

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Anti-Dumping Practices

MINUTES OF THE SPECIAL MEETING
HELD ON 20 DECEMBER 1993

Chairman: Mr. David Walker (New Zealand)

1. The Committee on Anti-Dumping Practices (hereinafter "the Committee") held a special meeting on 20 December 1993 for the purpose of conciliation under Article 15:3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (hereinafter "Agreement") in the dispute between Brazil and the European Community regarding the imposition by the European Community of anti-dumping duties on cotton yarn from Brazil.

EC - Imposition of anti-dumping duties on cotton yarn from Brazil

2. The Chairman recalled that Brazil had earlier informed the Committee about its request for consultations under Article 15:2 of the Agreement with the European Community regarding the European Community's anti-dumping actions on cotton yarn originating from Brazil (ADP/106, dated 5 October 1993). The Committee now had before it in document ADP/113, dated 8 December 1993, a request from the delegation of Brazil for conciliation under Article 15:3 of the Agreement regarding the imposition by the European Community of anti-dumping duties on cotton yarn from Brazil.

3. The representative of Brazil said that his delegation had attempted to present thoroughly Brazil's case in the text circulated to the Committee in document ADP/113 of 8 December 1993, without prejudice to any additional information Brazil might present to the Committee. But at that stage there was no additional element in relation to what was already included in ADP/113.

4. The representative of the EC recalled that definitive anti-dumping measures on cotton yarn originating in Brazil were imposed in March 1992. The EC and Brazil had bilateral consultations on this matter under Article 15:2 of the Agreement in April and October 1992 and in October 1993. On these occasions the EC gave extensive answers to all questions raised by Brazil and gave all necessary explanations for its findings which led to the imposition of anti-dumping measures. Brazil, however, was persisting in its claim that with regard to the determination of dumping and injury as well as the status of Brazil as a developing country, the EC had violated essential rules of the Agreement. Regarding dumping, Brazil had alleged that the EC had violated Articles 2:4 and 2:6 of the Agreement by failing to consider the particular market situation in Brazil during the investigation period, and to make adequate adjustments in comparing normal value and export prices for distortions between domestic inflation and the exchange rate which was set by the Brazilian authorities. Brazil's allegation was that the EC, for the purpose of a fair comparison, should have used export prices to a third country instead of domestic sales or establishing normal value on the basis of cost of production. The representative of the EC said that these arguments had already been brought forward by the Brazilian exporters concerned during the investigation and they had been addressed by the EC in its provisional determination of dumping as well as during the consultations held with Brazil. He said that the determination in this case was in full conformity with Article 2 of the Agreement. In accordance with Article 2:1, the EC had based normal value on the comparable prices in the ordinary course of trade for the like products

destined for consumption in Brazil. These prices were found to be at arm's-length between independent parties under competitive conditions in a market economy. Under these circumstances, it cannot be claimed that "a particular market situation" prevailed making these prices unsuitable for the comparison to establish the dumping margin.

5. The representative of the EC acknowledged that the Brazilian economy suffered from very high inflation, but said that this situation was well known and was not confined to the investigation period. As far as possible the EC took account of this situation, making comparisons of sales made at as nearly as possible the same time by establishing normal values on a monthly basis. In this context the evolution of the exchange rate of the cruzado against the currency in which exports were made, whether manipulated by the Brazilian Government or not, had no direct bearing on the functioning of the domestic market where transactions in the ordinary course of trade continued to be carried out in the domestic currency. Therefore, it cannot be claimed that the external developments during the investigation period had affected the domestic transactions so that they could not be used by the EC to establish normal value. Also, for these reasons there was no point for the EC to base normal value on export prices to third countries. There was no hierarchy in the Agreement requiring that third country export prices be preferred to constructed normal value. The question of the exchange rate evolution in relation to domestic inflation was a completely separate matter that had nothing to do with the determination of whether the domestic market conditions and price mechanism were an appropriate basis for the determination of normal value. What Brazil was suggesting was that for the purpose of a fair price comparison, domestic inflation should always be fully reflected in a corresponding adjustment of the exchange rate. Brazil was arguing that market distortions were subject to allowances pursuant to Article 2:6 of the Agreement, and that the EC by refusing to do so was in violation of these rules. This allegation was unfounded and unduly stretching the provisions of Article 2:6 which related only to objective differences affecting price comparability due to differences in conditions and terms of sale in taxation and physical characteristics of the products in question. The Brazilian interpretation, if considered, would introduce new concepts for prior determination for which there was no basis in the Agreement. The deviation from the nominal concept that was generally applied for the dumping determination would fundamentally change the basic definition of dumping. Furthermore, Brazil's argument that for a fair comparison the investigating authority should have evaluated the effects of the exchange rate policy (or any differences arising from economic policy decisions) of the competent Brazilian authorities in its dumping finding was far beyond the scope of the Agreement, the possibilities and the competence of the investigating authority and the interest of the parties to the Agreement as well. For all these reasons, the representative of the EC said that the Brazilian allegations that the EC had violated Articles 2:4 and 2:6 of the Agreement were unfounded and should be dismissed.

