

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES

Eleventh Session

Working Party on the Brazilian
Tariff and Schedule

DRAFT REPORT OF THE WORKING PARTY ON THE BRAZILIAN TARIFF AND SCHEDULE

1. In accordance with its terms of reference, the Working Party examined the effects which the introduction of a new tariff by the Government of Brazil would have on Brazil's obligations under the General Agreement and on the interests of other contracting parties. It took into consideration the statements made by the Brazilian Minister for Finance and the Leader of the Brazilian delegation at the plenary meetings of the CONTRACTING PARTIES, as well as additional statements made by the Brazilian delegation during the proceedings of the Working Party. In order to clarify a number of technical points and to have a better understanding of the effects of the introduction of the new tariff on the import trade of Brazil, a sub-group was set up whose report is appended to this report.
2. The Working Party agreed that, in view of the obsolescence of the tariff nomenclature and of the effects of price movements on the incidence of the specific rates of the tariff, a revision had become necessary. It agreed also that, in view of the exceptional circumstances in which the Brazilian Government found itself, it would be reasonable for the CONTRACTING PARTIES to enable the Brazilian Government to put into effect its tariff reform and consequent simplification of the exchange control without delay.
3. The Working Party considered that the proposed programme for the reform of the Brazilian fiscal structure and in particular the simplification of the present auction system was a step in the right direction. They noted with gratification the definite assurances given by the Brazilian delegation on behalf of its Government regarding the new method proposed for customs valuation including the system of exchange conversion which will be provided for by law. The elimination of the discriminatory aspect of the internal tax system and the simplification of customs procedures including consular formalities were also the subject of assurances.
4. The Working Party noted further that, in the view of the Brazilian Government, the introduction of the new tariff, with the consequent reduction in the level of the exchange agios, (a) would not result in any increase in the cost of imports

in the Brazilian market, (b) would not reduce the total volume of imports which would continue to be as large as Brazil's foreign exchange resources permit it and would not alter the existing pattern of imports. The Working Party felt, however, that until the tariff had actually been introduced it would not be possible to see whether these assumptions proved correct. They were of the opinion that, while in the short run, the new regime might not change substantially the existing pattern of imports, the level of rates for a large number of goods appeared so high that imports might be abnormally discouraged in the long run. It appeared, therefore, to some members that the prolonged maintenance of such high rates would be detrimental to trade and would not even be in the interests of Brazil as it might seriously impair a balanced development of the Brazilian economy once inflation had been brought under control. In this connexion, the Brazilian delegation agreed that it was in the interest of Brazil to reduce the tariff level if such trends appear and that the determined policy of the Brazilian Government was to limit tariff rates to the minimum level necessary to protect the Brazilian economy.

5. The Working Party agreed to recommend to the CONTRACTING PARTIES a suspension of the Brazilian tariff commitments to enable the Brazilian Government to introduce the new tariff and to see in practice how this tariff would influence the trend and pattern of imports. Some members pointed out, however, that, in view of the uncertainties regarding the long-term effects of the tariff, there would be a number of problems of general concern to be discussed with the Brazilian authorities in the course of the negotiations to establish a new Brazilian schedule. In this connexion, it was suggested that the Brazilian authorities might consider the desirability of replacing some portion of the very high rates provided for in the draft tariff by internal taxes which would apply equally to domestic and imported products. Moreover, it was pointed out, that, if questions of general concern would arise during the period covered by the waiver, the Tariff Negotiations Committee the creation of which is recommended, would be competent to deal with these questions.

6. The Working Party then considered the best procedure by which the CONTRACTING PARTIES could authorize the Brazilian Government to achieve its objectives whilst safeguarding the legitimate interests of other contracting parties. It agreed with the Brazilian delegation that it would not be

practicable for the Brazilian Government to postpone the introduction of its new tariff until negotiations in accordance with the provisions of Article XXVIII had been completed. Since there is no other provision in the Agreement applicable in these exceptional circumstances, the Working Party recommends that a temporary waiver of tariff obligations under paragraph 1 of Article II should be granted to Brazil. This decision should also provide for a similar suspension of the tariff commitments of the other contracting parties to Brazil.

