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## **BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES**

### **REQUEST FOR THE ESTABLISHMENT OF A PANEL BY JAPAN**

The following communication, dated 17 September 2015, from the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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My authorities have instructed me to request the establishment of a panel pursuant to Articles 4.7 and 6 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXIII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Article 8 of the *Agreement on Trade-Related Investment Measures* (TRIMs Agreement), and Articles 4.4 and 30 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) with respect to certain measures concerning taxation and charges imposed by the Federative Republic of Brazil (Brazil) (DS497, *Brazil – Certain Measures Concerning Taxation and Charges*).

On 2 July 2015, Japan requested consultations with Brazil, pursuant to Articles 1 and 4 of the DSU, Article XXII:1 of the GATT 1994, Article 8 of the TRIMs Agreement and Articles 4 and 30 of the SCM Agreement and with respect to certain measures concerning taxation and charges imposed by Brazil. The request was circulated on 9 July 2015 as document WT/DS497/1, G/L/1119, G/TRIMS/D/41, G/SCM/D108/1. Consultations were held on 15 and 16 September 2015 with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

As a result, Japan respectfully requests that a Panel be established with the standard terms of reference as set out in Article 7.1 of the DSU with respect to the following matters:

#### **I. MEASURES IN THE AUTOMOTIVE SECTOR**

Brazil administers a tax on industrial products known as the IPI (*i.e. Imposto sobre Produtos Industrializados*). In September 2011, Brazil raised the IPI tax rates applicable to motor vehicles by 30 percentage points, while providing for a reduction by up to the same number of percentage points in IPI tax rates for domestically produced motor vehicles that satisfy certain conditions. In 2012, Brazil introduced a similar but more elaborate tax advantage scheme named *Programa de Incentivo à Inovação Tecnológica e Adensamento da Cadeia Produtiva de Veículos Automotores* ("Incentive Programme for Technological Innovation and Consolidation of the Automotive Vehicle Supply Chain") or "INOVAR-AUTO". INOVAR-AUTO provides the advantage of lower IPI tax rates with respect to motor vehicles covered by the programme that are manufactured or imported by companies with INOVAR-AUTO accreditation (*habilitações*). INOVAR-AUTO accreditation is granted, under certain conditions, (i) for companies that manufacture motor vehicles in Brazil; (ii) for companies that obtain official approval from the relevant Brazilian authorities for their plans to invest in production facilities or industrial projects in Brazil; and (iii) for companies that market motor vehicles in Brazil without manufacturing activities. To be accredited, depending on the type of accreditation, companies must satisfy a set of requirements, including in particular a minimum number of manufacturing activities in Brazil and/or minimum levels of expenditure in Brazil on research and development, engineering, basic industrial technology and capacity-building of actual and potential suppliers.

Once accredited, companies can earn IPI tax credits which can be used, under certain conditions, to offset up to 30 percentage points of the IPI otherwise due on the domestic sale of motor vehicles covered by the programme. Any remaining tax credits can be used to offset up to 30 percentage points of the IPI due on motor vehicles imported by the company, but only up to a specific number of motor vehicles.

The IPI tax credits that can be earned and used to offset the IPI are linked to the level of certain expenditures in Brazil, including (*inter alia*) on so called strategic inputs (*insumos estratégicos*) (*i.e.*, automotive components),<sup>1</sup> tooling (*ferramentaria*) (*i.e.*, equipment used in the production of motor vehicles or automotive components), research and development, and capacity-building of automotive suppliers. Imported motor vehicles do not have the same ability to benefit from such tax credits as do domestic motor vehicles. Moreover, the value of tax credits to be earned from expenditures on strategic inputs or tooling is reduced if the purchased strategic inputs or tooling do not have specified levels of Brazilian-origin content. Additional conditions for becoming accredited and/or earning and using IPI tax credits are provided in individual "Terms of Commitment" (*termos de compromisso*), which the Brazilian authorities require each accredited company to agree to.

