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**UNITED STATES – ANTI-DUMPING DUTIES
ON SILICON METAL FROM BRAZIL**

Request for Consultations by Brazil

Revision

The following communication, dated 1 November 2001, from the Permanent Mission of Brazil to the Permanent Mission 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 instruction from my authorities, I hereby wish to convey the request of the Government of Brazil for consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 17 of the Agreement on Implementation of Article VI of GATT 1994 (Antidumping Agreement), including Article 17.4 thereof.

This request pertains to antidumping duties imposed by the United States on imports of silicon metal from Brazil: *Antidumping Duty Order: Silicon Metal From Brazil*, 56 Fed. Reg. 36135 (July 31, 1991) (US case number A-351-806). It also relates to Section 351.106(c) of the United States Department of Commerce's (Department) regulations¹, which establishes that a *de minimis* margin of 0.5 percent applies for administrative reviews. This request also concerns the US "zeroing" methodology when establishing margins of dumping, as reflected in Chapter 6 of the Antidumping Manual of the Department² and in Section 771(35) of the Tariff Act of 1930.

Measures at issue

Since 1991, the Department has imposed antidumping duties on imports of silicon metal from Brazil to the United States, including the imports from Companhia Brasileira Carbureto de Cálcio ("CBCC"). Pursuant to the US antidumping provisions, CBCC has participated in annual administrative reviews of its dumping margin and has sought to become eligible for the revocation of the antidumping duties imposed on its exports. The Department calculated no dumping margins for CBCC during the fifth, sixth and seventh administrative reviews, covering the review periods 1995-1996, 1996-1997, and 1997-1998, respectively.³ In spite of the fact that the Department did not

¹ 19 C.F.R. § 351.106(c).

² Available at <http://ia.ita.doc.gov/admanual/>.

³ *Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil*, 63 Fed. Reg. 6899 (February 11, 1998) ("Fifth administrative review"); *Silicon Metal From Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 Fed. Reg. 6305 (February 9, 1999) ("Sixth administrative

find any dumping with respect to CBCC's sales during those review periods, the Department rejected CBCC's request for revocation of the antidumping order.

In the most recently completed review, the eighth administrative review covering the period 1998-1999, CBCC again requested revocation of the antidumping duty order.⁴ This time, the Department calculated a small dumping margin of 0.63 percent. The Department determined that the requirement for revocation was not met because the dumping margin was above the *de minimis* standard.

The Department's action is consistent with the US legislation, which establishes that the 2 percent *de minimis* provision of Article 5.8 of the AD Agreement only applies in the case of initial investigations, allowing for a *de minimis* margin of 0.5 percent in the case of administrative reviews, including those reviews which purpose to determine whether the antidumping duty should be revoked. This standard is expressed in Section 351.106(c) of the Department's regulations. The language of the US legislation and the corresponding US practice are in clear violation of the Antidumping Agreement, which makes no distinction between *de minimis* margins applicable to investigations and those pertaining to administrative reviews. The United States seems to understand that the *de minimis* requirement of Article 5.8 does not apply to the reviews of antidumping duty orders contemplated in Article 9.3 for duty assessment purposes, nor to Article 11.2, concerning the revocation of antidumping duty orders. Moreover, the 0.63 percent margin of dumping resulted from the Department's use of the "zeroing" methodology, which also violates the Antidumping Agreement.

With regard to this latter point, WTO Panel findings, upheld by the Appellate Body⁵, maintained that the practice of "zeroing" negative dumping margins when establishing "the existence of margins of dumping" is inconsistent with the provisions of Article 2.4.2 of the Antidumping Agreement. Brazil upholds that the practice of "zeroing" is disallowed under Article 2 whenever investigative authorities are calculating dumping margins, given the inherently biased and distorted nature of that methodology. The US government currently applies the identical practice of "zeroing" when establishing the dumping margin in investigations and reviews. This methodology is reflected in the Department's Antidumping Manual (Chapter 6, p. 9-10). The Department has stated that the zeroing methodology is required by Sections 771(35)(A) and (B) of the Tariff Act of 1930.⁶

The application of the "zeroing" practice in the administrative review at issue resulted in the calculation of 0.63 % dumping margin for CBCC. This methodology, as expressed in the Department's Antidumping Manual and as applied to CBCC, is inconsistent with the US obligations under the Antidumping Agreement.

In light of the DSU provisions governing this matter, including Article 4.3 thereof, as well as Article 17 of the Antidumping Agreement, my authorities look forward to receiving in due course the reply of the United States to this request. Brazil is ready to consider with the United States mutually convenient dates to hold consultations in Geneva.

review"); *Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil*, 65 Fed. Reg. 7497 (February 15, 2000) ("Seventh administrative review").

⁴ *Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil*, 66 Fed. Reg. 11256 (February 23, 2001) ("Eighth administrative review").

⁵ Cotton-Type Bed Linen from India, WT/DS141/AB/R, 1 March 2001 (AB2000-13).

⁶ *Final Results of the Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand*, 66 Fed. Reg. 52744 (Oct. 17, 2001) (accompanying Issues and Decision Memorandum at Comment 10).

Brazil reserves the right to raise additional factual or legal points related to the aforementioned measure during the course of consultations.

This request for consultations replaces the one delivered to the Mission of the United States on 18 September 2001 (Document WT/DS239/1).
