

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

BOP/92
10 June 1969

Limited Distribution

Committee on Balance-of-Payments Restrictions

1969 CONSULTATIONS UNDER ARTICLE XVIII:12(b) WITH BRAZIL

Basic Document for the Consultation

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);
- (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;
- (xi) Instruction No. 285, of December 1964, reducing the rate of the financial charge and import deposit on exchange contracts;
- (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;
- (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;
- (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;
- (xvi) FIGAM Circular 66, of December 1965, eliminated the 25 per cent guarantee deposit for specified imports financed with external loans with a maturity exceeding twenty years;
- (xvii) Resolution No. 41, of November 1966, of the Central Bank providing that all remaining imports in the Special Category were to be governed by the import régime applicable to imports in the General Category, effective 1 March 1967;
- (xviii) Resolution No. 82, of January 1968, providing that clearance of imports through customs was no longer subject to prior closure of an exchange contract.

II. Methods used in restricting imports

All goods imported into Brazil were previously classified into two categories: the General Category and the Special Category. Commodities imported under the General Category regulations were free from quantitative restrictions and licensing while those imported under the Special Category regulations were subject to a special exchange régime. Since 1 March 1967 all commodities listed under the Special Category were transferred to the General Category.

The importer must obtain an import certificate (guia de importação), which is valid for a period of 120 days, from the Foreign Trade Department of the Bank of Brazil (CACEX) upon the presentation of data on the foreign price of the commodity and any other relevant information considered necessary. On the basis of the import certificate the importer is entitled to obtain a visa, free of charge, from the Brazilian Consular authorities abroad which will guarantee customs clearance for the goods. The visa is valid for 120 days.

This procedure takes place before the setting up of the exchange contract for the payment of the imports. With respect to these contracts the importer has the possibility of making use of spot exchange contracts, to be settled within two working days, if he wants to arrange payment through drafts at sight or at maturity, or of forward contracts for up to 180 days, if letters of credit were opened or if he wants to pay for goods already shipped. The letters of credit must be opened within five working days from the date of the exchange contract.

The commercial banks dealing in forward exchange contracts generally ask for guarantee deposits for their own protection which vary with the credit standing of the importer. These deposits are often used for payment of the foreign exchange needed at the time the contracts are liquidated. The portion of the contract not covered by the deposit is usually subject to a 2 per cent interest charge.

Certain imported goods are subject to special import régimes; these are imports of wheat, petroleum and petroleum products, and imports with foreign financing.

In the case of wheat imports the Government maintains a de facto monopoly which is exercised by the National Wheat Commission. For petroleum and petroleum products the import monopoly is exercised by Petroleo Brasileiro S.A. (PETROBRAS), a Government-owned oil concern. PETROBRAS concludes quarterly open foreign exchange contracts with the Bank of Brazil which provide that during a particular quarter actual exchange contracts may be closed up to a specific amount at the exchange rate prevailing on the day the open contract was concluded. The exchange contracts are subject to the following arrangements set up by the Bank of Brazil:

Thirty per cent of the value of a shipment must be paid not later than eight working days after the week in which the shipment has taken place, and the remaining 70 per cent within 110 days after the date of shipment; for imports of liquid gas the remaining 70 per cent is to be paid within 140 days of shipment, with an option for advance settlement. The Bank of Brazil charges an interest rate of 1 per cent a month on the balance outstanding during the 110 days or 140 days.

Under a Decree of 27 October 1966, exchange contracts for the purchase of crude oil and major petroleum products from a single foreign supplier in excess of specified quantities and terms of delivery may be closed only if the foreign supplier assumes a commitment to use at least 20 per cent of the value of the total imports contracted for one of the following purposes:

- (i) to arrange for exports of Brazilian products;
- (ii) to finance exports of Brazilian products;
- (iii) to invest in risk capital of companies domiciled in Brazil;
- (iv) to finance PETROBRAS in its exploration, refining and production activities;
- (v) other uses that may be approved by the National Council of Foreign Trade (CONCEX).