In addition, motor vehicles imported by accredited companies from a limited number of WTO Members (*i.e.* Mercosur countries and Mexico) can benefit from a special reduction in the applicable IPI tax rate, whereas the availability of a similar reduction to vehicles imported from other Members is subject to a strict quantitative limitation. Vehicles imported from Uruguay enjoy even more favourable treatment, because no accreditation is required for companies to receive the same advantage.

Without necessarily being exhaustive, Japan understands that INOVAR-AUTO and related measures are established and administered through the following legal instruments in particular:

- Lei n° 12,546 of 14 December 2011;
- Lei n° 12,715 of 17 September 2012;
- Lei n° 12,844 of 19 July 2013;
- Lei n° 12,996 of 18 June 2014;
- Decreto n° 7,819 of 3 October 2012;
- Decreto n° 8,015 of 17 May 2013;
- Decreto n° 8,294 of 12 August 2014;
- Portaria MCTI n° 296 of 1 April 2013;
- Portaria MDIC n° 106 of 11 April 2013;
- Portaria MDIC n° 113 of 15 April 2013;
- Portaria Interministerial MCTI/MDIC n° 772 of 12 August 2013;
- Portaria MDIC n° 280 of 4 September 2013;
- Portaria MDIC n° 297 of 30 September 2013;
- Portaria MDIC n° 257 of 23 September 2014;
- Portaria MDIC n° 290 of 14 November 2014;
- Portaria MDIC n° 318 of 26 December 2014;
- Convênio ICMS n° 38 of 22 May 2013;
- Convênio S/N° of 15 December 1970;
- accreditations (*habilitações*) and related acts granted pursuant to INOVAR-AUTO;
- Terms of Commitment (*termos de compromisso*) signed by accredited companies;

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<sup>1</sup> The term "automotive components" is used in this document to refer to raw materials, parts and other components for the manufacture of motor vehicles.

- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and any other measures related to those listed above.

The tax advantage scheme under INOVAR-AUTO and related measures, and each of the legal instruments through which they are established and administered – both individually and collectively, by and in themselves, or in conjunction with the increased IPI tax rate for motor vehicles – are inconsistent *as such* and *as applied* with Brazil's obligations under the following provisions of the GATT 1994, the TRIMs Agreement and the SCM Agreement:

- Article I:1 of the GATT 1994, because the advantages, favours, privileges or immunities granted to some motor vehicles originating in some Members are not accorded immediately and unconditionally to like products originating in other Members. In particular, the tax advantages available to motor vehicles imported from Mercosur countries and Mexico are not available to motor vehicles imported from other Members including Japan.
- Article III:2 of the GATT 1994, because imported motor vehicles are subject, directly or indirectly, to an IPI tax burden in excess of that applied, directly or indirectly, to like domestic products; and because imported motor vehicles and directly competitive or substitutable products that are domestically produced are taxed in a manner that affords protection to domestic production.
- Article III:4 of the GATT 1994, because motor vehicles, automotive components, and tooling imported into Brazil are accorded less favourable treatment than that accorded to like products of Brazilian origin, as a result of the conditions for accreditation and for earning and using IPI tax credits.
- Article III:5 of the GATT 1994, because the criteria and/or requirements to benefit from tax advantages under INOVAR-AUTO, including (*inter alia*) the requirement to perform certain manufacturing steps in Brazil, and the reduction in the IPI tax credits based on the level of local content in automotive components and tooling, amount to internal quantitative regulations relating to the mixture, processing or use of products, which require that specified amounts or proportions of products be supplied from domestic sources; and because the said criteria and/or requirements also amount to internal quantitative regulations that are applied so as to afford protection to domestic production.
- Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and with paragraph 1(a) of the Agreement's Illustrative List, because INOVAR-AUTO and related legal instruments are TRIMs that are inconsistent with Article III of the GATT 1994; and because they require the purchase or use of products (including automotive components and/or tooling) from domestic sources in order to obtain tax advantages.
- Articles 3.1(b) and 3.2 of the SCM Agreement, because the programme and related legal instruments are and/or confer subsidies within the meaning of Article 1.1 of the SCM Agreement that are contingent upon the use of domestic over imported automotive components and/or tooling.

