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## 1 ARTICLE 10

### 1.1 Text of Article 10

#### Article 10

##### Application of Article VI of GATT 1994<sup>35</sup>

Members shall take all necessary steps to ensure that the imposition of a countervailing duty<sup>36</sup> on any product of the territory of any Member imported into the territory of another Member is in accordance with the provisions of Article VI of GATT 1994 and the terms of this Agreement. Countervailing duties may only be imposed pursuant to investigations initiated<sup>37</sup> and conducted in accordance with the provisions of this Agreement and the Agreement on Agriculture.

1(a) of Article 8 may be investigated in order to determine whether or not they are specific within the meaning of Article 2. In addition, in the case of the ( )-5 ( )su thoa4oo r



investigated product where the respective producers operate at arm's length and which therefore may be included in the determination of the estimated total amount of subsidies bestowed on the investigated product. In our assessment, this means that an investigating authority must provide an analytical basis for its findings of the existence and extent of pass-through that takes into account facts and circumstances that are relevant to the exercise and that are directed to ensuring that any countervailing duty imposed on the downstream product is not in excess of the total amount of subsidies bestowed on the investigated product. Thus, we do not understand an investigating authority's discretion in evaluating the pass-through of subsidies under Article VI:3 to be so wide as to permit it to exclude any consideration of facts and circumstances that may be relevant to the very analysis that it must perform." <sup>8</sup>

6. Based on this reasoning, the Panel found that the relevant part of the respondent's domestic law on this issue was inconsistent with Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement and that its application in the challenged investigation was also inconsistent with these provisions:

"We have found above that Section 771B is inconsistent as such with Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement, because it directs the USDOC to presume the existence of pass-through between raw and processed agricultural products, whenever the two factual circumstances it prescribes are established, andnsi:wo2.3acTJ /TT2 1 Tf 0 Tca47-4



duties were imposed and the imposing Member acted inconsistently with one of its obligations under the relevant Agreement." <sup>14</sup>

## 1.6 Relationship with Article VI of the GATT 1994

### 1.6.1 Combined application of Article VI of the GATT 1994 and the SCM Agreement

12. In its analysis of the relationship between Article VI of the GATT 1994 and the SCM Agreement, the Appellate Body in *Brazil – Desiccated Coconut* relied on Article 10 and stated that "[f]rom reading Article 10, it is clear that countervailing duties may only be imposed in accordance with Article VI of the GATT 1994 and the SCM Agreement." <sup>15</sup> In this determination, the Appellate Body