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ANNEX G

REQUESTS FOR CONSULTATIONS AND THE ESTABLISHMENT OF A PANEL

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ANNEX G-1

REQUEST FOR CONSULTATIONS BY BRAZIL

WORLD TRADE ORGANIZATION

WT/DS382/1
G/L/872
G/ADP/D75/1
1 December 2008

(08-5867)

Original: English

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

Request for Consultations by Brazil

The following communication, dated 27 November 2008, from the delegation of Brazil to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Upon instructions from my authorities, I hereby request consultations with the Government of the United States pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of GATT 1994* ("Anti-Dumping Agreement"), with regard to the matters listed hereunder:

The following determinations of the United States Department of Commerce (USDOC) concerning the imports of certain orange juice from Brazil, case n° A-351-840:

- the antidumping administrative review for the period from 24 August 2005 to 28 February 2007, and the final results thereof, in *"Certain Orange Juice from Brazil: Final results and Partial Rescission of Antidumping Duty Administrative Review"*, published in 73 Fed. Reg. 46,584 (11 August 2008), as well as any assessment instructions and cash deposit requirements issued pursuant to them (the "Issues and Decision Memorandum", dated 5 August 2008, which discusses issues raised in this review, confirms that "zeroing" was applied by the USDOC in this review and specifically rejects the relevance of WTO Appellate Body precedents for administrative reviews conducted by the USDOC);

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- any on-going or future antidumping administrative reviews, and the final results thereof, related to the imports of certain orange juice from Brazil (case n° A-351-840), as well as any assessment instructions and cash deposit requirements issued pursuant to them.

Any actions taken by United States Customs and Border Protection (USCBP) to collect definitive anti-dumping duties at duty assessment rates established in periodic reviews covered by the preceding paragraph, including through the issuance of USCBP liquidations instructions and notices.

The following US laws, regulations, administrative procedures, practices and methodologies:

- the Tariff Act of 1930, as amended, (the "Act"), in particular sections 736, 751, 771(35)(A) and (B), and 777A(c) and (d);
- the US Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. I;
- the implementing regulations of USDOC, codified at Title 19 of the United States Code of Federal Regulations, 19 CFR Section 351, in particular sections 351.212(b), 351.414(c), and (e);
- the Import Administration Antidumping Manual (1997 edition), including the computer program(s) to which it refers;
- the general procedures and methodology employed by the United States to determine dumping margins in administrative reviews, whereby USDOC, in comparing weighted average normal value with transaction price of individual export transactions, treats as zero negative intermediate comparison results (i.e. situations in which the individual export price is greater than the weighted average normal value). Such methodology is commonly referred to as "simple zeroing" and/or the US "zeroing procedures."

Brazil is concerned that the laws, regulations, administrative procedures, practices and methodologies described above are as such, and as applied in the determinations and actions listed above, inconsistent with the obligations of the United States under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") and the Agreements annexed thereto. The provisions with which these measures appear to be inconsistent include, but are not limited to, the following:

- Articles II, VI:1 and VI:2 of the GATT 1994;
- Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.2 and 18.4 of the Anti-Dumping Agreement;
- And Article XVI:4 of the WTO Agreement.

Brazil reserves the right to raise additional claims and legal matters during the course of the consultations. It looks forward to receiving the United States Government's response and to setting a mutually convenient date for consultations.

Please accept, Excellency, the assurances of my highest consideration.

ANNEX G-2

REQUEST FOR CONSULTATIONS BY BRAZIL – ADDENDUM

WORLD TRADE ORGANIZATION

WT/DS382/1/Add.1
G/L/872/Add.1
G/ADP/D75/1/Add.1
27 May 2009

(09-2552)

Original: English

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

Request for Consultations by Brazil

Addendum

The following communication, dated 22 May 2009, from the delegation of Brazil to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

1. This letter contains a request for consultations pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"), and Articles 17.2 and 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (the "Anti-Dumping Agreement"). The present request complements, constitutes an addendum to, and must be read with, the original request for consultations presented on 27 November 2008 (Document WT/DS382/1, G/L/872, G/ADP/D75/1).

2. On 27 November 2008, the Government of Brazil requested consultations with the Government of the United States of America (the "United States") under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"); Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"); and Articles 17.2 and 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (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 antidumping duty administrative reviews regarding imports of certain orange juice from Brazil (case n° A-351-840).¹

¹ WT/DS382/1, G/L/872, G/ADP/D75/1.

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3. The consultations, held on 16 January 2009, covered the Antidumping Duty Administrative Review for the period from 24 August 2005 to 28 February 2007 (the "First Administrative Review") and the Antidumping Duty Administrative Review from 1 March 2007 to 29 February 2008 (the "Second Administrative Review"), pursuant to the original request for consultations, which included, among others: the First Administrative Review, the final results thereof, and any assessment instructions and cash deposit requirements issued pursuant thereto; and, any on-going or future antidumping administrative reviews related to the imports of certain orange juice from Brazil (case n° A-351-840), the final results thereof, and any assessment instructions and cash deposit requirements issued pursuant thereto.

4. In addition to the above matters, Brazil would like to consult with the United States with regard to the complementary matters listed hereunder:

- (a) The Antidumping Duty Investigation on certain orange juice from Brazil (case n° A-351-840), for the period from 1 October 2003 to 30 September 2004, and the final results thereof, in *"Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil"*, published in 71 Fed. Reg. 2183 (13 January 2006); the corresponding antidumping order, entitled *"Antidumping Duty Order: Certain Orange Juice from Brazil"*, published in 71 Fed. Reg. 12183 (9 March 2006); as well as any cash deposit requirements issued pursuant to them. In this measure, 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"). Such methodology is commonly referred to as "model zeroing" and/or US zeroing procedures; and
- (b) The continued use of the US zeroing procedures ("model" or "simple" zeroing) in successive antidumping proceedings, in relation to the antidumping order issued in respect of imports of certain orange juice from Brazil (case n° A-351-840), including the original investigation and subsequent administrative reviews, by which duties are imposed and maintained in place at a level in excess of the antidumping margin which would result from the correct application of the Anti-Dumping Agreement (whether duties or cash deposit rates or other form of measure).

5. Furthermore Brazil would like to further consult with the United States with regard to the following matter:

- (c) The Antidumping Duty Administrative Review from 1 March 2007 to 29 February 2008 (the "Second Administrative Review"), related to the imports of certain orange juice from Brazil (case n° A-351-840).

6. Brazil is concerned that these measures are inconsistent with the obligations of the United States under the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement") and the Agreements annexed thereto. The provisions with which these measures appear to be inconsistent include, but are not limited to, the following:

- Articles II, VI:1 and VI:2 of the GATT 1994;
- Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.2 and 18.4 of the Anti-Dumping Agreement;
- And Article XVI:4 of the WTO Agreement.

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7. Brazil reserves the right to raise additional claims and legal matters during the course of the consultations. It looks forward to receiving the United States Government's response and to setting a mutually convenient date for consultations.

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ANNEX G-3

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY BRAZIL

WORLD TRADE ORGANIZATION

WT/DS382/4
21 August 2009

(09-3998)

Original: English

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.

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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.

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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.

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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.