## **II MEASURES RELATING TO INFORMATION AND COMMUNICATION TECHNOLOGY, AUTOMATION AND RELATED GOODS**

### **A. Measures at issue**

In an effort to develop its information and communication technology (ICT), automation and related sectors, the Brazilian government has established several programmes that provide economic incentives, including but not necessarily limited to exemption from and/or reduction in taxes, duties, contributions and charges, to domestic entities engaged in the production, import, and export of goods and services in these sectors. Since 1991, Brazil has implemented tax advantage programmes which affect a number of products in the ICT and related sectors, including: (1) the Informatics Programme, created under the *Lei de Informática*<sup>2</sup> ("Informatics Law"), decreed in 1991 and later amended in 2001; (2) *Programa de Incentivos ao*

<sup>2</sup> *Lei* n° 8,248 of 23 October 1991, as amended by *Lei* n° 10,176 of 11 January 2001 and Law 13,023 of 8 August 2014.

*Setor de Semicondutores*, PADIS<sup>3</sup> (Programme of Incentives for the Semiconductors Sector"), 2007; (3) *Programa de Apoio ao Desenvolvimento Tecnológico da Indústria de Equipamentos para TV Digital*, PATVD<sup>4</sup> ("Programme of Support to the Technological Developments of the Industry of Digital TV Equipment"), 2007; and (4) *Programa de Inclusão Digital*<sup>5</sup> ("Digital Inclusion Programme"), 2005.

## 1. Informatics Programme

Brazil's Informatics Programme is set up and implemented through the Informatics Law<sup>6</sup> and related legal instruments. The programme reduces the IPI obligation for companies that develop or produce information technology and automation goods and services, and also invest in information technology research and development activities in Brazil. To benefit from the tax advantages under the Informatics Programme, companies must be qualified, or "accredited" (*habilitadas*), by means of an administrative decision (*Portaria*) granted by relevant ministries. In order to be accredited and benefit from the tax advantages, they must, *inter alia*, produce relevant products in Brazil in accordance with the terms of a particular *Processo Produtivo Básico* ("basic production process"), or PPB. The PPB is "a minimum set of operations performed at a manufacturing facility that characterises the actual industrialization of a given product" issued by the executive branch for a product or products. The PPB usually sets forth the minimum manufacturing steps to be conducted in Brazil and/or requires certain raw materials, parts and components incorporated in the product to be produced in Brazil (sometimes in compliance with additional PPBs).

For accredited companies, the Informatics Programme reduces and/or exempts IPI tax obligations otherwise due on the sale of the manufactured products. Products that are considered as "developed" in Brazil benefit from additional tax advantages. In addition, the Informatics Programme also suspends the IPI tax otherwise due on domestic sales of raw materials, intermediate goods and packaging materials used in the production of the relevant products, and/or assures the maintenance and use of tax credits against IPI tax paid on purchase of such raw materials, intermediate products and packing materials.

Without necessarily being exhaustive, Japan understands that the Informatics Programme is established and administered through the following legal instruments in particular:

- *Lei* n° 8,248 of 23 October 1991;
- *Lei* n° 10,176 of 11 January 2001;
- *Lei* n° 10,637 of 30 December 2002;
- *Lei* n° 13,023 of 8 August 2014;
- *Decreto* n° 5,906 of 26 September 2006;
- *Decreto* n° 6,759 of 5 February 2009 (final and transitional provisions), as amended by subsequent acts;
- *Decreto* n° 8,010 of 16 May 2013;
- *Decreto* n° 7,212 of 15 June 2010 (especially Chapter VI, Section II);
- *Portaria Interministerial MDIC/MCTI* n° 177 of 18 October 2002;
- *Portaria MCT* n° 950 of 12 December 2006;
- *Portaria Interministerial MCTI/MDIC/MF* n° 148 of 19 March 2007;
- *Portaria Interministerial MCTI/MDIC* n° 685 of 25 October 2007;
- *Portaria Interministerial MDIC/MCT* n° 170 of 4 August 2010;
- *Portaria MDIC* n° 267 of 30 August 2013;
- *Portaria SDP/MDIC* n° 1 of 18 September 2013;
- *Portaria MCT* n° 1,309 of 19 December 2013;

<sup>3</sup> *Lei* n° 11,484 of 31 May 2007, last amended by Decree 8,247 of 23 May 2014.

<sup>4</sup> *Lei* n° 11,484 of 31 May 2007.

<sup>5</sup> *Lei* n° 11,196 of 21 November 2005.

<sup>6</sup> *Lei* n° 8,248 of 23 October 1991.

- *Portaria Interministerial MCTI/MDIC* n° 202 of 13 February 2014;
- *Portarias* adopting PPBs pursuant to the provisions of the above mentioned instruments;
- accreditations (*habilitações*) and related acts granted pursuant to the Informatics Programme;
- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and any other measures related to those listed above.

## 2. PADIS and PATVD

Both PADIS and PATVD were established by *Lei* n° 11,484 of 31 May 2007. These programmes are implemented through a number of related regulations and instructions. Companies active in the manufacture in Brazil of semiconductor electronic devices, information displays, and supplies and dedicated equipment for such semiconductor electronic devices and information displays (PADIS), and companies active in the development and manufacture in Brazil of radio frequency signal transmitting equipment for digital televisions (PATVD) are eligible for tax advantages. In order to benefit under the both programmes, companies must be qualified, or "accredited" (*habilitadas*), by the relevant ministries. For the accredited companies, both PADIS and PATVD eliminate certain taxes and charges, including the IPI tax and contributions to PIS/PASEP,<sup>7</sup> COFINS,<sup>8</sup> PIS/PASEP-*Importação*, COFINS-*Importação*<sup>9</sup> due on the domestic purchase or importation of machines, appliances, instruments and equipment as well as software and supplies to be used for the development and production activities of the products mentioned above. In addition, PADIS and PATVD exempt the accredited companies from the payment of PIS/PASEP, COFINS and IPI otherwise due upon the sale of the above-mentioned products.

Under PADIS, semiconductor electronic device and information displays must be produced through minimum manufacturing steps in Brazil, and supplies and dedicated equipment must be manufactured in compliance with the PPBs in order to benefit from at least some of the advantages. Under PATVD, radio frequency signal transmitting equipment for digital televisions must be produced in compliance with the relevant PPB or alternatively meet the conditions for being considered as "developed" in Brazil in order to benefit from at least some of the advantages. The beneficiaries of these programmes must invest annually in research and development, etc., certain minimum amounts of money calculated based on their gross sales of the relevant products.

Without necessarily being exhaustive, Japan understands that PADIS is established and administered through the following legal instruments in particular:

- *Lei* n° 11,484 of 31 May 2007;
- *Decreto* n° 6,233 of 11 October 2007;
- *Decreto* n° 8,247 of 23 May 2014;
- *Instrução Normativa RFB* n° 852 of 13 June 2008;
- *Decreto* n° 7,212 of 15 June 2010 (especially Chapter VI, Section III);
- *Decreto* n° 6,759 of 5 February 2009 (especially Volume III, Title II, Chapter VII, Section VII), as amended by subsequent acts;
- Joint Ordinance MCT/MDIC/MF 297 of 13 May 2008 establishing the procedures and deadline for analysis of the PADIS implementing *Decreto* n° 6,233 of 11 October 2007 (GTI-PADIS);
- Interministerial Ordinance MCT/MDIC 290/2008;
- *Portarias* establishing PPBs applicable under PADIS;
- accreditations (*habilitações*) and related acts granted pursuant to the PADIS programme;

<sup>7</sup> PIS/PASEP is a regime that collects contributions to fund insurance for employees of private companies (*Programa de Integração Social*, or PIS) and civil servants (*Programa de Formação do Patrimônio do Servidor Público*, or PASEP).