7. The duration of this waiver should be limited to the time necessary for the completion of the negotiations to replace the present Brazilian schedule and for the entry into force of the resultant concessions. It is suggested that a period of one year from the date of the enactment of the tariff should be sufficient but that the CONTRACTING PARTIES should reserve the right to extend this period for all negotiations or some of them, if circumstances should be considered to require it.

8. Finally, the decision should contain the necessary procedural and legal provisions which appear appropriate in the circumstances to finalize the results of the negotiations under the terms of the decision and to establish the status of Brazil vis-à-vis the General Agreement on a durable basis. In this connexion, the Working Party recommends to the CONTRACTING PARTIES the establishment of a Tariff Negotiations Committee which should be set before the end of the present session. This Committee should include representatives of all contracting parties wishing to take part in negotiations with Brazil pursuant to paragraph 1 of the draft decision. The Committee would, of course, have the right to establish such subsidiary Committees as required. The terms of reference of the Tariff Negotiations Committee should include the power to examine questions of general concern such as those referred to in paragraph 5 above,

9. The Working Party considered the complaint referred to the CONTRACTING PARTIES by the Government of France regarding the discriminatory application of certain Brazilian taxes. In view of the assurances given by the Brazilian delegation regarding the enactment of a new excise law which should eliminate the discriminatory aspects of the present legislation, the Working Party hopes that this question will now be settled.

10. The Working Party submits to the CONTRACTING PARTIES for consideration and approval the text of the following Decision:

HAVING RECEIVED from the Government of Brazil a notification to the effect that it has been compelled to take emergency measures directed towards the solution of an acute internal problem arising out of the impossibility of continuing the existing fiscal structure which has proved incapable of meeting the needs of orderly and progressive economic developments, and that an essential factor in its programme for the reform of its fiscal structure is a tariff revision so comprehensive that it constitutes the enactment of a new customs tariff,

CONSIDERING that the entry into force of the new tariff will involve the withdrawal or modification of a large number of the concessions negotiated by Brazil and incorporated in Schedule III and that in view of the urgency of the situation it will not be practicable for the Brazilian Government to carry out negotiations in accordance with Article XXVIII before the entry into force of the new tariff, and

NOTING, without prejudice to the rights of contracting parties in respect of nullification and impairment of benefits accruing to them under the General Agreement, that the Brazilian Government has given assurances to the CONTRACTING PARTIES

- (a) that during the period covered by this Decision the introduction of the new tariff will not result in any significant increase in the cost of imports in the Brazilian market, nor bring about an alteration of the existing pattern of imports, nor reduce the volume of trade in accordance with the availability of foreign exchange,
- (b) that the entry into force of the new tariff will be accompanied by the elimination of certain discriminatory aspects of the controls at present in force, and in particular that the Brazilian Government will establish rules for the conversion of exchange for customs valuation so drawn and administered as to eliminate discrimination as between sources of supply and between different types of goods,
- (c) that, simultaneously with the introduction of the new tariff, the Brazilian Government intends to eliminate the discriminatory application of internal taxes and has introduced legislation for this purpose, and
- (d) the Brazilian Government is conducting a review of its customs procedures, including consular formalities, which it is confident will bring them into conformity with the provisions of the General Agreement and also, as far as possible, with the recommendations of the CONTRACTING PARTIES and in particular is taking steps to discontinue the requirements for the presentation of consular invoices,

THE CONTRACTING PARTIES

ACTING pursuant to the provisions of paragraph 5(a) of Article XXV

DECIDE that the provisions of Article II paragraph 1 of the General Agreement are waived to the extent necessary to permit the Brazilian Government to put into force its new customs tariff immediately following its enactment subject to the following terms and conditions:

