

**UNITED STATES – ANTI-DUMPING ADMINISTRATIVE REVIEWS AND OTHER
MEASURES RELATED TO IMPORTS OF CERTAIN ORANGE JUICE
FROM BRAZIL**

Request for the Establishment of a Panel by Brazil

The following communication, dated 20 August 2009, from the delegation of Brazil to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon instructions from my authorities, I hereby request the establishment of a panel pursuant to Articles 4.7 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), Article XXIII of the General Agreement on Tariffs and Trade of 1994 (the "GATT 1994") and Article 17.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 (the "Anti-Dumping Agreement"), with regard to the matters listed hereunder:

Consultations

On 27 November 2008, the Government of Brazil ("Brazil") requested consultations with the Government of the United States of America (the "United States") under Articles 4 of the DSU, Article XXII:1 of the GATT 1994 and Articles 17.2 and 17.3 of the Anti-Dumping Agreement, with regard to the laws, regulations, administrative procedures, practices and methodologies for calculating dumping margins in administrative reviews, involving the use of "zeroing", and their application in anti-dumping duty administrative reviews regarding imports of certain orange juice from Brazil (case No A-351-840). On 22 May 2009, Brazil requested further consultations with the United States with regard to the use of "zeroing" in the anti-dumping duty investigation and in the second administrative review related to case No A-351-840 as well as to the continued use of the US "zeroing procedures" in successive anti-dumping proceedings regarding imports of certain orange juice from Brazil. The consultations were held on 16 January 2009 and 18 June 2009, respectively. They allowed a better understanding of the parties' positions but failed to resolve the dispute.

Measures and claims

The measures at issue are the following:

- (a) **The anti-dumping duty investigation on certain orange juice from Brazil (the "Original Investigation")**

This anti-dumping proceeding concerns the imposition of anti-dumping duties on certain orange juice for transport and/or further manufacturing produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice

for further manufacturing (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as Not-From-Concentrate (NFC) (case No A-351-840). The final results of this Original Investigation were published in 71 Fed. Reg. 2183 on 13 January 2006 and the amended final results were published in 71 Fed. Reg. 8841 on 21 February 2006. The anti-dumping duty order was published in 71 Fed. Reg. 12183 on 9 March 2006. The period of investigation is 1 October 2003 through 30 September 2004, and the amended rate of the *ad valorem* anti-dumping duty was 12.46% for Fischer S.A.Comércio, Indústria, e Agricultura ("Fischer") and 19.19% for Sucocítrico Cutrale S.A. ("Cutrale").

In this Original Investigation, the United States Department of Commerce (the "USDOC") employed a methodology whereby it aggregated intermediate comparison results between weighted average normal value and weighted average export price for sub-groups of products within the product under investigation ("averaging groups"), treating as zero negative intermediate comparison results (i.e., situations in which the weighted average export price was greater than the weighted average normal value of an "averaging group"). Brazil refers to such methodology as "model zeroing" and/or US "zeroing procedures".

(b) The 2005-2007 anti-dumping duty administrative review on certain orange juice from Brazil (the "First Administrative Review")

This anti-dumping proceeding concerns the administrative review of anti-dumping duties on certain orange juice from Brazil (case No A-351-840) for the period of 24 August 2005 through 28 February 2007. The final results of this First Administrative Review were published in 73 Fed. Reg. 46584 on 11 August 2008. The rate of the *ad valorem* anti-dumping duty was 4.81% for Fischer and 0.45% for Cutrale.

In this First Administrative Review, in order to assess the importers' final liability for payment of anti-dumping duties and the going-forward cash deposit rates, the USDOC employed a methodology whereby it aggregated intermediate comparison results between weighted average normal value for each "averaging group" with the transaction price of individual export transactions, treating as zero negative intermediate comparison results (i.e., situations in which the individual export price was greater than the weighted average normal value of an "averaging group"). Brazil refers to such methodology as "simple zeroing" and/or U.S. "zeroing procedures".

(c) The 2007-2008 anti-dumping duty administrative review on certain orange juice from Brazil (the "Second Administrative Review")

This anti-dumping proceeding concerns the administrative review of anti-dumping duties on certain orange juice from Brazil (case No A-351-840) for the period of 1 March 2007 through 29 February 2008. The final results of this Second Administrative Review were published in 74 Fed. Reg. 40167 on 11 August 2009. The rate of the *ad valorem* anti-dumping duty was 0% for Fischer and 2.17% for Cutrale.

In this Second Administrative Review, the USDOC applied again "simple zeroing" and/or US "zeroing procedures".

The measures at issue also include any assessment instructions issued by the USDOC and cash deposit requirements imposed pursuant to the measures listed in items (a), (b) and (c) above, as well as any measures taken by the United States Customs and Border Protection (USCBP) to collect definitive anti-dumping duties at the duty assessment rates established in those measures, including through the issuance of USCBP liquidations instructions and notices.

(d) The continued use of the U.S. "zeroing procedures" in successive anti-dumping proceedings, in relation to the anti-dumping duty order issued in respect of imports of certain orange juice from Brazil

This measure concerns the continued use by the United States of "zeroing procedures" in successive anti-dumping proceedings, in relation to the anti-dumping duty order issued in respect of imports of certain orange juice from Brazil (case No A-351-840), including the original investigation and any subsequent administrative reviews, by which duties are applied and maintained over a period of time. In particular, the use of zeroing continues in the most recent administrative review, identified under item (c) above, by which duties are currently applied and maintained.

Claims

Brazil considers that the measures described above are inconsistent with the following provisions:

- Article 2.1 of the Anti-Dumping Agreement and Articles VI:1 and VI:2 of the GATT 1994 because the United States did not determine a margin of dumping for the product as a whole;
- Article 2.4.2 of the Anti-Dumping Agreement because the United States' use of "zeroing procedures" precluded a determination for the product as a whole in the Original Investigation;
- Article 2.4 of the Anti-Dumping Agreement because the comparison of normal value and export price using "zeroing procedures" is unfair;
- Article VI:2 of the GATT 1994 and Article 9.3 of the Anti-Dumping Agreement insofar as the imposition and collection of anti-dumping duties is made in excess of the margin of dumping properly determined pursuant to Article 2 of the Anti-Dumping Agreement;
- Article II:1(a) and II:1(b) of the GATT 1994 insofar as the United States subjects the importation of certain orange juice to duties in excess of the duties permitted by the United States' Schedule of Concessions; and
- Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization and Article 18.4 of the Anti-Dumping Agreement insofar as the United States has not taken all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of GATT 1994 and the Anti-Dumping Agreement.

Request

Brazil hereby respectfully requests that a panel be established pursuant to Article XXIII of the GATT 1994, Articles 4.7 and 6 of the DSU and Article 17.4 of the Anti-Dumping Agreement, with standard terms of reference. Brazil asks that this request be placed on the agenda of the next meeting of the WTO Dispute Settlement Body that will take place on 31 August 2009.