<sup>8</sup> COFINS, the Contribution for Social Security Financing, requires contributions to fund social security.

<sup>9</sup> PIS/PASEP *Importação* and COFINS *Importação* impose contribution requirements to the respective funds on imports of goods and services.

- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and any other measures related to those listed above.

Without necessarily being exhaustive, Japan understands that PATVD is established and administered through the following legal instruments in particular:

- *Lei* n° 11,484 of 31 May 2007;
- *Decreto* n° 6,234 of 11 October 2007;
- *Instrução Normativa RFB* n° 853 of 13 June 2008;
- *Decreto* n° 7,212 of 15 June 2010 (especially Chapter VI, Section IV);
- *Decreto* n° 6,759 of 5 February 2009 (especially Volume III, Title II, Chapter VII, Section VIII);
- Interministerial Ordinance 291 of 07 May 2008;
- *Portarias* establishing PPBs applicable under the PATVD;
- accreditations (*habilitações*) and related acts granted pursuant to the PATVD programme;
- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and any other measures related to those listed above.

### 3. Digital Inclusion Programme

Under the provisions of *Lei* n° 11,196 of 21 November 2005, as amended, and associated regulations, the so-called "Digital Inclusion Programme" exempts producers of "digital products" (such as computers, routers, smartphones and other hardware) from payment of PIS/PASEP and COFINS contributions otherwise due on sales of goods and services. In particular, contributions to PIS/PASEP and COFINS on the gross revenue of retail sales are reduced to zero. This reduction is applicable to products including: digital processing units, portable digital automatic machines for data processing that weigh less than 3.5 Kg, automatic data processing machines, keyboards and mice, modems, portable automatic data processing machines, portable telephones, and customer's terminal equipment (digital routers). The Digital Inclusion Programme requires that the goods in question be produced or developed in Brazil in accordance with PPBs in order to benefit from the tax advantages.

Without necessarily being exhaustive, Japan understands that the Digital Inclusion Programme is established and administered through the following legal instruments in particular:

- *Lei* n° 11,196 of 21 November 2005;
- *Lei* n° 12,507 of 11 October 2011;
- *Lei* n° 12,715 of 17 September 2012;
- *Lei* n° 13,097 of 19 January 2015;
- *Decreto* n° 5,602 of 6 December 2005;
- *Portaria* MC n° 87 of 10 April 2013;
- *Portaria* STE n° 2 of 26 August 2013;
- Other *Portarias* establishing PPBs applicable under the Digital Inclusion Programme;
- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and any other measures related to those listed above.

## B. Legal Basis

The Informatics Programme, Digital Inclusion Programme, PADIS, and PADTV, and each of the legal instruments through which they are established and administered – both individually and collectively – are inconsistent *as such* and *as applied* with Brazil's obligations under the following provisions of the GATT 1994, the TRIMs Agreement and the SCM Agreement:

