UNITED STATES – ANTI-DUMPING ADMINISTRATIVE REVIEWS AND OTHER MEASURES RELATED TO IMPORTS OF CERTAIN ORANGE JUICE FROM BRAZIL

WT/DS382

OPENING STATEMENT OF THE UNITED STATES OF AMERICA AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL

July 15, 2010

Mr. Chairperson, members of the Panel:

1. On behalf of the U.S. delegation, I would like to thank you for agreeing to serve on the Panel.

2. Today in our statement we would like to focus on a few points concerning Brazil's arguments. First, we will discuss how Brazil is improperly trying to include measures which fall outside of the scope of the Panel's terms of reference. Second, we will refute Brazil's claims that the United States has acted inconsistently with obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Antidumping Agreement") or the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). In particular, a plain reading of the text of those agreements makes clear that there is no obligation to provide offsets outside of the context of average-to-average comparisons in original investigations. Indeed, reading the text to impose such obligations would render certain provisions of the Antidumping Agreement meaningless. In addition, with respect to the challenged "continued use" of "zeroing," Brazil has failed to show any basis for concluding that such alleged "ongoing conduct" exists or for a dispute settlement panel to make findings based on speculation about what measure may or may not exist in the future.

3. We recognize that this is not the first time a dispute settlement panel has considered the issue of "zeroing," that is, the alleged obligation to provide offsets for non-dumped transactions. On the one hand, as discussed at some length in the submissions before you, the Appellate Body has found in other disputes that "zeroing" in Article 9 assessment proceedings is inconsistent with provisions of the Antidumping Agreement and the GATT 1994. Reliance upon those findings is the cornerstone of Brazil's claims. On the other hand – as panels have found in those disputes, and as discussed fully in our first written submission – there is no textual basis for imposing the obligations that Brazil suggests. Consistent with the standard of review provided for in Article 17.6 of the Antidumping Agreement, and the responsibilities of panels provided for in the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), we ask this Panel to remain faithful to the text of the negotiated agreements and refrain from making the findings that Brazil suggests.

Standard of Review

4. Article 11 of the DSU generally defines a panel's task in reviewing the consistency with the covered agreements of measures taken by a WTO Member. In a dispute involving the Antidumping Agreement, a panel must also take into account the standard of review set forth in Article 17.6(ii) with respect to various permissible interpretations of a provision of the Antidumping Agreement.

5. The question under Article 17.6(ii) is whether an investigating authority's action rests upon a permissible interpretation of the Antidumping Agreement. Article 17.6(ii) confirms that there are provisions of the Agreement that "admit[] of more than one permissible interpretation." Where that is the case, and where the investigating authority's action rests upon one such interpretation, a panel is to find that interpretation consistent with the Agreement.[1]

6. Under Article 11 of the DSU, this Panel is charged with making an objective assessment of the matter before it, including an objective assessment of the facts and the conformity of the challenged measures with the relevant covered agreements, applying the customary rules of interpretation. The Panel cannot make findings or recommendations that add to or diminish the rights and obligations provided in the covered agreements.

7. Again, we are aware that the Appellate Body has rejected the view that the covered agreements do not impose an obligation to provide offsets in assessment reviews. However, the fact that for the Appellate Body there is an interpretation under which there would be an obligation to provide offsets is not a basis for concluding that no other interpretation is permissible. The very inclusion of Article 17.6(ii) confirms that the text of the Antidumping Agreement may be susceptible to more than one interpretation. To find that it is not possible to find that there are conflicting interpretations of the text[2] would mean depriving the second sentence of Article 17.6(ii) of meaning. If the permissible interpretations are all "harmonious" then it is difficult to see how a measure could be in conformity with only one of the interpretations. And it is not surprising that the Antidumping Agreement could be subject to more than one permissible interpretation. For example, in many instances, the text was drafted to cover varying and complex antidumping systems around the world. A number of previous panels that considered the issue have found that the interpretation that there is no obligation to provide offsets beyond the context of the average-to-average comparison methodology in investigations rests on a permissible interpretation of the Antidumping Agreement. Accordingly, it is difficult to understand how, if these various panels found that this interpretation is permissible, then it is

[1] *See* Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, WT/DS241/R, adopted 19 May 2003, para. 7.341 and n. 223.

