

**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).<sup>1</sup>

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.

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<sup>1</sup> WT/DS382/1, G/L/872, G/ADP/D75/1.

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

- (1) 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
- (2) 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:

- (3) 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.

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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