1. The Brazilian Government will undertake to begin negotiations, as soon as possible after the new tariff is enacted with other contracting parties in order to establish a new schedule of Brazilian tariff concessions, the negotiations to be completed and the results put into effect within a period not to exceed one year from the date of such enactment, provided that this period may be extended by the CONTRACTING PARTIES upon application by the negotiating contracting parties concerned.
2. Pending the entry into force of the results of the negotiations, the other contracting parties will be free to suspend concessions initially negotiated with Brazil (subject, as regards contracting parties which have a principal supplying interest or a substantial interest therein, to procedures analogous to those provided for in Article XXVIII) as well as the application to Brazil of those provisions of the General Agreement which give to any contracting party with a principal supplying interest or a substantial interest a right to negotiation or consultation with respect to concessions initially negotiated with another contracting party.
3. As soon as the negotiations referred to in paragraph 1 above have come to an end the Brazilian Government and other negotiating contracting parties shall submit to the CONTRACTING PARTIES a report on the results of the negotiations and on other action taken in pursuance of this Decision. The CONTRACTING PARTIES may make such recommendations to Brazil and to other contracting parties as they may deem appropriate. In particular, if any negotiating contracting party considers that the situation resulting from the negotiations and other action pursuant to this Decision does not constitute a mutually satisfactory adjustment, the CONTRACTING PARTIES shall authorize the suspension of the mutual obligations of that contracting party and of Brazil under the General Agreement.
4. Together with the report referred to in paragraph 3 above, the Brazilian Government and other negotiating contracting parties will submit to the CONTRACTING PARTIES the new Schedule III, and modifications in the schedules of other negotiating contracting parties resulting from such negotiations, provided that any contracting party determined by the CONTRACTING PARTIES to have a principal

supplying interest or a substantial interest in any concession which would be modified or withdrawn as a result of such negotiations will be entitled to withdraw substantially equivalent concessions initially negotiated with the contracting party having modified or withdrawn such a concession. Such action will have to be taken not later than six months after such concession has been modified or withdrawn and after the CONTRACTING PARTIES having been duly notified.

DECIDE FURTHER to establish a Tariff Negotiations Committee to consider questions of general concern to the negotiating parties and to make the necessary arrangements for the conduct of the negotiations referred to in paragraph 1 above.

ANNEX

BRAZILIAN TARIFF REFORM

REPORT OF THE SUB-GROUP TO THE WORKING PARTY

The Sub-Group has examined with the Brazilian delegation a number of points relating to the new tariff and the proposed changes in the exchange control, excise taxes and the consular formalities. The present note summarizes the information supplied by the Brazilian delegation in response to specific questions put to them by various members of the Sub-Group.

THE OBJECTIVES OF THE TARIFF REFORM

The tariff reform became necessary for three reasons:

1. The present tariff is based on an obsolete nomenclature.
2. The present tariff uses specific rates, the incidence of which has become very low as a result of the depreciation of purchasing power of the cruzeiro.
3. The tariff no longer represents a reasonable protection of the Brazilian economy.

The terms of reference of the Commission for the revision of the tariff which has been appointed by the President of the Brazilian Republic are quoted below:

"To review the customs tariff, in the light of the instruments of commercial policy of the country, aiming at the granting of protection and incentives to agricultural and industrial production, at the improvement of their quality and at encouraging the transfer of foreign factories to Brazil and also the immigration of technicians."

THE GUIDING PRINCIPLES FOR THE ESTABLISHMENT OF THE NEW TARIFF

The important point in the preparation of the new tariff is that this tariff has been established with a view to finding out the relationship between the technical development of the various products on the Brazilian market and the consequent necessity for protection. This protection is established at a minimum degree in order to stimulate the quality of the national production.