- Article III:2 of the GATT 1994, because imported ICT, automation and related products are subject, directly or indirectly, to internal tax burdens in excess of those applied, directly or indirectly, to like domestic products; and because imported ICT, automation and related products and directly competitive or substitutable products that are domestically produced are taxed in a manner that affords protection to domestic production.
- Article III:4 of the GATT 1994, because the conditions for accreditation result in less favourable treatment for imported products than that accorded to like domestic products; and because the requirement to use local inputs and equipment in the production of ICT, automation and related products results in less favourable treatment for imported inputs and equipment than that accorded to like domestic products.
- Article III:5 of the GATT 1994, because the criteria and/or requirements to benefit from tax advantages under the respective programmes, including (*inter alia*) the requirement to perform certain manufacturing steps in Brazil, and the minimum levels of local content or national value added (including those imposed under the terms of the corresponding PPBs), amount to internal quantitative regulations relating to the mixture, processing or use products in specified amounts or proportions, which require that a specified amount or proportion of the final product be supplied from domestic sources; and because the said criteria and/or requirements also amount to internal quantitative regulations that are applied so as to afford protection to domestic production.
- Article 2.1 of the TRIMs Agreement, separately and in conjunction with Article 2.2 and paragraph 1(a) of the Illustrative List in the Annex to the TRIMs Agreement, because the programme and related legal instruments are TRIMs that are inconsistent with Article III of the GATT 1994; and because they require the purchase or use of products (*i.e.*, Brazilian inputs and manufacturing equipment) from domestic sources in order to obtain tax advantages.
- Articles 3.1(b) and 3.2 of the SCM Agreement, because the programmes and related legal instruments are and/or confer subsidies within the meaning of Article 1.1 of the SCM Agreement that are contingent upon the use of domestic over imported inputs and equipment.

## C. Alternative Claim

Products imported into Brazil, including from Japan, are subject to charges collected at the border under the instruments known as PIS/PASEP-*Importação* and COFINS-*Importação*. Japan notes that Brazil levies in parallel the "contributions" known as PIS/PASEP and COFINS on the turnover of domestic companies. PIS/PASEP-*Importação* and COFINS-*Importação* were introduced several years after the creation of PIS/PASEP and COFINS. Japan understands that Brazil considers the PIS/PASEP-*Importação* and COFINS-*Importação* as charges which form part of Brazil's system of internal taxes, rather than as "other duties or charges" on imports (within the meaning of Article II:1(b) of the GATT 1994).

In the event that the Panel finds that the PIS/PASEP-*Importação* and COFINS-*Importação* are not internal taxes falling under Article III:2 of the GATT 1994, Japan submits that the PIS/PASEP-*Importação* and COFINS-*Importação* are inconsistent, *as such* and *as applied*, with Brazil's obligations under Article II:1(b) of the GATT 1994, because "other duties or charges" are imposed on ICT, automation and related goods imported from Japan, in excess of the duties and charges set forth in Brazil's Schedule of Tariff Concessions.



### III MEASURES PROVIDING TAX ADVANTAGES TO EXPORTERS

Brazil has put in place certain programmes that confer benefits to "predominantly exporting companies" in the form of a suspension, and in at least some cases a subsequent exemption (or conversion to a zero rate), of taxes otherwise due in relation to their acquisition of capital goods (*i.e.*, machinery, tools, instruments and other equipment) and inputs (*i.e.*, raw materials, intermediate goods and packaging materials).

#### A. RECAP

RECAP is Brazil's "Special Regime for the Purchase of Capital Goods for Exporting Enterprises" (*Regime Especial de Aquisição de Bens de Capital para Empresas Exportadoras*), established under *Lei* n° 11,196 of 25 November 2005 and *Decreto* n° 5,649 of 29 December 2005, and implemented through a number of related regulations. Under this programme, Brazil suspends the application of several taxes and charges including PIS/PASEP, COFINS, PIS/PASEP-*Importação* and COFINS-*Importação* pertaining to the domestic purchase or importation of machinery, tools, instruments and other equipment by "predominantly exporting companies",<sup>10</sup> generally including companies that obtained at least 50 percent of their gross turnover from exports in the preceding calendar year as well as companies that did not meet such a 50 percent export threshold but commit to do so over the next three years. The suspension ultimately becomes a zero rate when certain conditions are met.

