

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

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UNITED STATES - DENIAL OF
MFN TREATMENT AS TO NON-RUBBER FOOTWEAR FROM BRAZIL

Request for the Establishment of a Panel
under Article XXIII:2 by Brazil

The following communication, dated 28 February 1991, has been received from the Permanent Mission of Brazil to the United Nations Office at Geneva with the request that the matter be inscribed on the agenda of the Council meeting on 12 March 1991.

1. As from 1 January 1980, when the provisions of the Code on Subsidies and Countervailing Duties became binding on the Governments of Brazil and the United States, neither of the two countries is permitted, under Article VI:6(a) of the General Agreement, to levy countervailing duties on the importation of products of the territory of other contracting parties without previous determination of injury.
2. On 26 October 1981, the Government of Brazil requested the competent authorities in the United States to review application, then underway without previous injury determination, of countervailing duties on non-rubber footwear of Brazilian origin.
3. On 21 June 1983, the Government of the United States ceased to collect countervailing duties on the said product of Brazilian origin and issued a directive for refund of any estimated countervailing duty deposits collected on previous imports of the item entering the United States on or after 29 October 1981. Nevertheless, on the argument that the date for request for an injury test had relevance for the imposition of duties, those collected between 1 January 1980 and 28 October 1981, that is, between the date the obligation arose and the date of receipt of Brazil's formal request for an injury test, were considered due.
4. At the same time, in relation to products from other countries imported by the United States after 1 January 1980, the United States Government implemented its obligation automatically. The date those countries requested an injury test did not limit the effective implementation which was, instead, made fully retroactive to the date the obligation under Article VI:6(a) arose.

5. The Government of Brazil has not ceased to pursue a conciliatory solution to this matter through bilateral consultations with the Government of the United States and, in pertinent aspects, through dispute settlement rules in the Committee on Subsidies and Countervailing Measures. Under the rules of the Committee, the matter was examined by a panel whose report, however, does not address the question of infringement of most-favoured-nation treatment.

6. More recently, Brazil requested consultations with the United States under Article XXIII:1 of the General Agreement and, as the United States gave sympathetic consideration to Brazil's request, consultations were held on 30 October 1990. No satisfactory adjustment has been effected to the present date.

7. The Government of Brazil considers that the Government of the United States has not conceded most-favoured-nation treatment to Brazil under Article I:1 of the General Agreement in the case of application of countervailing duties to the imports of Brazilian non-rubber footwear from 1 January 1980 to 28 October 1981 and therefore wishes to refer the dispute to the Council under Article XXIII:2 of the General Agreement.

8. While the Government of Brazil is willing to proceed at all times with further consultations with the Government of the United States to seek a mutually satisfactory settlement of the present dispute, it requests the prompt establishment of a panel in accordance with the Improvements to the GATT Dispute Settlement Rules and Procedures agreed upon at the Mid-Term Review Meeting.