While the Brazilian Government expects a sizeable revenue from the operation of the tariff, the rates for individual products have not been determined for fiscal reasons.

In order to determine the protection to be granted to the various branches of the Brazilian economy, an extensive survey has been made by the Brazilian authorities based on the experience made during the last ten years and the statistical studies available for this period. The main guiding principle was the fact that the system of agios is playing the part of an invisible tariff and that imports have adjusted themselves to the level determined by the auction market. The tariff has been established with a view to transferring a part of that protection to the customs tariff.

THE TARIFF LEVEL

The tariff rates for the various items are distributed among nineteen groups (free importation, 2 per cent, 4 per cent, 5 per cent, 7 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 35 per cent, 40 per cent, 50 per cent, 60 per cent, 70 per cent, 80 per cent, 100 per cent, 125 per cent, 150 per cent).

It is admitted that the higher rates of 80 to 150 per cent provided in the new tariff do not apply only to luxury goods, but also to goods which will not be considered as luxuries in other countries, but the view of the Brazilian Government is that these measures are necessary to afford protection to the Brazilian industry. Furthermore, the simplification and the stability introduced by the reform would improve the position of the imports of these goods as compared with the situation now existing and will therefore bring substantial advantages to the import trade.

The average level of the incidence of the new tariff in the commodities included in the present categories of the present auction system are as follows:

1st category	...	10.74%
2nd "	...	15.31%
3rd "	...	31.85%
4th "	...	40.59%
5th "	...	83.64%

This average has been calculated on the basis of the numbers of tariff items in the various categories but the Brazilian delegation was not in a position to provide similar information about the volume of imports affected by the various tariff rates ¹ because of the difference existing between the old and the new tariff nomenclature.

¹ See, however, the table on page 5.

THE NEW TARIFF AND THE EXISTING EXCHANGE SYSTEM

The experience with the direct controls of importation (the existing auction system) led Brazil to the decision to maintain this system providing for an adequate composition of imports in order to meet the needs of economic development. The experience of the functioning of the auction system, however, indicated that some modifications of the existing system would be necessary to adapt the system to the market mechanism. But such a development was not possible without bringing an adequate customs tariff into force. The intended simplification therefore will come into force at the moment at which the new tariff becomes effective.

The existing auction system has therefore to be maintained. It will, however, be simplified. While the existing system provides for five categories depending on the essentiality of the products, the new auction system will consist of only two categories. Category 1 comprises with few exceptions the previous first four categories and Category 2, the old Category 5, includes goods of which imports are not considered by the Brazilian Government to be essential. In the field of the new Category 1 the tariff should observe, in most instances, the protection which previously had been provided by the high auction rates.

The main difference between the new system envisaged and the old system lies in the increased stability because the powers of the executive to make changes will be limited. While under the old system the administration was entirely free to shift a product from one category to the other, this function will now be exercised by a Board, the powers of which are described below.

The distribution of currency under the new system will otherwise be the same as under the old system. That means that in the first place foreign currency will be made available for privileged imports which, in addition to imports of wheat, newsprint and petrol, include all direct governmental imports and, in the second and third place, for imports under the new Categories 1 and 2. There is no intention to change the present policy for allocating foreign currency for the imports in these categories.

The criteria for the allocation of foreign currencies in Category 2, which now covers slightly less than 3 per cent of the total of importation under the auction system, will remain the same; such allocations will only be expanded if the improvement in the Brazilian economy makes such an expansion possible, and it is not intended under present circumstances to allocate more than 10 per cent. This limitation will enable the Brazilian Government to maintain severe restrictions on the import of goods included in that category.

The following figures, based on the allocation of foreign currency in January/May 1956, are given as an illustration:

in the five categories of the auction system	73 per cent of total imports
petroleum and by-products	13 per cent of total imports
other special auctions (wheat, newsprint, governmental imports, etc.)	14 per cent of total imports
Total	100 per cent

It was stated that no other restriction or prohibition will be applied to imports.