In order to benefit from RECAP, "predominantly exporting companies" must obtain "accreditation" (*habilitação*) from the Secretariat of the Federal Revenue in the Ministry of Finance (*Secretaria da Receita Federal* of the *Ministério de Fazenda*). They may enjoy the benefits under RECAP on condition that they undertake to maintain for the following two or three years (as the case may be) a level of exports equal to or higher than 50 percent of their annual gross turnover and then fulfil those undertakings.

Without necessarily being exhaustive, Japan understands that RECAP is established and administered through the following legal instruments in particular:

- *Lei* n° 11,196 of 25 November 2005;
- *Lei* n° 12,715 of 17 September 2012;
- *Decreto* n° 5,649 of 29 December 2005;
- *Decreto* n° 5,789 of 25 May 2006;
- *Decreto* n° 6,759 of 5 February 2009 (especially Volume III, Title II, Chapter VII, Section IV);
- *Instrução normativa SRF* n° 605 of 4 January 2006;
- accreditations (*habilitações*) or registrations (*registros*), and related acts, pertaining to individual "predominantly exporting companies" granted pursuant to the RECAP programme;
- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and any other measures related to those listed above.

The RECAP programme and each of the legal instruments through which it is established and administered – both individually and collectively – are inconsistent *as such* and *as applied* with Articles 3.1(a) and 3.2 of the SCM Agreement, because they are and/or confer subsidies within the meaning of Article 1.1 of the SCM Agreement that are contingent upon export performance.

#### B. Export-Contingent Subsidies Concerning the Purchase of Raw Materials, Intermediate Goods and Packaging Materials

Brazil also provides IPI, PIS/PASEP, COFINS, PIS/PASEP-*Importação* and COFINS-*Importação* tax suspensions for predominantly exporting entities with regard to their purchases of raw materials, intermediate goods and packaging materials. Under *Lei* n° 10,637 of 30 December 2002,

<sup>10</sup> *Lei* n° 11,196 of 25 November 2005.



as amended, and *Lei* n° 10,865 of 30 April 2004, as amended, Brazil suspends the application of IPI, PIS/PASEP, PIS/PASEP-*Importação*, COFINS and COFINS-*Importação* for the benefit of those entities that received at least 50 percent of their gross turnover from exports in the preceding year. The suspension of the PIS/PASEP and COFINS contributions expires upon certain circumstances such as exportation or sale of the final goods incorporating the raw materials, intermediate goods and packaging materials for which the application of these taxes is suspended.<sup>11</sup> A similar rule applies to the IPI.<sup>12</sup>

Without necessarily being exhaustive, Japan understands that these export-contingent subsidies are established and administered through the following legal instruments in particular:

- *Lei* n° 10,637 of 30 December 2002;
- *Lei* n° 10,865 of 30 April 2004;
- *Lei* n° 12,715 of 17 September 2012;
- *Decreto* n° 6,759 of 5 February 2009 (especially Volume III, Title I, Chapter VII, and Volume III, Title II, Chapter VII, Section V);
- *Instrução Normativa SRF* n° 595 of 27 December 2005;
- *Instrução Normativa RFB* n° 948 of 15 June 2009;
- *Instrução Normativa RFB* n° 1,424 of 19 December 2013;
- accreditations (*habilitações*) or registrations (*registros*), and related acts, pertaining to individual "predominantly exporting companies" granted pursuant to the scheme;
- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and any other measures related to those listed above.

These export-contingent subsidies and each of the legal instruments through which they are established and administered – both individually and collectively – are inconsistent *as such* and *as applied* with Articles 3.1(a) and 3.2 of the SCM Agreement, because they are and/or confer subsidies within the meaning of Article 1.1 of the SCM Agreement that are contingent upon export performance.

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Japan asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body expected to be held on 28 September 2015.

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<sup>11</sup> *Instrução Normativa SRF* n° 595 of 27 December 2005.

<sup>12</sup> *Instrução Normativa RFB* n° 948 of 15 June 2009.