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

Request for Consultations by Brazil

The following communication, dated 20 March 2002, 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) and Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

This request pertains to the "Equalizing Excise Tax" imposed by the State of Florida on processed orange and grapefruit products produced from citrus fruit grown outside the United States – Section 601.155 Florida Statutes.

Measure at Issue

Since 1970, the State of Florida has imposed, pursuant to section 601.155 of the Florida Statutes, an "equalizing excise tax" on processed orange and processed grapefruit products, in amounts determined by the Florida Department of Citrus. However, the statute by its terms – Section 601.155(5), Florida Statutes – exempts from the tax products "produced in whole or in part from citrus fruit grown within the United States". The incidence of this tax on imported processed citrus products and not on domestic products on its face constitutes a violation of Articles II:1(a), III.1 and III:2 of GATT 1994.

Although the "equalizing excise tax" purports to tax imported processed citrus products at the same rate as the tax on Florida-grown citrus fruit imposed by section 601.15 of the Florida Statutes, that tax does not apply to fruit grown in the United States outside of Florida. Indeed, there is no tax whatever on domestic citrus products made from fruit grown outside of Florida. This is a clear violation of Article III:2 of GATT 1994. Moreover, even with respect to the tax on Florida-grown citrus fruit, Article III:2 is violated because "citrus fruit" from Florida and imported "processed citrus products" are not like products.

The equalizing excise tax also taxes imported citrus products at a higher *ad valorem* rate than it taxes Florida fruit, in violation of the second sentence of Article III:2 and, by reference, in violation of Article III:1 of GATT 1994. The rates that apply to imported juice are also, in effect, higher than those that apply to Florida fruit.

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The proceeds of the tax also are directed, by statute, to the advertising and promotion of Florida grown citrus and citrus products, with no promotion of imported citrus or citrus products. This violates Articles III:4 and III.1 of GATT 1994.

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 restraint on their importation by the State of Florida constitutes a nullification and impairment of benefits accruing to Brazil under GATT 1994.

In light of the DSU provisions governing this matter, my authorities look forward to receiving in due course a reply from the United States to this request. Brazil is ready to consider with the United States mutually convenient dates to hold consultations in Geneva.

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

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