

WORLD TRADE ORGANIZATION

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Committee on Anti-Dumping Practices

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Committee on Subsidies and Countervailing Measures

REPLIES TO QUESTIONS POSED BY AUSTRALIA¹
CONCERNING THE NOTIFICATION OF LAWS AND
REGULATIONS OF BRAZIL²

The following communication, dated 23 January 1996, has been received from the Permanent Mission of Brazil.

- (a) *What is the hierarchy between these WTO agreements and other Brazilian legislation, regulations, and other administrative rules?*

Having been incorporated into the Brazilian legal system by means of a Presidential Decree (Decree No. 1355, dated 30 December 1994), the WTO Agreements have the same hierarchical level as laws, and are subordinate only to the Federal Constitution. The Decree No. 1355/94 promulgated the Legislative Decree No. 30/94, dated 15 December 1994, which approved the WTO Agreements. As such, it has a distinct character from other subsequent legal instruments (decrees, ministerial orders) having precedence over them.

- (b) *Will subsequent laws (including regulations and other administrative rules) take precedence over the WTO agreements? For example, would the foreshadowed new regulation take precedence over the WTO agreements if a court found that there was a conflict?*

No, because of the afore-mentioned reasons. It should be stressed that the regulations and other administrative rules which are pertinent to anti-dumping and countervailing actions are subordinate to Decree 1355/94. The regulations only complement Decree 1355/94 which is their basis. In the case that a conflict arises the Decree takes precedence over all other subsequent legal instruments.

- (c) *In the absence of a specific provision in regulations, which levels of officials would have the authority to interpret the WTO agreements to determine procedure in an anti-dumping or countervailing duty action?*

Both in Law 9019, dated 30 March 1995, and in the decrees which regulate the procedures for the application of anti-dumping duties or countervailing measures, which are now in the process

¹G/ADP/W/84-G/SCM/W/93

²G/ADP/N/1/BRA/1-G/SCM/N/1/BRA/1

of being translated, the Ministry of Industry, Trade and Tourism, and the Ministry of the Economy have the competence to apply, through joint action, complementary norms.

- (d) *In the event of a conflict between the WTO agreements and other laws, could investigating officials decide which laws have precedence?*

No, the WTO Agreements, which are an integral part of Brazilian legislation, can only be interpreted by the Judiciary Branch. Only the Judiciary can, in case of conflict, decide on matters of legislative precedence.

- (e) *Can an interested party appeal to the courts about the interpretation of the WTO agreements by officials?*

Any interested party can have recourse to the Brazilian judiciary system in what concerns the application of specific provisions of the legal instruments. It is not the case of a recourse on the interpretation of the provision. The interpretation of the legal instrument is of the sole competence of the Judiciary. The recourse would pertain to the application, by the investigative authority, of a specific provision.