



9 January 2020

(20-0186)

Page: 1/3

Original: English

BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES

UNDERSTANDING BETWEEN BRAZIL AND JAPAN REGARDING PROCEDURES
UNDER ARTICLES 21 AND 22 OF THE DSU

The following communication, dated 27 December 2019, from the delegation of Brazil and the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

Brazil and Japan would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes" between Brazil and Japan with respect to the dispute *Brazil – Certain Measures Concerning Taxation and Charges (WT/DS497)*.

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

Agreed Procedures under Articles 21 and 22 of the Understanding on Rules and Procedures governing the Settlement of Disputes

Brazil – Certain Measures Concerning Taxation and Charges (WT/DS497)

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *Brazil – Certain Measures Concerning Taxation and Charges* (WT/DS497) on 11 January 2019.

Pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Brazil and Japan agreed that the reasonable period of time to implement the recommendations and rulings of the DSB in this dispute shall be eleven (11) months and twenty (20) days, expiring on 31 December 2019. With regard to the subsidies that were found to be prohibited, Brazil and Japan 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on Subsidies and Countervailing Measures ("SCM Agreement"), the time period within which these measures must be withdrawn would be five (5) months and ten (10) days from the date of adoption of the recommendations and rulings of the DSB, which expired on 21 June 2019 (WT/DS497/13).

Brazil and Japan (collectively, "the Parties") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes and are without prejudice to either Party's views on the correct interpretation of the DSU, and without prejudice to any other arrangements that may be agreed separately among the parties:

1. Should Japan consider that the situation described in Article 21.5 of the DSU exists, Japan will request that Brazil enter into consultations with Japan. The Parties agree to hold such consultations within 15 days from the date of receipt of the request. After this 15-day period has elapsed, Japan 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 Japan'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 of 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 that a division of the Appellate Body can be composed to hear this dispute upon 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 the reports of the Appellate Body and of the Article 21.5 panel (as modified by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
6. Japan 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 with the recommendations and rulings does not exist or is inconsistent with a covered agreement. This is without prejudice to Brazil's right to refer the matter to arbitration in accordance with Article 22.6 of the DSU.
7. If Japan requests 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, 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.

8. 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.

9. If any of the original panelists 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 panelist 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.

10. 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 endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.
