or legal entities domiciled or situate abroad are not subject to exchange purchase and sale on paper.

Sole paragraph. When the cession or transfer is made to individuals or legal entities domiciled or situate in Brazil, the registration shall be cancelled.

Article 53. Enterprises, including corporations, shall be obliged to indicate in their statement the portions of their capital and credits pertaining to individuals or legal entities domiciled or situate abroad and registered with the Superintendency of Currency and Credit. (Law 4,131, Article 21)

Sole paragraph. Like indications shall be made in the profit and loss statement to show the portion of profits, dividends, interest, and other monies credited to individuals and legal entities resident, domiciled, or situate abroad whose capital may be registered with the Superintendency of Currency and Credit. (Law 4,131, Article 22)

Article 54. Foreign banks authorized to operate in Brazil shall be subject to the same limitations and restrictions that the Law in their principal place of business imposes upon Brazilian banks. (Law 4,131, Article 50)

Section 1. The Council of the Superintendency of Currency and Credit shall issue the necessary instructions to assure that foreign banks already operating in Brazil comply with the provisions of this Article. (Law 4,131, Article 50, Sole paragraph)

Section 2. Foreign banks whose principal place of business is established in localities where existent legislation restrict the operations of Brazilian banks are prohibited from acquiring more than thirty per cent (30%) of the voting shares in Brazilian banks. (Law 4,131, Article 51)

Article 55. The criteria established for the import of used machinery and equipment shall be the same, both for investors and foreign enterprises as for domestic companies. (Law 4,131, Article 47)

Article 56. Imports of used machinery and equipment, if authorized, shall enjoy the same exchange system as is effective for the import of new machinery and equipment. (Law 4,131, Article 48)

Article 57. Deposit accounts in Brazil of individuals and legal entities resident, domiciled, or situate abroad, notwithstanding the origin of the same, shall be freely operated, independently of any authorization, prior or subsequent, if their balances accrue exclusively from order in foreign currency or from sales of exchange, and may be freely transferred abroad, at any time whatsoever, without authorization of any kind whatsoever.

Article 58. The Superintendency of Currency and Credit, at its sole discretion or when solicited, may forward to those directly interested in operations subject to registration copies of correspondence and notices it issues.

Article 59. The Superintendency of Currency and Credit, when solicited and if it deems wise, may approve remittances for payment of specialized technical services and projects and for the acquisition of industrial models and plans.

Article 60. The acquisition of enterprises abroad whose activities are preponderantly in Brazil shall be dependent upon the approval of the Superintendency of Currency and Credit.

Article 61. Transfer abroad of inheritances, prizes, earnings accruing from author's rights in this country, and the estates of persons transferring their residences abroad and other such remittances depend, in each and every case, upon the approval of the Superintendency of Currency and Credit.

Article 62. For the purposes of the provisions made in the present Decree, the Superintendency of Currency and Credit may, whenever it deems necessary, investigate to verify the declarations made, auditing, examining and inspecting enterprises, or may solicit and demand whatever proof and information it may deem necessary.

Article 63. Public agencies, mixed-capital corporations, and public and private companies enjoying Government benefits, as well as foundations, shall, to the limit of their capacity and within the shortest possible time, render all information, aid, and assistance solicited of them by the Superintendency of Currency and Credit to assure good and sufficient compliance with the provisions of the present Decree.

Article 64. Applications presented to the Superintendency of Currency and Credit prior to the date of publication of the present Decree are not subject to the need for a new application, as mentioned in Article 3.

Article 65. Members of the Council of the Superintendency of Currency and Credit shall be obliged to declare their incomes and holdings as well as those of their spouses and dependants on or before 30 April of each and every year, and the said declarations are to be examined and filed with the Federal Court of Accounts, which shall advise the Senate accordingly. (Law 4,131, Article 36)

Sole paragraph. Members of the staff of the Superintendency of Currency and Credit in positions of responsibility and exercising regulamentary functions in connexion with the registration of foreign capital and its control, in the terms of the present Decree, shall also be obliged to make the declarations provided for in this Article. (Law 4,131, Article 36, Sole paragraph)

Article 66. The Superintendency of Currency and Credit shall have published in the DIARIO OFICIAL (Official Gazette), at least every six (6) months, a report of registrations made during the period.

Article 67. All cases for which no provision has been made herein shall be resolved by the Council of the Superintendency of Currency and Credit.

Article 68. The present Decree shall become effective on the date of its publication; and all other provisions to the contrary are hereby revoked.

ANNEX B

SUMOC INSTRUCTION No. 285

The Superintendency of Currency and Credit, in accordance with the deliberations of its Council in the meeting of 16 December 1964, and in compliance with the provisions of Article 3, item "h" and Article 6 of Decree Law No. 7,293 of 2 February 1945.

