

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/154

14 December 1992

Special Distribution

Committee on Subsidies and
Countervailing Measures

Original: English

BRAZIL - COUNTERVAILING DUTY INVESTIGATION
ON IMPORTS OF WHEAT FROM THE UNITED STATES

Request by the United States for Conciliation
under Article 17:1 of the Agreement

Communication from the United States

The following communication, dated 7 December 1992, has been received by the Chairman of the Committee from the United States.

On 22 September 1992, the Government of Brazil announced the initiation of a countervailing duty investigation of imported US wheat. The investigation was initiated upon the request of the Brazilian Rural Society (SRB). On 13 October the United States requested consultations with Brazil under Article 3, paragraph 1 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII (the Subsidies Code) in order to clarify Brazil's basis under the Agreement for initiating an investigation.

Consultations were held with the Government of Brazil on 10 November, during which the United States presented Brazil with a list of questions for response. The United States also requested, under Article 3, paragraph 4 of the Subsidies Code, access to the non-confidential data and non-confidential summaries of confidential data on the basis of which Brazil claimed to have "sufficient evidence" under Article 2, paragraphs 1 and 3 of the Code to justify initiating the investigation, and subsequently, imposing preliminary duties. Notwithstanding the US request, the Government of Brazil did not provide access to any such data or summaries of data during the consultation. Further, as of today the Government of Brazil still has not responded to the questions we submitted during the 10 November consultations.

In the meantime, we are informed that Brazil issued an affirmative preliminary determination and has imposed a countervailing duty of 27.9 per cent on imports of US wheat. The Brazilian petitioner, unhappy that the duties are not retroactive, has apparently appealed the ruling to the Brazilian Supreme Court to request that the duties be applied retroactively.

. / .

Given the absence of any evidence to the contrary from the Brazilian authorities, the United States believes that the initiation of the countervailing duty investigation was inconsistent with Article 2 and the imposition of provisional measures was inconsistent with Article 5 of the Code. Further, the refusal of Brazil to permit access to the non-confidential data or non-confidential summaries of confidential data concerning the investigation is inconsistent with Article 3, paragraph 4 of the Code.

In light of Brazil's denial of US rights under the Code and the refusal of Brazilian authorities to respond to our questions or provide access to information, the United States requests that the Committee meet at its earliest convenience to conduct conciliation as to this matter under Article 17, paragraph 1 of the Code.