[2] *See* Appellate Body Report, *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R, adopted 19 February 2009, para. 273.

not permissible.

Scope of This Dispute

8. The United States has requested a preliminary ruling that two of the measures identified in Brazil's panel request are outside the Panel's terms of reference. Today we will briefly discuss our concerns and respond to a few points that Brazil raised in its July 2 submission.

9. Brazil suggests that the scope of a dispute includes any measure, adopted at any time (from before consultations through implementation), as long as the measures share the same "essence" or "close substantive connections" and together "manifest a common 'problem' that the complaining Member's claims are seeking to 'fix'." Such a sweeping approach is not based in the text of the DSU.

10. The Appellate Body has explained that the identification in a panel request may be considered to include subsequent measures in more limited circumstances, namely where those measures do not change the essence of the measure properly identified in the panel request.[3] However, this is not the case here. Each administrative review is separate and distinct from the reviews that proceed or follow it. With respect to the second administrative review, it is not a measure with the same "essence" as the first administrative review – it is a distinct measure dealing with different entries during a different period of time with different results. The final results of one administrative review do not apply to entries of merchandise for any other review. The fact that the second administrative review is a distinct measure is confirmed by Article 17 of the Antidumping Agreement which requires that there have been "final action" to "levy antidumping duties." The "final action" under the second administrative review is distinct from the "final action" under the first administrative review.

11. In addition, with respect to Brazil's claims concerning the "continued use of the U.S. 'zeroing procedures,'" this is not a "measure" that even exists currently. Brazil purports to include in this "measure" an indefinite number of future proceedings, none of them in existence, and any findings with respect to any such hypothetical future measure would be based only on speculation. Not only is it not possible to have consulted on a measure not in existence or to "identify" a "specific" non-existent measure, but any findings based only on speculation also could not comport with an "objective assessment" of the matter.

12. Moreover, the "essence" of a non-existent measure is nothing but speculation. In that vein, it should be noted that, apart from the *US – Zeroing II* dispute, the cases cited by Brazil in support of its broad approach to a panel's jurisdiction address situations in which the challenged "future" measures were in fact in existence, such that there was a measure that the panel could

[3] *See* Appellate Body Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207/AB/R, adopted 23 October 2002, para. 139.

evaluate. This is not the case here with respect to the "continued use of the U.S. 'zeroing procedures.'" Rather, Brazil requests the Panel to speculate as to whether any such measure will come into existence, what that measure will consist of, and find inconsistent an indefinite number of measures that do not exist. It is not known whether any of these hypothetical future measures will even reflect "use of the U.S. 'zeroing procedures.'" For example, there may be no negative value comparisons that could be "zeroed," such that neither the margin of dumping nor the duties assessed will reflect "zeroing." (Indeed, as discussed in our first written submission, the facts Brazil itself presents bear this out.) The Panel of course is unable to analyze any such future measure since there are no details or specifics to analyze.

13. Brazil's assertion that such an indeterminate measure could be within a panel's terms of reference is based on the reasoning of the Appellate Body in the *US – Zeroing II (EC)* dispute.[4] As just explained, however, we fail to see how a reference to the "continued use of the U.S. 'zeroing procedures' in successive anti-dumping proceedings" can in any way meet the requirement of Article 6.2 of the DSU to identify the specific measures at issue. Whether something is a "measure" goes to the very question of what a Member may challenge under the DSU, and therefore what may fall within a panel's terms of reference. If something is not a "measure," then it is not, and cannot be, a measure "specifically" identified within the meaning of Article 6.2. Brazil may wish to be free of needing to provide evidence as to the existence, content and relationship of any future measure to the WTO agreements, but that is not consistent with the WTO dispute settlement system.

14. Furthermore, Article 17.4 of the Antidumping Agreement provides that, if consultations have failed, and if "final action" has been taken by the administering authorities of the importing Member to levy definitive antidumping duties or to accept price undertakings, a Member may refer "the matter" to dispute settlement. At the time of Brazil's consultations request, neither the second administrative review nor the alleged "continued use of the U.S. 'zeroing procedures'" involved a final action to levy definitive antidumping duties or accept price undertakings. (While provisional measures may also be challenged in certain circumstances, Brazil has made no allegations in this regard.) Including the second administrative review and "continued use" within the terms of reference would ignore the fact that, for any given importation, the imposition of antidumping duties is grounded in a specific final action.

