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UNITED STATES – EQUALIZING EXCISE TAX IMPOSED BY FLORIDA ON PROCESSED ORANGE AND GRAPEFRUIT PRODUCTS

Request for the Establishment of a Panel by Brazil

The following communication, dated 16 August 2002, from the Permanent Mission of Brazil to the Chairman of te Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon instructions from my authorities, I would like to request the establishment of a panel pursuant to Article XXIII of the General Agreement on Tariffs and Trade (GATT 1994) and Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), concerning the "Equalizing Excise Tax" (EET) imposed by the State of Florida, in the United States, upon the processing of imported citrus products.

Pursuant to Section 601.155 of the Florida Statutes, as amended on 1 July 2002, the State of Florida imposes an "Equalizing Excise Tax" on processed orange and processed grapefruit products, in amounts determined by reference to Section 601.15 of the Florida Statutes and by the Florida Citrus Commission. Section 601.15 of the Florida statutes assesses a "Box Tax" on oranges and grapefruit grown and sold in Florida.

Until 1 July 2002, the Florida "Equalizing Excise Tax" contained an exemption for all citrus products produced from oranges and grapefruit grown in the United States. In April 2002, a state court in Florida ruled that this exemption for domestic juice was unconstitutional to the extent that it favoured juice made from citrus fruit grown in US states other than Florida. As a result, the law was amended on 1 July 2002, to eliminate the exemption for juice produced in states other than Florida. Now, only juice produced from oranges grown in Florida is exempt from the EET. Nonetheless, Brazil is still unsure as to whether the elimination of this exemption is permanent. For example, the Florida court decision may be appealed and overturned on appeal, possibly leading to the reinstatement of the cited exemption.

The impact of the Florida "Equalizing Excise Tax" has been to provide protection and support to domestic processed citrus products and to restrain the importation of processed citrus products into Florida. Processed citrus products, principally in the form of frozen concentrated orange juice are among Brazil's most significant exports to the United States, and the collection of the "Equalizing Excise Tax" unjustifiably changes the conditions of competition between the Brazilian product and the like Florida product, favouring the latter.

Therefore, on 20 March 2002, Brazil requested consultations with the United States with regard to the "Equalizing Excise Tax" (WT/DS250/1). Consultations were held between the United States and Brazil, in Geneva, on 2 May 2002 and on 27 June 2002. Although consultations promoted an important exchange of information, the two parties could not reach a mutually agreed solution to the problems posed by the EET.

Article III Claims

Brazil is of the view that the Florida "Equalizing Excise Tax" is inconsistent with the obligations of the United States under Articles III:1, III:2 and III:4 of GATT 1994. Brazil also considers that the Florida "Equalizing Excise Tax" nullifies or impairs the benefits accruing, directly or indirectly, to Brazil under GATT 1994.

First, the "Equalizing Excise Tax" (on "processed citrus products") is applied to the Brazilian product so as to afford protection to domestic production, thereby violating Article III:1.

Second, the "Equalizing Excise Tax" is not applied to the "like product" and is therefore "in excess" of internal taxes and charges applied "to like domestic products", thus violating the requirements of Article III:2. Moreover, the "Equalizing Excise Tax" is applied in a manner contrary to the principles set forth in Article III:1, which is inconsistent also with the last sentence of Article III:2.

Third, because the State of Florida collects the "Equalizing Excise Tax" on imported processed orange and processed grapefruit products and applies the funds from that tax in the manner required by law, the United States fails to accord to the Brazilian products "treatment no less favourable" than that accorded to products of national origin, within the meaning of Article III:4 of GATT 1994. For instance, the proceeds of the "Equalizing Excise Tax", assessed on imported products, are directed, by statute, to the advertising and promotion exclusively of Florida grown citrus and citrus products, thus discriminating against imported citrus or citrus products, in violation of Articles III:4 and III:1 of GATT 1994.

Fourth, Brazil also submits that section 601.155 of the Florida Statutes "as such" is inconsistent with paragraphs 1, 2, and 4 of Article III of GATT 1994.

Article II Claims

In the event that the "Equalizing Excise Tax" may be characterised by the Panel as "other duties or charges of any kind imposed on or in connection with the importation" of processed orange and processed grapefruit products, within the meaning of Article II of GATT 1994, Brazil considers that the EET is inconsistent with the provisions of paragraph 1, subparagraphs (a) and (b) of said Article.

More specifically, because of the collection of the EET the United States fails to accord to the commerce of Brazil "treatment no less favourable" than that provided for in the Schedule of the United States annexed to GATT 1994, and therefore violates Article II:1(a) of GATT 1994.

Brazil recalls that the EET is not recorded in the appropriate Schedule of the United States annexed to GATT 1994. Therefore, its collection is "in excess" of the level permitted by Article II:1(b) and by the Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994.

Requested Panel Findings

In light of the above, Brazil requests that the Panel consider and find that:

1. The imposition of the Florida "Equalizing Excise Tax" is inconsistent with Articles III:1, III:2, and III:4 of GATT 1994;

2. Section 601.155 of the Florida Statutes "as such", is inconsistent with Article III, paragraphs 1, 2, and 4 of GATT 1994;

3. The Florida "Equalizing Excise Tax" nullifies or impairs benefits accruing, directly or indirectly, to Brazil under GATT 1994; and

In the event that the "Equalizing Excise Tax" may be characterised by the Panel as "other duties or charges of any kind imposed on or in connection with the importation" of processed orange and processed grapefruit products, within the meaning of Article II of GATT 1994, Brazil requests that the Panel consider and find that:

(a) Because of the collection of the EET the United States violates Articles II:1(a) and II:1(b), as clarified by the Understanding on the Interpretation of Article II.1(b) of the General Agreement on Tariffs and Trade 1994; and

(b) The Florida "Equalizing Excise Tax" nullifies or impairs benefits accruing, directly or indirectly, to Brazil under GATT 1994.

Brazil also wishes to recall the issue of the exemption of the "Equalizing Excise Tax", which applied to non-Florida domestic juice before 1 July 2002. Brazil requests that the Panel find that if, for any reason, this exemption ever enters into force again, it will constitute a violation of Articles III:1, III:2 and III:4 of GATT 1994.

Finally, Brazil requests that the Panel use its prerogative under Article 19.1 of the DSU and, not only recommend that the United States "bring the measure into conformity with the GATT 1994", but also suggest that the Government of the United States take all such reasonable measures as may be available to it to ensure that the State of Florida rescinds the Equalizing Excise Tax forthwith.

Brazil requests that a Panel be established with standard terms of reference, in accordance with Article 7 of the DSU.

Brazil asks that this request for the establishment of a Panel be placed on the agenda for the next meeting of the Dispute Settlement Body, which is scheduled to take place on 30 August 2002.