RESOLVES:

I. To establish according to Article 29 of Law No. 4,131 of 3 September 1962, altered by Law No. 4,390 of 29 August 1964, that the financial charge referred to in item IV of Instruction No. 275 of 3 August 1964, will henceforth be required according to the following percentages:

- (a) ten per cent on the equivalent of the exchange contract for merchandise imports; and
- (b) thirty per cent on the equivalent of the exchange contract for financial remittances.

II. To establish at 50 per cent the deposit to be charged on the equivalent of the exchange contract for merchandise imports and financial remittances referred to in item I of Instruction No. 277 of 9 September 1964.

III. To revoke Instruction No. 280 of 22 September 1964.

IV. To clarify that present provisions shall be applicable to transactions which pertinent exchange contracts are closed as from the date the present Instruction is in force.

ANNEX CSUMOC INSTRUCTION No. 287

The Superintendency of Currency and Credit in accordance with the deliberation of its Council in meeting of 11 January 1965 and in compliance with the provisions of Articles 3, item "h" and 6 of Decree Law No. 7,293 of 2 February 1945.

**RESOLVES:**

- I. To raise from US\$30,000.00 (thirty thousand dollars) to US\$50,000,00 (fifty thousand dollars) per firm, the weekly limit for closing of exchange intended for payment of the c.i.f. value of imports as provided for in item II of Instruction No. 204 of 13 March 1961.
- II. To maintain the exemption of the limit referred to in the previous item for imports of products originating from Latin American Free Trade Area member countries included in Brazil's National List.
- III. To exempt equally from the limit mentioned in item I, imports covered by foreign loans with terms of over twenty years.
- IV. To revoke item II of Instruction No. 206, III of Instruction No. 229, V of Instruction No. 256 and III of Instruction No. 263 of 22 May 1961, 15 August 1962, 29 October 1963 and 19 February 1964 respectively.

ANNEX D

SUMOC INSTRUCTION No. 291

The Superintendency of Currency and Credit, in accordance with the deliberations of its Council in the meeting of 8 February 1965, and in compliance with the provisions of Article 3, item "h" and Article 6 of Decree Law No. 7,295 of 2 February 1945.

**RESOLVES:**

- I. Operations relative to the import of machinery and equipment, financed for a period of less than eight years or without exchange coverage, as a direct investment of foreign capital, may also be authorized by SUMOC, when of real interest to the country's economic and social development, after approval by a Committee made up of SUMOC's Executive Director and also the Directors of CACEX and Banco do Brasil's Exchange Department.
- II. Provisions set forth in item I having been followed, priority treatment may be given to transactions having a grace period in the initial years and, successively, to those with less incidence of down payment, amortization and interest in the first two years; those allowing for a more extensive payment period, and those referring to import of machinery and equipment originating from Latin American Free Trade Area countries and figuring in the Brazil's National List.
- III. In cases of imports coming from monetary areas where the balance of payments are in Brazil's favour, terms and conditions compatible with the volume of the existing balance and with prospective trade transactions may also be authorized.
- IV. Imports of machinery and equipment, provided for in item I, shall not be permitted, when satisfactorily supplied by the national industry.
- V. In cases of foreign financing, at a term of not less than fifteen years, destined to the acquisition of machinery and equipment, subject to the clause of obligatory international bid, imports of machinery and equipment offered by the foreign industry shall be permitted, when such bids have not been won by national industry, inspite of its participation having been assured by a minimal protection margin of 15 per cent on c.i.f. price, unloaded in a Brazilian port. Submitted proposals shall be considered after the price offered by the Brazilian industry has been calculated at the exchange rate in force, on the date of bids, plus the financial charge in force.
- VI. Instruction No. 242 of June 1963, and Item IV of Instruction No. 256 of 29 October 1963, are hereby revoked.

ANNEX EFICAM CIRCULAR No. 57 - CENTRAL BANK'S RESOLUTION No. 9

(13 November 1965)

1. The following is the text of Resolution No. 9 issued by this Bank on 13 November, in accordance with the deliberation of the National Monetary Council in its meeting held on this date:

- I. to abolish previous deposits and the financial charge presently collected on imports;
  - II. to abolish previous deposits charged on financial transfers;
  - III. to reduce, to fifteen per cent, the financial charge on financial transfers and, to ten per cent, in the case of enterprises which signed the price stabilization agreement, provided the present exemption system is maintained;
  - IV. to exclude imports of products originating from LAFTA member countries, which appear in Brazil's National List, from the limit to which are subject exchange closing operations, per firm or per week, throughout Brazil;
  - V. to revoke Instructions Nos. 243, 253, 254, 256, 275, 277 and 285 of 9 August 1963, 11 October, 1963, 29 October 1963, 3 August 1964, 9 September 1964 and 24 December 1964 respectively, issued by the former Superintendency of Currency and Credit.
2. Consequently provisions of Notice No. 23 of 13 August 1964 and items I and II of Notice No. 22 of 22 May 1964, both issued by Bank of Brazil's Exchange Department, are affected by this Resolution.
3. We clarify that present regulations will be applied to exchange operations contracted as of 13 November 1965.