15. The United States first requests a preliminary ruling that the "Second Administrative Review," which appeared in Brazil's panel request but was not the subject of consultations, is outside the Panel's terms of reference. Under Article 7.1 of the DSU, the measures within a panel's terms of reference are determined by the complaining party's request for the establishment of a panel. Article 6.2 in turn provides that a panel request must "identify the specific measures at issue" in a dispute. Under Article 4.7, however, a Member may not request

[4] *See* Appellate Body Report, *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R, adopted 19 February 2009, paras. 168-171.

the establishment of a panel with respect to any measure, but only with respect to a measure that was subject to consultations. Article 4.4 requires that the request for consultations state the reasons for the request, "including identification of the measures at issue and an indication of the legal basis for the complaint." As the United States explained in its first written submission, the Antidumping Agreement contains parallel requirements in Articles 17.3 through 17.5.

16. The covered agreements therefore establish a clear progression between the measures that are discussed in consultations conducted pursuant to Article 4.4 of the DSU and the measures identified in a request to establish a panel, which, in turn, form the basis of the panel's terms of reference. This is not a question of form over substance. Under the relevant provisions in the DSU and the Antidumping Agreement just discussed, a panel's terms of reference cannot include measures that were not the subject of a request for consultations.

17. Brazil seeks to include the second administrative review in this dispute. However, the final determination in the second administrative review was issued after Brazil's request for consultations, and even after those consultations were held. It was not, and could not have been, the subject of consultations and is therefore outside this Panel's terms of reference. Brazil's argument to the contrary is based on its assertion that the second administrative review "has the same essence as" the first administrative review. However, as explained earlier, the second administrative review is not essentially the same measure as the first administrative review, and is not within the scope of this dispute.

18. The United States also asks that the Panel find that Brazil's reference in its panel request to the "continued use of the U.S. 'zeroing procedures' in successive anti-dumping proceedings" does not meet the specificity requirement of DSU Article 6.2. As I just noted, by including this purported "measure" in its panel request, Brazil is merely speculating as to what might happen in the future, and speculation as to what might happen is not identification of a specific measure.

19. In addition, Article 3.3 of the DSU contemplates the "prompt settlement of situations where a Member considers that any benefits accruing to it directly or indirectly under the covered agreements *are being impaired*" by another Member's measures.[5] While it appears that Brazil is challenging an indeterminate number of future measures by identifying "the continued use" in its panel request, a non-existent measure cannot be impairing any such benefits and cannot fall within the scope of a dispute.

20. Finally, we note that Brazil makes repeated references to what it suggests is the desired remedy in this dispute as justifying the expansion of the scope of this proceeding. First, there have been no recommendations and rulings yet in this dispute. Moreover, a Member's desired

[5] DSU Article 3.3 (emphasis added); Panel Report, *United States – Subsidies on Upland Cotton*, WT/DS267, adopted 21 March 2005, as modified by the Appellate Body Report, WT/DS267/AB/R, paras. 7.158-7.160.

remedy (whatever that may be) does not dictate a panel's jurisdiction and does not provide a basis for departing from the requirements of the DSU. In determining its terms of reference, a panel does not start from what the complaining Member describes as the appropriate relief and work backwards. Rather, the Panel should be guided by the requirements of the DSU, including the requirement to identify the specific measures at issue.

The Claimed Obligation to Provide Offsets

21. We now turn to comments related to Brazil's argument that the Antidumping Agreement contains an obligation to provide offsets for instances of non-dumping in the context of assessment proceedings. Brazil argues that the Antidumping Agreement imposes on Members an obligation to provide an offset to dumping in all types of antidumping proceedings, including assessment proceedings. The key issue here is whether the text of the Antidumping Agreement actually contains such an obligation that applies in assessment proceedings. The starting point must be what the text of the Agreement actually says. It is fundamental that a treaty interpreter must not impute into an agreement words and obligations that are not contained in the text. In this dispute, Brazil asks this Panel to read an obligation into the Antidumping Agreement, notwithstanding the fact that there is no textual basis for the obligation that Brazil proposes.

