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BRAZIL – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN RESINS FROM ARGENTINA

Request for the Establishment of a Panel by Argentina

The following communication, dated 7 June 2007, from the delegation of Argentina to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Argentina considers that certain measures of the Government of Brazil are inconsistent with Brazil's commitments and obligations under the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"), and the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement"). In particular:

(1) On 26 August 2005, the President of the Ministers Council of the Foreign Trade Chamber ("CAMEX"), through *Resolução No* 29, *de* 26 *de Agosto de 2005, da Cãmara de Comércio Exterior CAMEX, do Conselho de Goberno* ("Resolution No. 29"), resolved, *ad referendum* of the Council, to apply an anti-dumping duty on imports of polyethylene terephthalate ("PET") resins, with intrinsic viscosity over 0.7 dl/g, excluding added resins of glass fiber and other blends, classified under item 3907.60.00 of the NCM[1], originating from Argentina. Resolution No. 29 was published in Brazil's *Diario Oficial da Uniao* on 2 September 2005 and appears to have been ratified by the Council of Ministers of CAMEX on 16 December 2005. This measure appears to be inconsistent with the following provisions of the AD Agreement and the GATT 1994:

(a) Articles 6.1, 6.2, 6.4, 6.6, 6.8, and 6.9 of the AD Agreement and paragraphs 1, 3, 5, 6 and 7 of Annex II of the AD Agreement, because Brazil:

- failed to inform the Argentinian exporter of perceived deficiencies in its responses to Brazil's questionnaire;

- failed to provide the Argentinian exporter an opportunity to provide further explanations within a reasonable period;

- failed to provide the Argentinian exporter with ample opportunity to present in writing all evidence which it considered relevant in respect of the anti-dumping investigation;

- failed to give the Argentinian exporter a full opportunity for the defence of its interests;

[1] Nomenclatura Comun Mercosur (Mercosur Common Tariff Schedule).

- failed to provide timely opportunities for the Argentinian exporter to see all information that is relevant to the presentation of its case and to prepare presentations on the basis of this information;

- failed during the course of the investigation to satisfy itself as to the accuracy of the information supplied by interested parties upon which their findings were based;

- improperly made its final determination on the basis of the facts available; and

- failed to inform the Argentinian exporter of the essential facts under consideration which formed the basis for the decision to apply definitive measures in sufficient time for the Argentinian exporter to defend its interests;

(b) Articles 2.2.1.1 and 6.8 of the AD Agreement, paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, and paragraph 2 of Article VI of GATT 1994, because Brazil substituted the facts available for the Argentinian exporter's actual records regarding the primary input into PET resin, which records were in accordance with the generally accepted accounting principles of Argentina and reasonably reflected the costs associated with the production and sale of the product under consideration; and by failing to use special circumspection in basing its findings on information from a secondary source;

(c) Articles 2.2.2 and 6.8 of the AD Agreement, paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, and paragraph 2 of Article VI of GATT 1994, because Brazil substituted the facts available for the Argentinian exporter's actual data regarding administrative, selling and general costs and for profits pertaining to production and sales in the ordinary course of trade of the like product by the Argentinian exporter under investigation; and by failing to use special circumspection in basing its findings on information from a secondary source;

(d) Articles 2.2.1 and 6.8 of the AD Agreement, paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, and paragraph 2 of Article VI of GATT 1994, because Brazil improperly treated sales of the Argentinian exporter's like product as being at prices below per unit costs of production plus administrative, selling and general costs in the domestic market of Argentina, and as not being in the ordinary course of trade by reason of price, which Brazil disregarded in determining normal value;

(e) Articles 2.4 and 6.8 of the AD Agreement, paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, and paragraph 2 of Article VI of GATT 1994, because Brazil, in calculating the profits accruing to be deducted from the export price on sales in Brazil made by the affiliated party of the Argentinian exporter of PET resin after importation, substituted the facts available for the actual profit realized on the sales by the affiliated party of the Argentinian exporter;

