

UNITED STATES – SUBSIDIES ON UPLAND COTTON

Recourse to Article 7.9 of the SCM Agreement
and Article 22.2 of the DSU by Brazil

The following communication, dated 6 October 2005, from the delegation of Brazil to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 7.9 of the SCM Agreement and Article 22.2 of the DSU.

Brazil requests that the following item be included in the agenda of the meeting of the Dispute Settlement Body (the "DSB") to be held on 18 October 2005:

"United States – Subsidies on Upland Cotton" (DS267)

- A. Recourse to Article 7.9 of the Agreement on Subsidies and Countervailing Measures and Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes by Brazil

Background

On 21 March 2005, the Dispute Settlement Body (the "DSB") adopted the Appellate Body report and the Panel report in this dispute. The Appellate Body upheld the Panel's finding that the United States, through the effect of certain price-contingent subsidies, caused significant price suppression in the world upland cotton market, within the meaning of Article 6.3(c) of the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement"), constituting serious prejudice and adverse effects to the interests of Brazil within the meaning of Article 5(c) of the same Agreement. The recommendations and rulings of the DSB include the recommendation that the United States take appropriate steps to remove the adverse effects of certain subsidies or withdraw these subsidies within six months from the date of adoption of the Panel and Appellate Body reports. The subsidies in question include marketing loan programme payments, user marketing (Step 2) payments, market loss assistance payments and counter-cyclical payments.

The compliance period expired on 21 September 2005. Pursuant to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU") and Article 7.9 of the SCM Agreement, Brazil hereby requests that the DSB, in its meeting of 18 October 2005, grant Brazil authorization to take countermeasures in the annual amount of US\$ 1.037 billion until such time as the United States withdraws the above-mentioned subsidies or removes their adverse effects.

In principle, these countermeasures would take the form of suspension of tariff concessions and related obligations under the GATT 1994 by means of the imposition of additional import duties on a list of products imported from the United States, to be defined by Brazil.

However, Brazil considers that it is not practicable or effective to suspend concessions or other obligations exclusively with respect to the same sector/agreement as that in which the Panel and the Appellate Body have found the violations. Brazil also considers that the circumstances are serious enough to justify the suspension of concessions or obligations under other covered agreements. These considerations are further explained below.

Suspension of concessions and obligations under Article 22.3(c) of the DSU

It is neither practicable nor effective for Brazil to suspend concessions and other obligations on imports of US goods up to a value of approximately US\$ 1 billion, when, in 2004, the total value of these imports amounted to US\$ 11.3 billion.

First, the imposition of additional import duties negatively affects the cost of inputs and capital goods to Brazilian industry. As a developing country, Brazil cannot place itself at a competitive disadvantage in domestic and international markets. Second, the rise in import costs will inevitably have a significant negative impact on current efforts to control inflation. Given the asymmetries between the two economies, additional import duties would have a much greater negative impact on Brazil than on the United States.

Additionally, in Brazil's view, the United States continuing non-compliance renders the circumstances "serious," within the meaning of Article 22.3(c) of the DSU, given that Brazilian producers of upland cotton will continue to suffer serious losses so long as the United States does not withdraw the measures at issue or remove their adverse effects.

Summary of countermeasures

For the reasons given above, Brazil intends to take countermeasures in the form of the suspension of tariff concessions and related obligations under the GATT 1994 by imposing additional customs duties on a list of products imported from the United States, to be defined by Brazil.

Given that Brazil considers that it is not practicable or effective to limit countermeasures to additional import duties, and considering that the circumstances are serious enough, Brazil may, to the extent necessary, resort to countermeasures in the form of suspension of obligations under the following sections of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights:

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| Section 1: | Copyright and related rights |
| Section 2: | Trademarks |
| Section 4: | Industrial designs |
| Section 5: | Patents |
| Section 7: | Protection of undisclosed information. |

Likewise, Brazil may also suspend horizontal and/or sectoral concessions and obligations for any, some or all sectors contained in Brazil's Schedule of Specific Commitments (GATS/SC/13) under the General Agreement on Trade in Services. Those sectors are:

1. Business Services
2. Communication Services
3. Construction and Related Engineering Services

4. Distribution Services
 7. Financial Services
 9. Tourism and Travel Related Services
 11. Transport Services
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