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 The tariff no longer represents a reasonable protection of the Brazilian economy.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:

<table>
<thead>
<tr>
<th>Category</th>
<th>Average Incidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>10.74%</td>
</tr>
<tr>
<td>2nd</td>
<td>15.31%</td>
</tr>
<tr>
<td>3rd</td>
<td>31.85%</td>
</tr>
<tr>
<td>4th</td>
<td>40.59%</td>
</tr>
<tr>
<td>5th</td>
<td>83.64%</td>
</tr>
</tbody>
</table>

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 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 Brazilian economy would make 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:

<table>
<thead>
<tr>
<th>CATEGORIES</th>
<th>TARIFF LEVELS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Free</td>
</tr>
<tr>
<td>1 to 4</td>
<td>54.44</td>
</tr>
<tr>
<td>5</td>
<td>45.56</td>
</tr>
<tr>
<td></td>
<td>100.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CATEGORIES</th>
<th>30%</th>
<th>35%</th>
<th>40%</th>
<th>50%</th>
<th>60%</th>
<th>70%</th>
<th>80%</th>
<th>100%</th>
<th>125%</th>
<th>150%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 4</td>
<td>87.02</td>
<td>83.59</td>
<td>75.40</td>
<td>48.75</td>
<td>39.77</td>
<td>26.67</td>
<td>28.09</td>
<td>5.78</td>
<td>1.11</td>
<td>15.63</td>
</tr>
<tr>
<td>5</td>
<td>12.98</td>
<td>16.41</td>
<td>24.60</td>
<td>51.25</td>
<td>60.23</td>
<td>73.33</td>
<td>71.91</td>
<td>94.22</td>
<td>98.89</td>
<td>84.37</td>
</tr>
<tr>
<td></td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
</tr>
</tbody>
</table>

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, involved, and to offer them compensation, or, if it proved impossible to arrive at an agreement, to accept that those contracting parties withdrew equivalent concessions. The Brazilian delegation indicated that, in their view, such negotiations would be appropriate, if contrary to their expectations, the import 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. Anyhow, the results of international tariff negotiations have to be transmitted 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 by decree which, however, are subject to confirmation 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 Chamber of Deputies, including proposals for the classification of commodities by categories for the purposes of the auction system.
This ensures that the Brazilian Government is not in a position to act inconsistently with its obligations 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 result of this formulation is that the customs value does 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 meant 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 preceding 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 preliminary provisions in the tariff (Article IV) are not mandatory but give the Government only the necessary power to fix the conversion rates for customs valuation purposes according to the need of the exchange system in force.

The above-described system will be incorporated in a specific law and remain in force as long as the auction exchange system. It 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. However, the suppression of all consular formalities was 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.