6. Regarding injury, the representative of the EC said that there was no basis for the Brazilian complaint that the EC had violated Articles 3:1, 3:2, 3:3 and 3:4 of the Agreement by not basing the injury findings on positive evidence, not objectively examining the relevant facts and not giving any reasonable explanation as to how the facts supported the injury determination. He said that due to the complexity of the case the EC devoted eighteen months to its fact finding investigations before coming to a preliminary conclusion. In the course of this period inspections were carried out at the premises of thirty-five complaining EC producers. All the relevant information gathered by the EC from the EC industry was made available for inspection to the exporters and representatives of Brazil. Hearings had been granted where the facts at issue were discussed in detail. In this respect, the EC had nothing to add to the facts and explanations of the findings set down at length in the preliminary and definitive decisions. The EC considered these decisions to be conclusive under Articles 3:1, 3:2 and 3:3 of the Agreement.

7. On the other factors of injury, the representative of the EC recalled Brazil's allegation that there were other factors also which caused injury to the EC industry, in particular numerous non-dumped imports which allegedly also undercut EC producers prices. He said that it was the standing practice

of the EC to consider in its determinations of injury, the possible impact of factors other than the dumped imports. This was also the case in the present investigation where the EC analyzed the effect of imports of cotton yarn from third countries. It was found that among those imports, imports from one country only, Switzerland, were of significant volume and market share. Imports from other countries were negligible with market shares distinctly below 1 per cent, and could therefore not have caused material injury to the EC industry even if sold at prices undercutting those of the EC producers. Moreover, according to the information available to the EC, these imports were high priced and no evidence of dumping or significant price undercutting was found. In this context it was also not relevant that the volume and market share of imports from Brazil had slightly decreased during the investigation period and that price undercutting by other dumped or not dumped imports was higher. It was the standing practice of the EC, not contradicted by the Agreement and consistent with that of the major users of the anti-dumping instrument, to assess the injury caused by dumped imports cumulatively when these imports competed with each other and the like EC product, and when the dumped imports as in the Brazilian case were not negligible as such. In addition, in accordance with Article 3:2 of the Agreement, the EC had to take into consideration not only the cumulated volumes of dumped imports but a combination of factors. In this case the volume of Brazilian imports was significant and, together with considerable price undercutting and the recent price depression in the EC market, led the EC to conclude that the dumped imports from Brazil had contributed significantly to the injury caused to the EC industry. Therefore, the Brazilian allegation that Articles 3:1, 3:2, 3:3 and 3:4 had been violated by the EC could not be upheld.

8. On the issue of statistical discrepancies, the EC recalled that Brazil was contesting the accuracy of the Eurostat statistics used by the EC to determine the volume of EC imports of Brazilian cotton yarn and was claiming that the use of the Brazilian data would have shown a *de minimis* market share. He said that the Eurostat contained the most reliable records with regard to the entry into the EC customs territory of imports within a given period, and on the basis of that data the market share of imports of cotton yarn from Brazil was not negligible.

9. The representative of the EC noted Brazil's allegation that the EC, by not imposing protective measures against other dumped imports, had discriminated against Brazilian exporters in violation of Article 8:2 of the Agreement. In this respect, the determination by the EC was clearly explained in the regulations. The finding of *de minimis* dumping with regard to imports from Egypt excluded any definitive action which would have obviously been infringing the Agreement. Thailand and India were excluded because of their *de minimis* market shares, while the market share of imports from Brazil could not be considered marginal as suggested by the Brazil.

