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Committee on Safeguards

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BRAZIL - PROVISIONAL SAFEGUARD MEASURE CONCERNING IMPORTS OF TOYS¹

Replies from BRAZIL to Questions posed by JAPAN²

The following communication, dated 16 April 1997, has been received from the Permanent Mission of Brazil.

Q1. Is the provisional safeguard measure applied to the products imported from member countries of the Mercosur? If not, please explain on what legal basis such exemption from the application of the measure is justified, despite the fact that Article 5 of Decree No. 1488/95, 11 May 1995 (G/SG/N/1/BRA/3) clearly provides that such measures will be applied to the imported products independently of its sources? How is it justified under the GATT 1994 and the Agreement on Safeguards?

Answer

Decree No. 1488/95, altered by Decree No. 1936/96, established that safeguard measures would be applied regardless of their origin, respecting possible regional bilateral agreements, as well as special regimes of importation, such as drawback, for example.

The safeguard investigation has already been concluded and the provisional safeguard measure has been replaced by the final safeguard measure. Taking into account Article 9 of the Agreement on Safeguards, the safeguard measure does not apply to products originating in a developing country Member of the WTO, as long as its share of imports of the product concerned in the importing Member does not exceed 3%, provided that developing country Members with less than 3% import share collectively account for not more than 9% of total imports of the product concerned.

Since imports originating in developing country Members of the WTO which exported to Brazil in 1995 and had a share of less than 3% of the total Brazilian imports represented jointly 6.2% in value, and 2.3% in quantity, these countries (which included Paraguay and Uruguay, members of MERCOSUR) were exempt from the application of the safeguard measure.

¹G/SG/N/7/BRA/1.

²G/SG/Q2/BRA/1.

Q2. Please provide us with the amount of domestic production for the past three years, in terms of both value and volume, of each product to which the provisional safeguard measure is being applied.

Answer

For the purposes of analysis, all types of toys were considered to be close substitutes among themselves and therefore all toys manufactured in Brazil are classified as products directly competing with imported ones. In the analysis of injury, the selected variables referred to all toys taken as a same class and not to different types of toys.

In this way, as presented in the Opinion No. 8, dated 7 June 1996 (which was the basis for the application of the provisional safeguard measure), the evolution of the domestic production of toys in the last three years took into account figures concerning 97% of the domestic production and was as follows:

US\$ million

1993	590.4
1994	565.0
1995	558.7

It is important to mention that at the time of preliminary determination of serious injury caused by increased imports, adequate information concerning quantities were not available.

In the Opinion No. 17, dated 7 November 1996, that refers to the final application of the safeguard measure, the evolution of the domestic production of toys refers only to the production of 21 companies which represented nearly 70% of domestic production.

Year	Quantity	US\$
1993	55,734,578	332,712,889
1994	50,860,552	462,183,651
1995	41,122,329	393,066,651

Q3. Please provide us with Brazil's concrete criteria which divide products into directly competitive products and indirectly competitive products.

Answer

The Agreement on Safeguards refers to "directly competitive products", a concept that is, however, not defined. Therefore in the investigation, for purposes of defining this concept, it was understood it refers to products that dispute the same market, meet the same objectives and are near substitutes among themselves.

In order to analyze the degree of substitution existing between products, it is necessary to have a correct understanding of the relevant forms of competition in a specific market, which corresponds to the set of determining factors of success of the companies that compete in this market (it may be price, ability to supply, capacity to differentiate, etc.). The predominance of one factor or set of these factors as determinants of success will depend on the characteristics of each market.

The study of the toy sector confirmed that the industry has a competitive pattern characteristic of a differentiated competitive industry, that is, where the competition among companies is done through product differentiation (inauguration of new types of toys) and the time of placing them on the market (the capacity to quickly adjust to final user demands) are factors more and more important in the dispute for a larger share of the market. Any type of new product may, at any moment, be launched on the market and constitute a great attraction for consumers, obtaining, very quickly, larger shares of the market, thus dislodging other existing types.

With regard to imported toys, the competition with those internally manufactured reflects the patterns of industry competition. Thus, an imported toy competes with all other types of domestic toys and not just with the identical toy, and the reason is that, if the toy is new, an identical product did not exist, but this would not prevent it from dislocating the sales of any other toy internally manufactured.

The attempt to categorize types of toys invalidates an adequate analysis of the market. Distinct categories of toys would correspond to distinct markets, eliminating, thus, the analysis of competition among "directly competitive products" and would not reach a correct understanding of the pattern of competition and the dynamics of the toy industries' growth. A tariff distinction between dolls, for example, would inconveniently classify in two different markets those representing the human figure (HS 9502.10) and those representing animals and non-human figures (HS 9503.4). The same problem would occur if a division in the process of manufacturing were to be invoked, such that plastic and cloth dolls were to pertain to distinct markets. Or, yet, a division by application, according to the classes of the International Council of Children's Play and the Centre National d'Information du Jouet (affective development, infancy, the technical world, physical activities, intellectual activities, creativity and socialization), for example, were to place in distinct categories board games (socialization) and puzzles (intellectual activities); or cradle toys (infancy) and furry animals (affective development).

It was understood that, despite different physical characteristics or tariff classification, the emphasis in the definition of "directly competitive products" was on the degree of substitution among them, since they were destined for the same market.

In relation to the expression "indirectly competitive products", this concept has never been used during the investigation.