(f) Article 2.4 of the AD Agreement and paragraphs 1 and 2 of Article VI of GATT 1994, because Brazil improperly denied adjustments to normal value and export price for volume discounts, debits and credits for price adjustments, customer credits, as well as level of trade differences granted by the Argentinian exporter to individual customers, thereby failing to make a fair comparison between the export price and normal value;

(g) Articles 3.1, 3.2, and 3.4 of the AD Agreement because Brazil, in conducting its injury analysis, failed to collect or examine recent data, and failed to base its injury determination on positive evidence or to conduct objective examinations of the volume

of the allegedly dumped imports, the effect of those imports on prices in the domestic market of the like product, and the impact of the imports on domestic producers of those products;

(h) Articles 3.1 and 3.5 of the AD Agreement because Brazil failed to demonstrate that the allegedly dumped imports are, through the effects of dumping, causing injury; failed to base its determination of a causal relationship between the allegedly dumped imports and injury to the domestic industry on positive evidence and an objective examination of all relevant evidence; failed to examine all known factors other than the allegedly dumped imports which at the same time are allegedly injuring the domestic industry; and attributed the alleged injury caused by these other factors to the allegedly dumped imports;

(i) Article 8.3 of the AD Agreement, because Brazil rejected a proposed price undertaking by the Argentinian exporter without providing the reasons which led the investigating authorities to consider acceptance of an undertaking as inappropriate, and without giving the exporter an opportunity to make comments thereon;

(j) Article 10.1 of the AD Agreement, because Brazil began applying anti-dumping duties to products which entered for consumption prior to the time when the decision to impose anti-dumping duties entered into force; and

(k) Articles 12.1, 12.1.1, 12.2, and 12.2.2 of the AD Agreement, because Brazil failed in its public notice of initiation to provide adequate information concerning the product involved in the investigation, and failed in its final determination to set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material or to provide all relevant information on the matters of fact and law and reasons which led to the imposition of final measures.

(2) Certain provisions of Brazil's Decree 4732 of 10 June 2003 ("Decree 4732/03") appear to be inconsistent with Brazil's obligations under the provisions of the AD Agreement, the GATT 1994, and the WTO Agreement.

Article 2(XV) of Decree 4732/03 authorizes CAMEX to impose provisional or definitive anti-dumping measures. Article 5 § 3 of Decree 4732/03 authorizes the president of CAMEX to perform all acts of CAMEX, including the imposition of anti-dumping measures, *ad referendum* of the Council of Ministers, and Brazilian law prescribes no deadline within which CAMEX must ratify or reject those acts, nor does it stipulate the legal status of the anti-dumping measures apparently in force. These provisions appear to be inconsistent with:

(a) Article 10.1 of the AD Agreement, which requires that anti-dumping duties only be applied to products which enter for consumption after the time when the decision to impose anti-dumping duties enters into force;

(b) Article X:1 and X:3(a) of GATT 1994, which requires that laws, regulations, judicial decisions and administrative rulings of general application made effective by a contracting party be published promptly in such a manner as to enable governments and traders to become acquainted with them and to administer them in a uniform, impartial and reasonable manner;

(c) Article 18.4 of the AD Agreement, which requires each Member to take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into

force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the AD Agreement; and

(d) Article XVI:4 of the WTO Agreement, which requires Members to ensure the conformity of their laws, regulations and administrative procedures with their obligations as provided in the annexed Agreements.

Brazil's measures identified in this request also appear to nullify or impair benefits accruing to Argentina directly or indirectly under the cited Agreements. For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures.

On 26 December 2006, the Government of Argentina requested consultations with the Government of Brazil pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of GATT 1994, and Article 17 of the AD Agreement (WT/DS355/1). Argentina and Brazil held such consultations on 1 February 2007, covering the measures at issue in this request. These consultations provided some helpful clarifications, but unfortunately did not resolve the dispute.

Accordingly, Argentina respectfully requests, pursuant to Article XXIII of the GATT 1994, Articles 4.7 and 6 of the DSU, and Article 17.4 of the AD Agreement, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU. Argentina further asks that this request for a panel be placed on the agenda for the next meeting of the Dispute Settlement Body to be held on 20 June 2007.