The products whose export should be promoted in this way are determined periodically by CONCEX. Moreover, preference is given to those foreign suppliers who, while quoting a competitive price, are willing to assume in respect of part of the value of the contract any of the obligations described above, even though the contract is for an amount below that for which a commitment is obligatory. PETROBRAS must report to the Foreign Trade Department and the Exchange Department of the Bank of Brazil all purchases of crude petroleum and by-products and, when a supplier undertakes to use a specific proportion of the proceeds according to one of the ways set out above, all details relating to such an undertaking. Balances corresponding to the value of commitments undertaken are released only to the extent that such commitments have been fulfilled. In cases where the commitments were of the voluntary kind referred to above, balances corresponding to the value of a commitment required of the foreign supplier have in the past been released after a maximum period of 180 days, if within that period it was impossible to use these balances for the purposes defined by the Decree.

Only a few commodities are excluded from the import list. They are new automobiles and recreational boats of a value of more than \$3,500 and lubricating oil and petroleum products, if they are shipped in individual packages for retail sale. Certain other commodities experience import restrictions in so far as an import authorization is granted only if the domestic production of these goods has been sold. Vegetable or synthetic latex, as well as natural or synthetic rubber are imported directly by the industrial users according to a programme established by the Rubber National Council.

III. Treatment of imports from different sources

Brazilian authorities are tending to reply less on bilateralism, specially when partner countries use only global restrictions, or none, on imports. Since 1966, among others, the payments agreements with Czechoslovakia, Denmark and Portugal have been terminated. The agreement with Denmark was terminated on 31 March 1968. There remain only five payments agreements in force with contracting parties: Greece, Iceland, Israel, Poland and Yugoslavia. There are also payments agreements with Bulgaria, East Germany, Hungary, Romania and the Soviet Union.

Besides these bilateral agreements, Brazil is an active member of the Latin American Free Trade Area (LAFTA), which was established in accordance with Article XXIV:5(a) of GATT, and which has served to increase the trade between participating countries.

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

Brazil maintains Government monopoly over the importation of wheat, exercised by the National Wheat Commission, and of petroleum and its derivatives, which is exercised by PETROBRAS, a Government-owned oil concern. (See under II, page 3.)

V. Measures taken since the last consultation in relaxing restrictions

Brazil has made considerable progress since March 1966, date of its last consultation, in the relaxation of exchange restrictions.

In September 1966, Law 5025 came into force; this law provides, on a reciprocity basis, for free consular visas on commercial invoices.

On 1 January 1967, the stamp tax and other obligatory charges previously levied on most exchange transactions were eliminated.

On 1 February 1967, the bilateral payments agreement with Czechoslovakia was terminated and payments between the two countries were made in convertible currencies.

On 1 March 1967, Decree Law 63 of 21 November 1966 was implemented (it provided for an overall reduction of customs duties notably on imports of raw materials and intermediate goods and for the lowering of the highest tariff rates from 150 per cent to 120 per cent ad valorem); in this connexion, imports of commodities listed under the Special Category became subject to the regulation applicable to the General Category.

On 10 March 1967, Resolution 12 of the National Council of Foreign Trade eliminated the requirement of export licences, except for a number of specified commodities.

In December 1967, the Central Bank announced a change effective 4 January in the official buying and selling rates from new cruzeiro 2.700 and new cruzeiro 2.715 per United States dollar respectively to new cruzeiro 3.20 and new cruzeiro 3.22 per United States dollar respectively.

In January 1968, Central Bank Resolution 82 provided that clearance of imports through customs was no longer subject to the prior closing of an exchange contract. Previously an importer had to close an exchange contract for payment of imports (which could be covered for or up to 180 days) prior to the clearance of the goods through customs. It was also provided that exchange contracts and payments for imports could only be closed against presentation of documents relevant to the general import transaction.

Also in January 1968, the customs despatch tax of 5 per cent on the value of imports was eliminated, and in some cases incorporated in the duty.

In addition, Central Bank GECAM Announcement 42 laid the rules for the closing of forward exchange contracts and payments for imports. Forward contracts and payments for imports could henceforth be closed only when it was intended to open a letter of credit or to pay for goods already shipped. Credit had to be opened within five working days from the date of the exchange contract. Previously, it was possible to enter into forward contract without proving that a genuine import transaction was involved.

VI. Effects of the restrictions

The effects of the remaining restrictions are very slight in comparison with those which have already been eliminated.

A statement on the balance-of-payments position will be supplied.