

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/W/57
22 November 1989

Special Distribution

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group on MTN
Agreements and Arrangements

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII

Submission by Brazil

Brazil welcomed with great interest the submission on the Customs Valuation Agreement presented by India in the Negotiating Group on MTN Agreements and Arrangements relating to need for adequate flexibility to enable customs authorities to shift the burden of proof to the importer in certain specified circumstances (MTN.GNG/NG8/W/9 and W/54).

2. As in India, the customs administration in Brazil has also encountered several practical difficulties arising from the application of the Customs Valuation Agreement which have tended to encourage problems of customs fraud and capital flight. These are in themselves problems of a serious nature, but they assume even greater dimensions in the case of developing countries that are faced with the need to ensure customs revenue and obtain hard currency to help finance their economic development programmes.

3. Like many other developing countries faced with serious external payments imbalances and an escalating foreign debt situation, Brazil has been forced to resort to very strict controls, including exchange controls, in order to secure adequate results in its balance of payments position, a policy that has had the negative consequence of encouraging custom fraud.

4. As is well known, the effective application of the principles of the Customs Valuation Agreement presupposes the existence of an extremely efficient and modern data base, containing up-to-date information on transactions and operators, which permits the automatic cross-reference of the available data, so as to accurately determine the possibility of customs fraud in the form of under or over valuation.

5. The lack of such a system in many developing countries, due, inter alia, to its relatively high cost, be it in terms of the actual hardware required, be it of the need to provide extensive training to customs officials, will progressively exacerbate the problems mentioned above. This is particularly true of a country such as Brazil where the large frontier and multiple ports of entry for imports render efficient national control difficult.

./.

6. Apart from these questions related to lack of resources and consequently infrastructure in developing countries, the absence of an international and accessible data bank and the somewhat limited cooperation afforded by many trading partners in supplying information (to allow for the determination of the relationship between importer and exporter, for the comparison of prices etc.) is of equally great concern to Brazilian customs authorities.

7. Brazil therefore considers that the Negotiating Group should examine not only the need for greater flexibility so that, in certain specific cases, the burden of proof can be shifted to the importer, but also ways of improving the mechanisms for technical cooperation and exchange of information within the agreement.

8. While fully supporting the contents of the Indian proposal, Brazil further believes that the circumstances mentioned therein for shifting the burden of proof should not be limited to under-valuation of imports, but should also cover over-valuation of imports, which, together with the declaring of artificially low export prices, greatly increase the problems of capital flight. In the case of Brazil, the need to maintain a tight exchange control policy has given rise to these types of irregular practices which aim at obtaining illegal profits by way of the unofficial currency market. These problems are further compounded by the failure of the provisions of the Agreement to assure adequate technical cooperation and exchange of information in a manner that takes into account the special needs of developing countries. Evidently it is understood that there is the need to guarantee the confidentiality of certain commercial information. Nevertheless, greater cooperation could be granted to developing countries in this domain.

9. In the field of technical cooperation, therefore, Brazil believes that the relevant provisions in the Agreement could also be improved through, for example, a periodic review of the mechanisms of technical cooperation among signatories, so as to allow for an exchange of views on the different national customs valuations systems and ways and means to promote more effective and practical cooperation.

10. These are intended to be preliminary comments to highlight the importance Brazil attaches to the implementation of the Customs Valuation Agreement. In this connection, Brazil would like to expand on the proposal submitted by India, which it fully supports, to also cover the shifting of the burden of proof to the importer in specified cases of detected over-valuation. Furthermore, Brazil believes that the provisions relating to technical cooperation could also be improved within the context of these negotiations and will be in the near future tabling specific proposals covering all these points.