

Committee on Subsidies and
Countervailing Measures

Original: English

BRAZIL - COUNTERVAILING DUTY PROCEEDING CONCERNING
IMPORTS OF MILK POWDER FROM THE EUROPEAN ECONOMIC COMMUNITY

Request by the European Communities for Conciliation
under Article 17 of the Agreement

Communication from the European Communities

The following communication, dated 6 July 1992, has been received by the Chairman of the Committee from the Commission of the European Communities.

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1. The European Community wishes to refer the above proceeding to the Committee on Subsidies and Countervailing Measures for conciliation in accordance with Article 17 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code").
 2. This request is made following the failure of consultations under Article 3:3 of the Subsidies Code, held in Brasilia on 23 June 1992, to arrive at a mutually agreed solution in this case and in view of Brazil's failure to respond adequately to written requests for information from the European Community.
 3. The European Community considers that Brazil has infringed several provisions of the Subsidies Code in this proceeding.
 - (a) Brazil opened this countervailing proceeding on 16 March 1992, but failed to notify the European Community of the opening, in contravention of Article 2:3 of the Subsidies Code.
 - (b) On 8 April 1992, Brazil imposed a provisional countervailing duty of 31 per cent to 52 per cent on imports of milk powder originating in the European Community.

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The European Community submits that this action contravenes Article 5:1 of the Subsidies Code, which states:

"Provisional measures may only be taken after a preliminary affirmative finding has been made that a subsidy exists and that there is sufficient evidence of injury as provided for in Article 2, paragraph 1(a) to (c)."

In this case no investigation was carried out before the provisional duty was imposed. The questionnaire relating to this case was sent on 18 May 1992, more than one month after the taking of provisional measures. The exporters in the European Community were never informed of the investigation.

The European Community considers that Brazil's failure to carry out at least a preliminary investigation, which involves informing and requesting information from the parties concerned in order to ensure their rights of defence, makes the imposition of provisional measures incompatible with Article 5:1 of the Subsidies Code.

- (c) Furthermore, in its formal determination, set out in the public notice of 8 April 1992, Brazil provides no evidence to show that the requirements of Article 5:1 of the Subsidies Code for the taking of provisional measures are met. There is no evidence which could lead to a preliminary affirmative finding of the existence of a subsidy, nor to the conclusion that there is sufficient evidence of injury as provided for in Article 2, paragraph 1(a) to (c) of the Subsidies Code. The European Community requested such evidence in a letter of 7 May 1992 to the Brazilian authorities, but as yet has not received a satisfactory reply.

4. In view of the above, the European Community submits that the imposition of provisional measures by Brazil violates Articles 1 and 5:1 of the Subsidies Code.

5. Following the failure of the bilateral consultations to arrive at a mutually agreed solution and in view of the fact that provisional duties are already in force, the European Community requests the Committee on Subsidies and Countervailing Measures to undertake conciliation under Article 17 of the Subsidies Code, in order to review the facts and to encourage a mutually acceptable solution.