

**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);
- 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.
