

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

Understanding between Brazil and the United States  
Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 3 April 2012, from the delegation of Brazil and the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

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On 17 June 2011, the Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *United States – Anti-Dumping Administrative Reviews and Other Measures Related to Certain Orange Juice from Brazil* (WT/DS382).

Pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") Brazil and the United States agreed that the reasonable period of time to implement the DSB recommendations and rulings would be nine months, expiring on 17 March 2012 (WT/DS382/9).

Brazil and the United States (the "Parties") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes, without prejudice to either Party's position on the correct interpretation of the DSU:

Brazil maintains that compliance with DSB findings and recommendations is required from the end of the reasonable period of time (RPT) and that all anti-dumping duties assessed or collected with zeroing after the end of the RPT are subject to implementation. Brazil further considers that under the DSU the level of suspension of concessions or other obligations shall be based on the level of nullification or impairment suffered as from the end of the respective RPT.

The United States maintains that every WTO Member is required to comply with its WTO obligations not just from the end of the RPT, but from the time it becomes a Member of the WTO. The United States considers that under the DSU the level of suspension of concessions or other obligations in any period of time must be equivalent to the nullification or impairment in the corresponding period of time, and that the level is not to include an additional amount based on prior or cumulative levels of nullification or impairment.

1. If Brazil deems it appropriate to invoke Article 21.5 of the DSU, Brazil may at any time request the establishment of a compliance panel pursuant to that Article. Brazil will not need to hold previous consultations with the United States before requesting the establishment of

the panel. If, however, Brazil requests consultations, the Parties agree to hold such consultations within 15 days from the date of receipt of the request.

2. In case consultations are requested, Brazil may, at any time after the 15-day period referenced in paragraph 1, request the establishment of a compliance panel pursuant to DSU Article 21.5.
3. At the first DSB meeting at which Brazil's request for the establishment of an Article 21.5 compliance panel appears as an item on the agenda, the United States will accept the establishment of that panel.
4. The Parties will cooperate to enable the compliance panel to circulate its report within 90 days of the panel's establishment, excluding such time as the panel's work may be suspended pursuant to Article 12.12 of the DSU.
5. Either Party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless either Party appeals the report.
6. In case of an appeal of the compliance panel report, the Parties will cooperate to enable the Appellate Body to circulate its report within 90 days from the date of notification of the appeal to the DSB.
7. In case of an appeal, either Party may request the DSB to adopt the reports of the Appellate Body and of the Article 21.5 panel (as modified by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
8. In the event that the DSB rules that a measure taken by the United States to comply does not exist or is inconsistent with a covered agreement, Brazil may at any time request authorization to suspend concessions or other obligations in accordance with Article 22 of the DSU.
9. The United States shall not assert that Brazil is precluded from obtaining such DSB authorization on the grounds that the request was made outside the 30-day time-period specified in Article 22.6 of the DSU. This is without prejudice to the right of the United States to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
10. If Brazil requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, and if the United States objects under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claims that the principles and procedures set forth in DSU Article 22.3 have not been followed, the matter will be referred to arbitration pursuant to DSU Article 22.6.
11. The Parties will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its award within 60 days of the referral to arbitration.
12. The Parties will cooperate to facilitate the participation of the original panelists in the compliance panel and the Article 22.6 arbitration.
13. If any of the original panelists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration, or both, the Parties will promptly consult on a replacement panelist or arbitrator, and either Party may request the Director-General of the WTO to appoint, within 10 days, a replacement for the proceeding or proceedings in which such a replacement is required. For any such request where an original panelist is unavailable to serve on the compliance panel and the Article 22.6 arbitration, the Parties will request that in

selecting a panelist for the compliance panel, the Director-General seek a person who will also be available to act in both proceedings.

14. The Parties agree to continue to cooperate in all matters related to these agreed procedures and not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the Parties consider that a procedural aspect has not been properly addressed, they will endeavour to find a solution within the shortest time possible that will not affect the other agreed procedures.
15. These agreed procedures in no way prejudice other rights of either Party to take any action or procedural step to protect its rights and interests, including recourse to the DSU.
16. Before the end of 2012, the Parties agree to consult with a view to achieving a resolution to this dispute.

Agreed in Geneva on 3 April 2012.

For Brazil

For the United States

Roberto Carvalho de Azevêdo  
Ambassador

David P. Shark  
Chargé d'affaires, a.i.

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