

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
ADP/118
8 March 1994
Special Distribution

(94-0428)

Committee on Anti-Dumping Practices

Original: English

**BRAZIL - IMPOSITION OF PROVISIONAL ANTI-DUMPING DUTIES
ON IMPORTS OF CERTAIN PEACHES ORIGINATING IN GREECE**

Request for Consultations under Articles 15:1 and 15:2 of the Agreement

Communication from the EC

The following communication, dated 28 February 1994, has been received from the Permanent Delegation of the European Community.

1. Pursuant to Articles 15:1 and 15:2 of the GATT Anti-Dumping Code, the European Community hereby requests consultations with Brazil concerning the imposition by Brazil of provisional anti-dumping duties on imports of certain peaches originating in Greece.
2. On 10 November 1993, Brazil published a notice in the Official Journal initiating an anti-dumping investigation concerning imports of certain peaches from Greece. On 15 December 1993, another public notice announced the imposition of a provisional anti-dumping duty of 44 per cent on these products. Brazil failed to notify the Government of Greece or the European Community of the initiation of the investigation, and also failed to notify the exporters concerned, in spite of the fact that the names and addresses of the exporters had been listed in the complaint.
3. The Community considers that Brazil has violated several provisions of the Anti-Dumping Code, having imposed a provisional anti-dumping duty without carrying out a preliminary investigation. Article 10:1 of the Anti-Dumping Code states that provisional measures may only be taken after a "preliminary affirmative finding" of dumping and injury has been made. The Community contends that such a finding can only be made following an investigation, indeed Article 1 of the Code states that anti-dumping duties can only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of the Code.
4. The Community considers that investigations within the meaning of the Anti-Dumping Code must at least involve the observation of procedural obligations and of the participatory rights of all parties concerned. Therefore there must be notification under Article 6:6 and all parties must have the opportunity to see the information relevant to the presentation of their cases, as provided in Article 6:2. Throughout the investigation, all parties must have an opportunity to defend their interests (Article 6:7).
5. In view of the fact that Brazil has failed to notify the exporters and the authorities in Greece or the Community, it is considered that Brazil has violated Article 6:6 of the Code. As a result, the

parties concerned were not afforded the opportunity to examine the complaint or to present information to counter the allegations made therein, which constitutes a violation of Articles 6:2 and 6:7.

6. In conclusion, given the above violations, the Community considers that Brazil has therefore failed to carry out an investigation within the meaning of the Code, and that consequently the provisional duty was imposed without a preliminary affirmative finding of dumping and injury having been made, in violation of Article 10:1 of the Code, since such a finding can only be made pursuant to such an investigation.

7. The Community also considers that Brazil has violated Article 8:5 of the Anti-Dumping Code by failing to notify the Government of Greece or the exporters of the imposition of the provisional duty.

8. The Community requests that consultations should take place in Geneva and should be initiated promptly.