

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/W/281**

**G/SCM/W/291**

2 February 1996

(96-0408)

**Committee on Anti-Dumping Practices**

Original: English

**Committee on Subsidies and Countervailing Measures**

## REPLIES TO QUESTIONS POSED BY HONG KONG<sup>1</sup> CONCERNING THE NOTIFICATION OF LAWS AND REGULATIONS OF BRAZIL<sup>2</sup>

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

### **Questions Anti-Dumping Legislation**

#### **General**

Q. (a) *What is the legal effect of the incorporation of the WTO A-D Agreement into the Brazilian legal system? Would this give the WTO A-D Agreement the force of law in Brazil? Are the Brazilian authorities obliged by law to abide by the provisions of the WTO A-D Agreement?*

1. *The Brazilian notification under Article 18.5 of the WTO A-D Agreement, as reproduced in the WTO Document G/ADP/N/1/BRA/1, provides that:*

- (a) *the Marrakesh Agreement and its Annexed Agreements has been incorporated into the Brazilian legal system, in their full text, by Decree No. 1355, of 30 December 1994;*
- (b) *Provisional Measure (PM) No. 926 of 1 March 1995 has been introduced to reflect the incorporation of the WTO A-D Agreement into the Brazilian legal system; and*
- (c) *Brazil is presently drafting a new regulation in accordance with the provision of the WTO A-D Agreement.*

A. 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. The competent authorities

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<sup>1</sup>G/ADP/W/142-G/SCM/W/149

<sup>2</sup>G/ADP/N/1/BRA/1-G/SCM/N/1/BRA/1

responsible for the application of the pertinent legislation are those specified in Law No. 9019, dated 30 March 1995, which resulted from the republication of Provisional Measure No. 926/95. They act according to the legislation in effect and, in consequence, are bound to follow Decree No. 1355/94 and the regulation ("implementing legislation") of the Agreements, which is based on them, for the applicable cases, which are investigations and revisions initiated with basis on petitions presented since 31 December 1994.

Q. (b) *Would Brazil explain the relationship between the WTO A-D Agreement, Provisional Measure No. 926 and the relevant regulations? Which takes precedence in case of inconsistency? Would the Brazilian authorities take the WTO A-D Agreement as the primary source of authority in A-D matters? Or would they only refer to it as a supplement to the Provisional Measure and/or other domestic regulations or as a last resort?*

A. Decree No. 1355, dated 30 December 1994, incorporated the WTO Agreements into the Brazilian legal system. Law No. 9019, dated 30 March 1995, complements the Decree. This Law established the juridical nature of the anti-dumping duties and of the countervailing measures, eliminating links with the import tax, and defined the authorities that are competent to conduct anti-dumping and subsidies investigations, as well as for the application of measures and receipt of duties.

Q. (c) *What is the legislative time table for the regulation under preparation? Would the legislation bring the Brazil's existing law into conformity with the WTO A-D Agreement?*

A. In what concerns the new regulations, which are already in effect through Decree No. 1602, dated 23 August 1995, relative to anti-dumping measures, and Decree 1751, dated 19 December 1995, relative to countervailing measures, they establish procedures for the application of anti-dumping and countervailing measures and have as a basis Decree No. 1355/95, which has precedence over the above-mentioned two decrees.

#### ***Provisional Measures No. 926***

#### **2. Article 3 (PM No. 926) - Amount of provisional measure**

Question: *What is meant by "total value of the obligation"? How is it calculated? What are the possible "other legal charges"? Is it possible that the guarantee offered by the importer would exceed the provisionally estimated margin of dumping?*

*Article 7.2 of the WTO A-D Agreement provides that provisional measures may take the form of a provisional duty or a security equal to the amount of the A-D duty provisionally estimated, being not greater than the provisionally estimated margin of dumping.*

*Article 3 of PM No. 926 provides for an offer by the importer of a guarantee equivalent to the total value of the obligation and other legal charges, either in the form of a deposit in money or bank guarantee.*

### 3. **Article 3.1 (PM No. 926) - Correction for inflation**

Question : *Would Brazil explain the practical effect of Article 3.1?*

*Article 7.2 of the WTO A-D Agreement provides that provisional measures may preferably take the form of a security equal to the amount of the A-D duty provisionally estimated.*

