

WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/AHG/W/60

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**Committee on Anti-Dumping Practices
Ad Hoc Group on Implementation**

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Paper by Brazil

The following communication, dated 15 October 1998, has been received from the Permanent Mission of Brazil.

Topic 1: Treatment of Confidential Information

Answered by Brazil in document G/ADP/AHG/W/46.

Topic 3: Application and implementation of the last sentence of Article 6.10.2 of the Agreement

Article 5.LV of the Brazilian Federal Constitution states that litigants in an administrative process - which is the case of an anti-dumping investigation – are guaranteed the right of access to "the adversary system" and a full defence, with the means and resources inherent to it.

The Brazilian legislation that implements the provisions of the WTO Anti-Dumping Agreement – Decree 1062/95 – reads:

- Art. 26 – All interested parties in an anti-dumping investigation shall be given notice of the information required and shall have ample opportunity to submit, in writing, all evidence that they consider relevant in respect of the investigation in question.
- Sole paragraph – Due consideration shall be given to any difficulties encountered by the interested parties (...) in providing requested information (...).
- Art. 27.2 – Additional or complementary information may be requested or accepted in writing throughout an investigation. The time period for providing requested information shall be stipulated based on the nature of the information and may be extended when a duly justified request is made. The time periods for the

* See document G/ADP/W/401 for descriptions of the topics.

investigation itself must be taken into account both for information that is requested and for consideration of such additional information submitted.

Therefore, the Brazilian legislation does not inhibit voluntary participation in the course of the investigation and allows the admission of additional information, which will be considered by the investigating authorities, as long as the time limits imposed by Decree 1602/95 are observed.

Topic 4 - Special Circumstances

Any attempt to devise a negative list including situations that do not fit this concept would be an extremely complex and delicate task.

The only one particular instance when Brazil self-initiated an investigation, was a direct consequence of the dissolution of the ex-Soviet Union. Since import statistics were readjusted in order to identify the countries of origin of the product, Brazil self-initiated an investigation concerning the newly formed independent countries. Such a situation was truly exceptional and does not tend to reoccur.

Topic 5 - Notification to the Exporting Member

As pointed out in document G/ADP/AHG/W/46, dated April 20th 1998, when the Brazilian investigating authority considers that the application contains sufficient information to allow an analysis of the petition, the Embassy of the exporting country is notified that the Brazilian government received a properly documented application requesting the opening of the investigation (Art. 5.5 of the ADP Agreement).

Such notification informs the name of the enterprise or entity that presented the petition, the product whose imports are under examination, and the country or countries of origin.

Since a decision has not yet been taken on whether or not an investigation should be opened, the Brazilian investigating authorities do not inform the names of exporters or producers in that notification. In this regard, the Brazilian government also bears in mind that Article 5.5 of the Anti-Dumping Agreement determines that the authorities shall avoid any publicising of the application for the initiation of an investigation, "unless a decision has been made to initiate an investigation".

The names of exporters may be included in the notification provided for in Article 6.1.3 of the ADP Agreement.

Topic 6 - Hearings

Answered by Brazil in document G/ADP/AHG/W/46.

Topic 7 - Provision of Essential Facts

Answered by Brazil in document G/ADP/AHG/W/18.

Topic 8 - Public Notices – Internet Web-Sites

The Department of Trade Defence (DECOM) of the Foreign Trade Secretariat (SECEX) – a body of the Ministry of Industry, Trade, and Tourism (MICT) - has a home page that may be accessed at the Internet address <http://www.mict.gov.br>. This page is still being developed but it already contains information on the Brazilian trade defence legislation, petition outlines, and a brief description of each available mechanism (safeguard, anti-dumping, and countervailing measures).

The site also provides DECOM's organisational chart, its legal competence, and the name and address of area directors.

An e-mail address is also available for further inquiries decom@secex.mict.gov.br.

This home page may also direct the visitor to information on other Departments of SECEX, where he may obtain data concerning: the Brazilian foreign trade legislation, export-import statistics, SECEX informative bulletins, MERCOSUL, international negotiations, legal responsibilities of MICT and SECEX, and useful addresses.

There are plans to make available investigation data and statistics, as well as to permit on-line access by the general public and interested parties, who would then be able to follow the developments of an investigation on the Internet.

Topic 10 - Duty Assessments

The Brazilian legislation does not provide for a specific refund procedure concerning anti-dumping or countervailing duties. When necessary, the authorities follow the general rule applied for tax refunds, which is covered by Normative Instruction 21, issued on 10 March 1997 by the Federal Revenue Secretariat.

The Federal Revenue Secretariat authority with jurisdiction over the "fiscal residence" of the taxpayer examines the refund requested and decides on its approval. The appropriate form - "Request for Refund" (*Pedido de Restituição*) - is included in Annex I of Normative Instruction 21.
