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Brazil vs. U.S. WTO Cotton Dispute

Brazil Threatens to Impose High Import Duties on U.S. Products

Brazil's government announced a bold initiative against the United States in retaliation for U.S. cotton subsidies earlier this month. On March 8, Brazil published a long list of U.S. goods subject to high import duties that will likely go into effect in 30 days, unless the two governments can reach an agreement before then. A second set of measures was just published on March 15 aiming at the U.S. pharmaceutical, movie and agriculture industries.

The World Trade Organization (WTO) determined in 2004 that subsidies to U.S. cotton producers were discriminatory. Last year, the WTO authorized Brazil to set \$829.3 million in annual penalties against the United States. A press release¹ from the Brazilian Ministry of Commerce regrets that Brazil is having to resort to retaliation, but argues that the country had to insist on its rights after a long battle trying to make the U.S. comply with the WTO determinations.

CAMEX Resolution No. 15: High Import Duties on Certain U.S. Goods

The Brazilian CAMEX resolution No. 15 imposes high import duties on 102 U.S. goods,² purposefully covering a wide range of products, from cosmetics to wheat, cars and, obviously, cotton products. Brazil's list includes products in sectors that minimally affect Brazil and mostly affect the U.S. The duty range from 12 percent (adhesive dressings) to 100 percent (cotton products). If the duties are indeed implemented, they would certainly affect a broad range of U.S. producers, exporters and Brazilian consumers. The CAMEX Resolution is valid for one year, although Brazilian government officials are making contradictory remarks about its validity. The press release from the Brazilian Ministry of Commerce indicates that the retaliation may be effective as long as the U.S. remains noncompliant with the WTO ruling.

The total value of the first retaliatory measure is estimated to be \$591 million per year. The remaining authorized \$238 million per year (to reach a total authorized WTO retaliation value of \$829.3 million) will be applied to the intellectual property and service sections.

(Footnotes)

¹ Press Release, Brazilian Ministry of Commerce, Industry and Development, available in Portuguese at <http://www.mdic.gov.br/sitio/interna/noticia.php?area=1¬icia=9644>.

² A non-official English version of the list is available at the website of the Brazilian Embassy in Washington D.C. (www.brasilemb.org)

CAMEX Resolution No. 16: The Cross-Retaliation on U.S. Intellectual Property Rights

The cotton dispute was one of the few disputes where the WTO authorized a country to cross-retaliate against the U.S. — trade retaliation in a different area than the one subject to the dispute. By amplifying the scope of the retaliation, Brazil could persuade U.S. domestic interests to lobby Washington to comply with the WTO ruling.

On March 15, 2010, the Brazilian government published the cross-retaliation measures in Brazil's Federal Register (CAMEX Resolution No. 16)³. Contrary to the first measure published on March 8, Brazil is inviting public comments from interested parties with respect to the suspension of concessions or obligations vis-à-vis certain U.S. intellectual property rights. Brazil is targeting U.S. pharmaceutical and agricultural products, and U.S. books and movies. After an analysis of the public comments, the Brazilian government will select a final set of measures. The selected measures will complement the first measures in the area of goods published on March 8.

The U.S. Commerce Secretary, Gary F. Locke, traveled to Brazil the day after the March 8 list was published; however, the trip had been scheduled for some time. Brazilian newspapers reported that the U.S. Secretary did not present any proposals to the Brazilian government to try to resolve the matter. Although a high ranking official of the U.S. government, Secretary Locke is not the one responsible for negotiating with Brazil in the WTO area, rather this is a role of the Office of the U.S. Trade Representative ("USTR"). The USTR released a short statement that it was "disappointed" and will continue to pursue negotiations with Brazil.

Now, it is a wait-and-see scenario.

(Footnotes)

³ Press Release, Brazilian Ministry of Commerce, Industry and Development, available in at <http://www.mdic.gov.br/sitio/interna/noticia.php?area=1¬icia=9657>