

RESTRICTED

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Special Distribution

Multilateral Trade Negotiations

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COMMUNICATION FROM THE DELEGATION OF BRAZIL

The following communication, dated 23 November 1978, has been received from the delegation of Brazil.

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1. Certain countries participating in the Multilateral Trade Negotiations have presented requests to Brazil concerning the allegedly excessive severity of penalties applied in cases of errors in import documents.
 2. Law No. 6,562, of this year, made certain changes in the Brazilian system of penalties for error or fraud in import documents, in order better to adjust the system to the factual situation of Brazil's import system. In particular, Law No. 6,562 has reworded Article No. 169 of Decree-Law No. 37 dated 18 November 1966 and, for various cases, has alleviated the penalties provided under Decree-Law No. 37.
 3. Tables A and B, annexed hereto, allow a comparison between the former system of penalties and the new provisions recently established by Law No. 6,562.
 4. My country considers that the changes in the system of penalties, recently brought into effect by Law No. 6,562, constitute an important contribution to the Multilateral Trade Negotiations and a positive response to requests addressed to Brazil in the non-tariff field.
 5. Furthermore, given the reasons explained bilaterally to the countries concerned, my country does not consider that the system of penalties formerly applied constituted a barrier to trade.
 6. I would be glad if you would kindly circulate this letter and the annexed tables to all countries participating in the Multilateral Trade Negotiations and likewise hold available at the secretariat offices a copy of the texts of Law No. 6,562 and the earlier legislation on penalties, for consultation by any countries that may so wish.

REMARKS

TABLE A

Limits of amount of fines	Cumulation of penalties	Definition of value of goods	Not deemed an infringement
FORMER WORING UNLIMITED	-	Calculated on the basis of the exchange cost (f.o.b.) plus the amount of exchange charges applicable upon import weight	A difference not exceeding 10 per cent for price or 5 per cent for quantity or weight
NEW WORING, UNDER LAW No. 6.562/78	<p>Lower limit: 5.000 cruzeiros</p> <p>Upper limit: 20.000 cruzeiros, in the case of shipment before issue of the import licence or up to forty days after its validity expires, or in case of non-presentation of the detailed list of products imported or of presentation of the detailed list of products imported after the time-limit has expired, on condition there has been no default of payment of financial or exchange fees (values may be updated on the basis of the ORTN (Readjustable Obligations of the National Treasury)).</p>	<p>Apart from cases of under-invoicing or over-invoicing, if two or more infringements are committed simultaneously, only the most serious one is penalized.</p> <p>Value determined under the legislation concerning the basis for calculating import charges (currently c.i.f.)</p>	<p>(a) A difference not exceeding 10 per cent for price or 5 per cent for quantity, providing they are not simultaneous.</p> <p>(b) Cases of shipment prior to issue of an import licence or up to forty days after its validity expires, or non-presentation of the detailed list of products imported or presentation after the time-limit has expired, if the data indicated in the import licence or in an equivalent document have been amended by the competent authority.</p> <p>(c) Imports of machinery and equipment obviously originating in a specific country, forming a set of integrated elements, even if they contain parts or components produced in other countries that are not mentioned in the import licence.</p>

TABLE 8

INFRINGEMENTS REFERRED TO IN ARTICLE 169 OF DECREE-LAW NO. 37/66

PENALTIES APPLIED (FINES)							
	Lack of import licence or equivalent document	Non-observance of an exchange control requirement for payment or deposit of surcharges	Under-invoicing and over-invoicing	Any other kind of exchange fraud	Shipment of goods prior to issue of import licence or equivalent document	Non-observance of detailed list of products imported or presentation after time-limit has expired	Non-observance of other provisions of the import regulations
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
FORGERY OR FRAUD	100 per cent of value of the goods.	100 per cent of value of the goods	100 per cent of amount of the fraud	100 per cent of value of the goods	100 per cent of value of the goods	100 per cent of value of the goods	100 per cent of value of the goods
NEW HARBOUR INSPECTOR LAW NO. 65/78	(a) In case of failure to lodge deposit or pay financial or exchange fees: 100 per cent of value of the goods. (b) Otherwise: 30 per cent of value of the goods	See column 8.	100 per cent of the difference	-	(a) Up to 20 days: 10 per cent of value of the goods (b) From 20 to 40 days: 20 per cent of value of the goods (c) More than 40 days: 1 - In case of failure to lodge deposit or pay financial or exchange fees: 100 per cent of value of the goods 2 - Otherwise: 30 per cent of the value of the goods	30 per cent of value of the goods	(a) In case of failure to lodge deposit or pay financial or exchange fees: 100 per cent of value of the goods (b) Otherwise: 30 per cent of value of the goods