Permanent Mission of Brazil
in Geneva
71, Avenue Louis-Casaï - 1216 Cointrin
Geneva - Switzerland

10 November 2004

H.E. Ambassador Amina Mohamed
Chairperson of the Dispute Settlement Body
WTO - Centre William Rappard (022-7395761)

Excellency,

In view of the next regular meeting of the Dispute Settlement Body, to be held on 24 November 2004, and pursuant to article 22.7 of the DSU, Brazil would like to request the inclusion of the following item on the agenda (Adoption of Report):

"UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000"

RECOURSE BY BRAZIL TO ARTICLE 22.7 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES.

The relevant Brazilian document to the item mentioned above is attached herewith.

Please accept, Excellency, the assurances of my highest consideration.

Paulo Estivallet de Mesquita

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Counsellor

cc: H.E. Ms Linnet F. DEILY, Permanent Representative of the US
H.E. Mr Don STEPHENSON, Permanent Representative of Canada
H.E. Alejandro JARA, Permanent Representative of Chile
H.E. Mr Carlo TROJAN, Permanent Representative of the European Communities
H.E. Mr Ujal Singh BHATIA, Permanent Representative of India
H.E. Mr CHOI Hyuck, Permanent Representative of Korea
H.E. Mr Shotaro Oshima, Permanent Representative of Japan

Mr Mateo DIEGO FERNANDEZ, Deputy Permanent Representative of Mexico to the WTO

Mr Evan ROGERSON, Director, WTO Council and TNC Division
Mr Bruce WILSON, Director, WTO Legal Affairs Division

Brazil requests that the Dispute Settlement Body consider, at the forthcoming meeting on 24 November 2004, the following agenda item:

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United States – Continued Dumping and Subsidy Offset Act of 2000

Recourse by Brazil to Article 22.7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

The Panel and the Appellate Body found that the Continued Dumping and Subsidy Offset Act of 2000 ('CDSOA') was inconsistent with the United States' 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, the Agreement on Subsidies and Countervailing Measures and the Marrakesh Agreement establishing the World Trade Organisation. On 27 January 2003, the Dispute Settlement Body ('DSB') adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. The United States stated that it intended to implement the recommendations and rulings of the DSB but failed to do so within the reasonable period of time, as determined by the arbitrator pursuant to Article 21.3 (c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ('DSU'), which expired on 27 December 2003.

Consequently, on 15 January 2004[1], Brazil requested the authorization to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in an amount to be determined every year on the basis of the amount of offset payments made to affected domestic producers in the latest annual distribution of anti-dumping and countervailing duties under the CDSOA.

[1] WT/DS217/20

On 23 January 2004, the United States objected to the level of suspension proposed and on 26 January 2004, pursuant to Article 22.6 of the DSU, the matter was referred to arbitration. On 31 August 2004, the arbitrator issued its decision as follows:

V. AWARD OF THE ARBITRATOR

5.1 For the reasons set out above, we determine that, in the matter *United States – Continued Dumping and Subsidy Offset Act of 2000 (Original Complaint by Brazil)*, the level of nullification or impairment suffered by Brazil in a particular year can be deemed to be equal to the total of disbursements made under the CDSOA for the preceding year relating to anti-dumping or countervailing duties paid on imports from Brazil, multiplied by the coefficient identified in Section III.D above.

5.2 Accordingly, we decide that the suspension by Brazil of concessions or other obligations in the form of the imposition of additional import duties on a final list of products originating in the United States covering, on a yearly basis, a *total value of trade* not exceeding, in US dollars, the amount resulting from the following equation:

> Amount of disbursements under CDSOA for the most recent year for which data are available relating to anti-dumping or countervailing duties paid on imports from Brazil at that time, as published by the United States' authorities.

multiplied by:

0.72

would be consistent with Article 22.4 of the DSU.

To date, the United States has still not implemented the recommendations and rulings of the DSB with respect to the CDSOA, and no mutually satisfactory solution has been reached.

Article 22.7 of the DSU provides that "the DSB shall be informed promptly of the decision of the arbitrators and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request." Therefore, Brazil hereby requests authorization from the DSB to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in the form of the imposition of additional import duties on a final list of products originating in the United States, at a level not exceeding every year 72% of the amount of CDSOA disbursements relating to anti-dumping or countervailing duties paid on imports from Brazil for the most recent year for which data are available at that time.

In this respect, Brazil is mindful of the notification specified in paragraph 5.3 of the arbitration award.