

BRAZIL - MEASURES ON IMPORT LICENSING AND MINIMUM IMPORT PRICES

Request for Consultations by the European Communities

The following communication, dated 14 October 1999, from the Permanent Delegation of the European Commission to the Permanent Mission of Brazil and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

On behalf of the European Communities, I request hereby consultations with the Federal Republic of Brazil pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 19 of the WTO Agreement on Agriculture, Article 6 of the Agreement on Import Licensing Procedures and Article 19 of the WTO Agreement on Implementation of Article VII of the GATT 1994, on a number of Brazilian measures, procedures and practices which are seriously restricting trade and causing damage to EC exporters.

The measures in question include, but are not limited to, creating unjustified import licensing regimes and imposing minimum prices on several imported products and notably on textile products, Sorbitol and Carboxymethylcellulose (CMC). These minimum prices are established by the Government of Brazil (Ministry for Development, Industry and Commerce) under request of and after consultations with the national industry, and are systematically applied at the border by the customs authorities either (1) in order to obtain an import licence or (2) as the basis on which to calculate the customs value.

In particular, in some cases products are subject to non-automatic licensing regimes through the Integrated Foreign Trade System (SISCOMEX). However, these regimes do not correspond in scope or duration to any measure they are used to implement and are administered in an unfair and non-equitable manner. In practice, applications for non-automatic licenses remain indefinitely pending, without formal reply, and thus imports are stopped while the Brazilian customs authorities advise the importer informally of the existence of a minimum price.

In other cases, the Brazilian customs authorities ignore the transaction price on which the customs duties should be applied but instead apply a minimum price to calculate the duties. Minimum prices imposed at the time of the import declaration are to be seen in the framework of the implementation of the new Brazilian legislation on customs valuation enacted in February 1998.

Moreover, the measures imposing the minimum prices have not been published anywhere and the non-automatic licensing regimes are not transparent. For example, until August 1998, Annex II of the Comunicado 37/17 listed the products submitted to non-automatic licensing. Comunicado 23 of 23 August 1998 provides that the products submitted to non-automatic import licensing are no longer published, but only encoded in a field ("tabela administrativa") of the SISCOMEX, to which only authorized and registered users have access. Finally, the above-mentioned measures create an unjustified and disproportionate burden on EC imports.

The Brazilian non-automatic licensing system and the minimum pricing practice are also applied to agricultural products (e.g. Sorbitol) in a way contrary to Article 4.2 of the WTO Agreement on Agriculture which provides that members shall not maintain, resort to or revert to measures such as minimum import prices and discretionary import licensing procedures.

The European Communities considers that the above measures breach Brazil's obligations under several WTO Agreements and in particular:

- Articles II, VIII, X and XI of the GATT;
- Article 4.2 of the Agreement on Agriculture;
- Articles 1, 3, 5 and 8 of the Agreement on Import Licensing Procedures;
- Articles 1 through 7 of the Agreement on Implementation of Article VII of the GATT 1994.

I look forward to receiving your reply to this request from the European Communities and to setting a mutually convenient date for these consultations.