10. The representative of the EC then addressed Brazil's argument that any possibility of injury finding in the market of cotton yarn was excluded because that market was regulated by bilateral agreements within the MFA framework which established quotas and a monitoring system. He also noted Brazil's complaint that the EC had violated Article 13 of the Agreement by failing to give due consideration to the situation of Brazil as a developing country. He said that quantitative restrictions protected the EC industry from excessive volume of imports but did not prevent, as demonstrated by the investigation, injury caused by unfair trading practices such as dumped imports at very low prices. With regard to the provisions of Article 13 of the Agreement concerning developing countries, he said that the EC had carefully examined the offer by the Brazilian authorities of an undertaking in the form of voluntary quantitative export restrictions. For the same reasons which led to the injury finding despite the quotas under the MFA system, the EC was not satisfied that the injurious effects would be eliminated by the Brazilian offer and could not accept it. For all these reasons, the representative of the EC said that the EC's findings were reasonable and in full conformity with the Agreement.

11. The representative of Brazil said though there were extensive questions from Brazil and the case took a long time to conclude, Brazil was disappointed with the extent of information received

from the EC. Brazil still had several concerns regarding the decision in this case. For example, with respect to the exchange rate (which he was surprised to hear the EC representative say was manipulated by Brazilian authorities), there was not a proper comparison because the period chosen to follow the investigation was precisely the one at the beginning of the plan when the prices were severely distorted as a result of the exchange rate policy. The highest margins of dumping were found in the first months of 1989 when the policy was more strict and the official rate was maintained until April. High dumping margin was found during this period. However, when Brazil started periodically adapting the exchange rate, immediately the margins of dumping fell from June to July from 15 per cent to 3 per cent and then in August to 2 per cent, and then in September to 14 per cent and in October to 4 per cent. They were negligible; they could not even be considered dumping margins. At that point, after four months of very low dumping margins, the EC for no apparent reason suddenly changed its methodology and decided to use costs of production. Thus, in November the margin of dumping increased to 10 per cent, and in December to 11 per cent. So there was a clear manipulation in the investigation.

12. Regarding the issue of *de minimis*, the representative of Brazil said that the EC's consumption of the product in question in 1989 was 1,184,000 tons, and imports from Brazil were 26,800 tons according to Eurostat and 22,000 tons according to CACEX (Brazilian statistics). That meant a market share of 2.27 per cent according to European Eurostat statistics, and 1.88 per cent according to CACEX. The latter share would be a *de minimis*. If, the EC had given due consideration to the situation of Brazil as a developing country, even the 2.27 per cent should have been considered as *de minimis* by the EC, but was not so considered. The representative of Brazil expressed surprise at the EC's statement regarding other exporters. For example, the imports from Egypt in the year 1989 were 38,600 tons, i.e. more than those from Brazil's even according to Eurostat statistics. Emphasising that Brazil did not believe that other developing countries' exporters were responsible for any disruption or any problem the EC would have had as far as importing cotton yarn was concerned, he said that while Brazil's exports to the EC fell from 26,800 tons in 1989 to 13,000 tons in 1992, imports from India increased from 12,100 tons to 31,800 tons during the same period, i.e. an increase of 163 per cent, which Brazil considered to be *de minimis* Indian exports. He noted that imports from Thailand to the EC increased by 77 per cent during the period, i.e. from 5,200 tons to 9,300 tons in 1992. That was the result of the measure against Brazil which was singled out to have duties imposed. The only other country in the same situation was Turkey, which had much higher exports to the EC. The representative of Brazil said that these were examples of the various reasons for which Brazil was dissatisfied in the bilateral consultations and had decided to ask the Committee to use its good offices in a conciliation process.

13. The representative of the EC said that the term "manipulation" in the context of exchange rate had been used by him in a manner similar to Brazil using the term "artificial exchange rate". What he meant was that the EC did not agree with the view that the artificial fixing of the exchange rate would result in a particular market situation prevailing in Brazil within the meaning of Article 2:4, because if that view were accepted then the exchange rate officially established by governments would no longer be reliable in certain circumstances. The EC knew that Brazil had high inflation, but at the last consultation and in various meetings when the EC had requested Brazilian exporters to give alternative methods it emerged that there was no safe method to use apart from an artificial one, and thus there was no solution. As far as the *de minimis* argument was concerned, the EC believed that its statistics had demonstrated that the market share of Brazil was far beyond the threshold which was used by the EC for the purpose of *de minimis* even if there were several other exporters below the threshold of the *de minimis* level. This was a situation where there were some exporters, like Brazil and Turkey, which were higher than the *de minimis* threshold and others which were below that threshold, and the rule applied quite clearly in that case.

14. The Committee took note of the statements made. The Chairman encouraged the two parties to the dispute to make further efforts to find a mutually satisfactory solution to the dispute, consistent with Article 15:4 of the Agreement.