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BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES

UNDERSTANDING BETWEEN BRAZIL AND THE EUROPEAN UNION REGARDING
PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU
AND ARTICLE 4 OF THE SCM AGREEMENT

The following communication, dated 23 December 2019, from the delegation of Brazil and the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

The European Union and Brazil would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding and Article 4 of the Agreement on Subsidies and Countervailing Measures" between the European Union and Brazil with respect to the dispute *Brazil – Certain Measures Concerning Taxation and Charges* (DS472).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

Brazil – Certain Measures Concerning Taxation and Charges (DS472)**Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding and Article 4 of the Agreement on Subsidies and Countervailing Measures**

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *Brazil – Certain Measures Concerning Taxation and Charges* (DS472) on 11 January 2019.

Pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), the European Union ("EU") and Brazil agreed that the reasonable period of time ("RPT") to implement the DSB recommendations and rulings would be 11 months and 20 days, expiring on 31 December 2019 (WT/DS472/15). With regard to the subsidies that were found to be prohibited, Brazil and the European Union agreed that, for the purposes of Article 4 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), the time period within which these measures must be withdrawn would be five (5) months and ten (10) days from the date of adoption of the recommendations and rulings of the DSB, which expired on 21 June 2019.

In order to facilitate a satisfactory solution to the dispute through the implementation of the DSB recommendations and rulings and the withdrawal of the prohibited subsidies, the EU and Brazil (referred to collectively as "the Parties") have agreed on the following procedures for the exclusive purposes of this dispute, which are designed to reduce the scope for procedural disputes and are without prejudice to either party's views on the correct interpretation of the DSU:

1. Should the EU consider that the situation described in Article 21.5 of the DSU exists, the EU may request consultations with Brazil. The Parties agree to hold such consultations within 20 days from the date of receipt of the request. Brazil and the EU agree that at the end of this round of consultations, should either party so state, the parties will consider that the consultations have failed to settle the dispute. After this 20-day period has elapsed, the EU may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time.
2. At the first DSB meeting at which the EU's request for the establishment of an Article 21.5 panel appears on the agenda, Brazil shall accept the establishment of that panel.
3. The parties shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days from the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless either party appeals the report.
5. In the event of an appeal of the Article 21.5 panel report, the parties shall cooperate to enable the Appellate Body to circulate its report to the Members within 90 days from the date of notification of the appeal to the DSB. Further, either party may request the DSB to adopt its recommendations and rulings at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
6. The parties are discussing the procedural consequences that may arise because of the blockage of appointments of persons to serve on the Appellate Body and will endeavour to enter into a separate procedural agreement that preserves the availability of appeal review in this case on the basis of Article 25 DSU.
7. The EU may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU and to adopt countermeasures pursuant to Article 4.10 of the SCM Agreement, in the event that the DSB rules, as a result of a proceeding under Article 21.5 of the DSU, that a measure taken to comply does not exist or is inconsistent with a covered agreement. Brazil shall not assert that the EU is precluded from obtaining such DSB authorization because its request was made outside the time period specified in the first sentence of Article 22.6 of the DSU. This is without prejudice to Brazil's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.

8. If the EU requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU including Article 4.10 of the SCM Agreement, Brazil shall have the right to object under Article 22.6 of the DSU, to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed. In the event of such objection, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU and/or Article 4.11 of the SCM Agreement.

9. The parties will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.

10. If any of the original panellists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), or any person serving in such proceeding becomes unavailable to serve, the parties will promptly consult on a replacement, and either party may request the Director General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panellist is unavailable to serve in either of the proceedings, or a person serving in such proceeding becomes unavailable to serve, the parties will further request that, in making this appointment, the Director General seek a person who will be available to act in both proceedings.

11. The parties will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties consider that a procedural aspect has not been properly addressed in these procedures, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.
