

***BRAZIL – CERTAIN MEASURES CONCERNING
TAXATION AND CHARGES***

(DS472 / DS497)

**EXECUTIVE SUMMARY
OF THE UNITED STATES OF AMERICA**

October 26, 2017

I. GATT 1994 ARTICLE III:8(b)¹

1. A measure conditioning an advantage, such as a subsidy, on the use of a domestic good would breach Article III:4. In light of Article III:8(b), Article III:4 must be interpreted as not prohibiting the provision of subsidies *because of* the exclusion of foreign producers as eligible subsidy recipients. Such a payment should not be understood, on the basis of this exclusion alone, to be in conflict with Article III:4 (including its requirement of national treatment for measures affecting the “use” of a product).

2. SCM Agreement Article 3.1(b) and GATT 1994 Article III share similar disciplines. Subsidies contingent on the use of domestic over imported products would be inconsistent with *both* provisions. The Panel thus correctly analyzed the disputed programs under both Article III and Article 3.1(b).

3. While Members must be free to define the domestic producers who are to receive subsidies, including the productive activities that make them a domestic producer, we consider that subsidies conditioned not solely on domestic production, but also the use of domestic products, fall outside Article III:8(b)’s derogation.

II. GATT 1994 ARTICLE III:4

4. The Panel found that “nested” PPBs—which require the use of inputs that themselves conform to another PPB—contain an explicit requirement to use domestic over imported goods. Brazil has not appealed these findings. Such a requirement is inconsistent with Article III:4.

III. SCM AGREEMENT ARTICLE 3.1(b)

5. With respect to intermediate goods, we note that if a measure *exempts* taxes, government revenue, otherwise due, is clearly foregone under SCM Agreement Article 1.1(a)(1)(ii). If a measure *suspends* taxes that are later paid, a financial contribution is still provided: at the time when government revenue would otherwise be due, it is foregone (albeit temporarily). In addition, implicit interest may also be foregone.

6. Brazil has not appealed the Panel’s factual findings regarding the disputed programs. Those facts show that the tax advantages under the programs are contingent on the use of domestic over imported goods under Article 3.1(b) with respect to nested PPBs.

¹ This executive summary contains a total of 382 words (including footnotes), and the U.S. third participant submission contains 3831 words (including footnotes).