The International Monetary Fund has been unofficially informed of the intended changes in the auction system. This statement was made by the Brazilian representative and confirmed by the representative of the Fund.

The Brazilian delegation sees the advantage of this new system applied together with the new tariff in the following points:

1. The Government will no longer fix a minimum price (agio) for the bidding in the auction;
2. The combination of the new tariff with the new exchange system will lead to a considerable improvement for the importers;
3. The tariff rates will remain stable and thus a significant part of the total import charges will remain fixed whereas at present practically the whole of the import charges are liable to fluctuations under the auction system; and there will furthermore be the guarantee for the importer and the domestic producer that the executive cannot without the ratification of Congress transfer items from one category to the other.

Furthermore, it is expected that the introduction of the new tariff will reduce the import certificate charges pro tanto, since the new rates would automatically have the effect of reducing the level of the agios to be paid under the auction system. The combined future charges will therefore not exceed the present incidence of the charges paid for imports into Brazil. The total return from the agios under the present system is 54 billion cruzeiros a year, and it is expected that, calculated on the actual level of imports, with the introduction of the new tariff

12 billion cruzeiros will be collected by the customs as compared with 1.5 billion cruzeiros at present. In view of this fact it is considered by the Brazilian delegation that the volume and composition of trade will not be affected.

To illustrate this statement, the Brazilian delegation furnished the following table showing the distribution of each of the nineteen tariff rates in the exchange categories in the order of these categories:

CATEGORIES	T A R I F F L E V E L S									
	Free	2%	4%	5%	7%	10%	15%	20%	25%	
1 to 4	54.44	81.20	84.97	25.00	92.13	97.52	67.72	82.50	67.26	
5	45.56	18.80	15.03	75.00	7.87	2.48	32.28	17.50	32.74	
	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
	30%	35%	40%	50%	60%	70%	80%	100%	125%	150%
1 to 4	87.02	83.59	75.40	48.75	39.77	26.67	26.09	5.78	1.11	15.63
5	12.98	16.41	24.60	51.25	60.23	73.33	71.91	94.22	98.89	84.37
	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

As stated almost 98 per cent of Brazilian imports are absorbed by the four first categories. The remaining, less than 3 per cent, corresponds to the 5th category.

EFFECT OF THE NEW TARIFF ON THE CUSTOMS RATES BOUND IN GATT SCHEDULES

Brazil has bound in its schedule products which cover some 60 per cent of the total of the Brazilian importation. It is considered inevitable that such a general tariff reform as carried through in Brazil will lead to increases of bound rates.

The delegation of Brazil is convinced that the imports of products, the rates of which have been bound under GATT, will not undergo any reduction as a result of the introduction of the new tariff. They feel that the new tariff should be submitted to a probationary period, the length of which would be determined by the CONTRACTING PARTIES. The Brazilian Government would be prepared to enter into negotiations with the contracting party, or contracting parties, affected, and to offer them compensation, or, if it proved impossible to arrive at an agreement, to accept that those contracting parties withdraw equivalent concessions. The Brazilian delegation indicated that, in their view, such negotiations would be appropriate if, contrary to their expectations, the imports of the products, the rates of which had been bound under the GATT, was adversely affected by the introduction of the new tariff.

POWERS GRANTED TO THE GOVERNMENT

Article XVI of the Tariff Law grants to the executive branch of the government the power to increase or to reduce the rates by 35 points, upon the recommendation of the Customs Board. This provision would permit, for example, a rate of 40 per cent to be increased to 75 per cent or to be reduced to 5 per cent. Article XVI is not concerned with international negotiations, the results of which have to be submitted for ratification to the Congress.

