The following communication, dated 30 December 1992, has been received by the Chairman of the Committee from Brazil.

I refer to a communication addressed to you on 7 December 1992 by the Office of the United States Trade Representative in Geneva, circulated as GATT document SCM/154, dated 14 December 1992.

The Government of the United States has requested, by means of that communication, that the Committee on Subsidies and Countervailing Measures "meet at its earliest convenience to conduct conciliation as to" a countervailing duty investigation of imported US wheat by the Government of Brazil and the application of a provisional duty on that product.

I am instructed to transmit to you the views of the Government of Brazil on this matter, which can be summarized as follows:

(a) Consultations

As correctly stated by the United States in the above-mentioned communication, the Government of Brazil initiated on 22 September 1992 a countervailing duty investigation of imported US wheat, following which, on 13 October 1992, the United States requested consultations with Brazil. Consultations were held in Brasilia on 10 November 1992.

The request for consultations was promptly accepted by Brazil. The span of time of less than one month between the request for consultations and the realization of such consultations is explained in part by the US insistence that they be held in Geneva, rather than in Brasilia, and by the postponement at US convenience, of the first proposed meeting.

The information on this topic provided by the US in the above-mentioned communication should be complemented by the following:

In conformity with obligations under Article 3:1 of the Code, Brazil offered to consult with the United States soon after a request for
initiation of an investigation was formulated by the petitioners, the "Sociedade Rural Brasileira (SRB)", several months before the initiation of the investigation. The opportunity for consultations was offered to the Embassy of the United States in Brasilia by means of an official communication dated 20 March 1992 and duly received.

From March until September 1992, the opportunity for consultations remained open. During this time, and after having acknowledged receipt of the communication of 20 March 1992 through the Embassy in Brasilia, the US Government failed to express any interest whatsoever in holding consultations, whose purpose - as explicitly stated in the Brazilian communication - would have been, pursuant to the provision of Article 3:2 of the Code, to clarify the situation so as to arrive at a mutually agreed solution.

(b) Access to Information

The United States claims that they

"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."

It is further claimed that there was

"refusal of Brazil to permit access to the non-confidential data or non-confidential summaries of confidential data concerning the investigation [which] is inconsistent with Article 3, paragraph 4 of the Code."

In the communication, the USTR Office also explains that during the consultations of 10 November 1992

"the United States presented Brazil with a list of questions for response.(...)Further, as of today [7 December 1992] the Government of Brazil still has not responded to the questions we submitted during the November 10 consultations."

Contrary to what the United States claims, Brazil offered, during consultations, unrestricted access to available data. Officers from the Ministries of Economic Affairs, External Relations and Agriculture presented a detailed explanation of the reasons Brazilian authorities had initiated the investigation.
Further, a copy of the non-confidential petition, in its integrity, was forwarded to the Embassy of the United States in Brasilia on 19 November 1992. A written explanation on the matter, elaborated by the competent Brazilian Government body ("Coordenaçao Técnica de Tarifas - CTT") was also delivered to the Embassy.

During consultations, it was agreed that, should US representatives wish to peruse the documentation on the investigation, deposited with the Tariff Technical Coordination ("Coordenaçao Técnica de Tarifas - CTT"), based in Rio de Janeiro, a petition to that effect would be presented. The US side mentioned they would verify the convenience of assigning personnel from the US Consulate-General in Rio de Janeiro to consult the documentation. To this date, no request to the Government of Brazil to that effect has been presented.

As to the list of written questions submitted by the North-American side, it was agreed during the consultation that they would be replied to also in writing. The document with Brazilian replies, whose adequate preparation required only a very reasonable period of time, was delivered to the Embassy of the United States in Brasilia on 9 December 1992.

(c) Provisional Duties

Brazil confirms that an affirmative preliminary determination has been issued and provisional duties of 27.9 per cent imposed on subsidized imported US wheat, on an ad valorem basis, as from 19 November 1992.

It is to be noted that the existence of subsidies under the "Export Enhancement Programme - EEP" is not disputed in the US above-mentioned communication.

In 1991, Brazilian imports of wheat of US origin, subsidized under the EEP, increase significantly. Imports in 1989 had reached 133 thousand tonnes. There were no imports from the US in 1990. In 1991, they reached 706 thousand tonnes.

Imports of subsidized wheat from the United States have a depressive impact on prices of Brazilian wheat. They further contributed to a reduction of 35 per cent in the area destined to wheat crops from 1990 to 1991. Injury in the sense of the Agreement is therefore found to exist.

(d) US Request for Conciliation under Article 17

Brazil considers unfounded US claims in the communication contained in document SCM/154 that the initiation of the referred countervailing duty investigation was inconsistent with Article 2; that the imposition of provisional duties was inconsistent with Article 5 of the Subsidies Code; and, therefore, that Brazil denied US rights under the Code.
As explained above, it is also unfounded that the allegation by the Government of the United States that the Brazilian authorities refused to respond to questions formulated by the United States or to offer access to relevant information.

Brazil considers that the request for conciliation under Article 17 of the Code is premature. From Brazil's point of view, consultations have been useful and have not failed. Nevertheless, as further indication of the Brazilian co-operative attitude, Brazil will not oppose conciliation proceedings should the Committee find it useful to employ their good offices.