*Article 3.1 of the PM requires the guarantee to ensure the same level of correction for inflation used for the purposes of federal taxes, including interest, starting from the date provisional duties were imposed.*

### 4. **Article 4 (PM No. 926) - Undertakings**

- Questions:
- (a) *Would Brazil explain how an undertaking may be entered into with the government of the exporter's country and its operation?*
  - (b) *When such an undertaking has been entered into, will individual exporter be able to reject the undertaking without prejudice to the consideration of its case?*
  - (c) *Does the lesser duty rule apply in the case of undertaking?*

*Article 8 of the WTO A-D Agreement provides for the suspension or termination of A-D proceedings without the imposition of provisional duties upon receipt of satisfactory voluntary undertakings from any exporter. The undertakings may also be suggested by the authorities of the importing country.*

*Article 4 of PM No. 926 provides that an undertaking may be entered into with the exporter or with the government of the exporter's country.*

#### Answers 2, 3 and 4

In relation to Questions 2, 3 and 4 it should be stressed that even though Provisional Measure 926/95, republished as Law No. 9019/95, makes reference to provisional measures and undertakings, the definition of such measures as well as the conditions for their adoption are defined in the regulation of the Agreements (Decrees 1602/95 and 1751/95). We consider that the discussion of these points should occur during the examination of the new legislation.

### 5. **Article 12 - Administrative process referred to in Articles 1 to 5**

Question: *Would the regulation under preparation bring the Resolutions into conformity with the WTO A-D Agreement? Are Resolution provisions inconsistent with the WTO A-D Agreement applicable pending amendment?*

*Article 12 provides that the administrative process referred to in Articles 1 and 5 shall comply, where applicable, with the provisions of Resolution 1227 of 14 May 1987, with the amendments of Resolution 1582 of 17 February 1989 which are yet to be brought into conformity with the WTO A-D Agreement.*

- A. The new regulation, as has already been mentioned, has as its basis Decree No. 1355, dated 30 December 1994, which incorporated the WTO Agreements into the Brazilian legal system, and is applicable to investigations and revisions opened with basis on petitions presented as

of 31 December 1994. The Decrees which incorporated the Tokyo Round codes (Legislative Decrees No. 20 and 22, dated 5 December 1986, promulgated by Decrees No. 93941, dated 16 January 1987, and 93962, dated 22 January 1987) and their regulations (CPA Resolution 00-1227, dated 14 August 1987) will remain in force during the transition period, and will be applied only to the investigations and the revisions initiated from petitions presented before 31 December 1994, the date in which Decree No. 1355 entered into force.

***Key Issues in the WTO A-D Agreement which are found silent in the Brazilian Legislation***

6. *The Brazilian legislation seems to be silent on a number of key issues on which there are specific provisions in the WTO A-D Agreement. Notable examples are as follows:*

- *determination of normal value and export price (Article 2.1-2.3)*
- *comparison method (Article 2.4)*
- *determination of injury (Article 3)*
- *standing requirement for petitioner (Article 5.4)*
- *standards for termination of a case i.e. de minimis dumping margin, negligible volume of dumped imports and negligible injury (Article 5.8)*
- *sampling (Article 6.10)*
- *newcomer review (Article 9.5)*
- *judicial review (Article 13)*
- *procedures for on-site verification (Annex I)*
- *public notice requirements (Article 12)*

Question: *Would Brazil confirm that it would follow strictly the relevant provisions in the WTO A-D Agreement on these issues? Would Brazil introduce relevant specific provisions into its new Regulation?*

A. In what concerns the Uruguay Round Agreements, compliance is guaranteed by the incorporation to the Brazilian legislation of the Agreement on Implementation of Article VI of GATT 1994 and the Agreement on Subsidies and Countervailing Measures, which was made through Decree No. 1355/94. In what concerns the regulation ("implementing legislation") of both Agreements, it has been made through Decree No. 1602, dated 23 August 1995, relative to anti-dumping measures, and Decree 1751, dated 19 December 1995, relative to countervailing measures. Both regulations are based on Decree 1355 and include all aspects referred to in the questions except for "judicial review". The exclusion of this topic from the regulations is explained by the fact that judicial review related to anti-dumping and countervailing actions is secured through recourse to the Brazilian judiciary system.