The Chamber of Deputies, studying the draft bill, was very anxious to see these powers well defined. The agreed compromise was the creation of a customs board, which probably would consist of twelve members (two representatives of industry, two of agriculture, two of trade and six of the Government). It will be this Customs Board which will exercise all the powers provided for by Article XVI. This authority is limited to the cases enumerated in paragraph 1 of this Article, while in all other instances legal action will be necessary. In the cases specially enumerated, the Customs Board will have the right to take decisions which the Government will put into force by decree subject to review by the Congress.

The main functions of this Customs Board will be:

- (a) reductions of tariff rates for internal considerations within the terms of Article XVI;
- (b) increases of tariff rates for the reasons enumerated in Article XVI and within the terms of that article;

- (c) preparation of suggestions for action to be presented to the Congress, including proposals for the classification of commodities by categories for the purpose of the auction system.

This ensures that the Customs Board is not in a position to act inconsistently with the obligations accepted by Brazil under the GATT and the Brazilian delegation has given a firm assurance that the Brazilian Government will not act inconsistently with its obligations under that Agreement.

The Customs Board will, on the other hand, not have any right to review decisions taken by the customs authorities, since the existing system will be maintained which provides for the possibility of an appeal to the courts against any administrative decision considered not to be in conformity with the legal obligations of the administration.

CUSTOMS VALUATION

The valuation regulations included in the preliminary provisions to the tariff will be used as a basis for the corresponding part of a future customs law under preparation.

Article III, paragraph 1, as it stands in the English translation of the draft tariff does not correctly reproduce the definition of value, which will be taken by the Brazilian Government as the basis for the application of the tariff rates. According to the statement made by the Brazilian delegate, the basis for valuation will be the wholesale export price in the exporting country, plus cost of freight, insurance and packing (c.i.f. value). The customs value, therefore, will not include the amount of any internal tax, from which the exported goods have been exempted or have been or will be relieved by means of refund.

It is furthermore declared that the customs administration will not use its powers under Article III, paragraph 3 (permitting a fixing of the value, if the foreign export value is not available, on the basis of the import market price minus charges and minus 30 per cent of estimated profits) in a way which would lead to the application of arbitrary or fictitious values, or to a comparison with prices of a merchandise of Brazilian origin. This paragraph, on the contrary, is intended to favour the importer, and recourse to it will only be had at the request of the latter.

The exchange rates for customs valuation will be established by calculating a weighted average of all transactions in all exchange auctions for commodities in Category 1 during the penultimate month. This weighted average exchange rate will, in the first instance, be calculated on the US dollar; for this purpose other non-Brazilian currencies will be converted into US dollars at their official cross rates. The weighted average for the United States dollar so established will be applied to imports of all United States dollar commodities and the weighted average for other currencies will

be calculated by converting the United States dollar rate, at the official rate for the currency concerned, and will be applied to all imports from these sources. Thus, a common basis for valuation will be established for all imports, irrespective of the source and of the system of exchange control.

It has been stressed that the provisions in the tariff law relating to customs valuation (Article IV) give the Government the necessary power to fix the conversion rates for customs valuation purposes according to the need of the exchange system in force and that these provisions are consistent with the methods of the exchange system described above. That system of exchange conversion will be incorporated in a specific law and remain in force as long as the auction exchange system is applied. That law will also contain the necessary transitional provisions.

THE INTERNAL TAX SYSTEM

A bill providing for the revision of the excise tax law is under discussion in the Congress. Under this new bill the same rates and the same method of assessment will be applied to imported and like domestic products. This bill will therefore remove all discriminatory aspects of the existing legislation.

CONSULAR FORMALITIES

The problem of consular formalities, including customs clearance procedures, is being studied in connexion with the reform of the customs law which is not directly linked to the tariff reform, and the Brazilian delegation is confident that the requirement of consular invoices will be abolished in the very near future. The suppression of all consular formalities was also under consideration but would pose difficult problems for the Brazilian Administration, which needs a very effective form of control over imports, especially import prices.

The Brazilian delegation gave an assurance that consular fees would not be increased but could not accept any obligation to suppress them.