22. In particular, Brazil seeks to infer an obligation to reduce antidumping duties to account for instances of non-dumping. This treats non-dumped imports as though they were a remedy for dumped imports. Brazil does so despite the absence of a textual basis for such an obligation and despite the presence of a permissible interpretation of the Antidumping Agreement that does not require such offsets.

23. In the disputes to date that have addressed the issue of offsets, the only textual basis panels have identified for an obligation to provide offsets has been the "all comparable export transactions" language in the text of Article 2.4.2 of the Antidumping Agreement. This is entirely consistent with the approach articulated by the Appellate Body in *US – Softwood Lumber Dumping*. The phrase "all comparable export transactions" in Article 2.4.2 applies only to antidumping investigations and only when authorities use average-to-average comparisons pursuant to Article 2.4.2. Panels have consistently characterized as persuasive the argument that the obligation to provide offsets applies only as a consequence of the text-based obligation to include all comparable export transactions when making weighted-average to weighted-average comparisons in an investigation. With respect to the argument that there is an obligation to provide offsets outside the context of average-to-average comparisons in investigations, the panels addressing this question have consistently reasoned that there is no textual basis for such an obligation. The analysis offered by the prior panels is persuasive and correct.

24. Article 2.4.2 provides for three different types of comparisons: two symmetrical comparison types, average-to-average and transaction-to-transaction; and, a third asymmetrical comparison type, average-to-transaction, which may be used under certain conditions. With

respect to the average-to-average comparisons, the phrase "all comparable export transactions," as interpreted by the Appellate Body in *US – Softwood Lumber Dumping*, addresses whether the relevant comparison may be made at the level of averaging groups (or "models"). Under this reading, the word "all" in "all comparable export transactions" refers to all transactions across all models of the product under investigation. This is the textual basis for the conclusion that margins of dumping based on average-to-average comparisons must relate to the "product as a whole" rather than individual averaging group comparisons. This phrase, "all comparable export transactions," however, applies only to the use of average-to-average comparisons in an investigation. It does not apply to the use of transaction-to-transaction or average-to-transaction comparisons, which will necessarily result in multiple comparisons where there are numerous transactions because each export transaction will result in its own separate comparison. The text of Article 2.4.2 does not address whether or how a Member should aggregate the results of such multiple comparisons into a single overall margin of dumping.

25. A general prohibition of zeroing that applies in all proceedings and with respect to all comparison types would negate and contradict the interpretation of the phrase "all comparable export transactions" that was the basis of the obligation to provide offsets in the context of average-to-average comparisons, and for the conclusion that the margin of dumping must be calculated for "the product as a whole."

26. In this case, Brazil argues that margins of dumping calculated in assessment proceedings must relate to the "product as a whole," and cannot be calculated for individual transactions. However, "product as a whole" is not a term found in the Antidumping Agreement, nor does it have any defined meaning. Furthermore, to the extent the concept of "product as a whole" has any relevance to the Antidumping Agreement, it is only as a shorthand for the operation of the phrase "all comparable export transactions" in the context of average-to-average comparisons in investigations. And Brazil's argument relies entirely on the concept of "product as a whole" being applied in a manner detached from that underlying textual basis.

27. Brazil offers no textual analysis to support its claim that offsets are required by Article 2.1 of the Antidumping Agreement and Article VI of the GATT 1994. This is because the text of these provisions defines and describes dumping as occurring in the course of individual commercial transactions. Prices are generally set in individual transactions, and products are "introduced into the commerce" of the importing country in individual transactions. In other words, dumping – as defined under these provisions – may occur in a single transaction. This is entirely consistent with the exporter-specific understanding of dumping because individual transactions are also exporter-specific. There is nothing in either the GATT 1994 or the Antidumping Agreement that suggests that dumping that occurs with respect to one transaction is mitigated by the occurrence of another transaction made at a non-dumped price. To the extent that some transactions introduce merchandise into the market of an importing country at a price above normal value, this benefits the seller, but does not undo the effects on the domestic industry of other (dumped) transactions made at less than normal value.

28. Nevertheless, Brazil asserts that dumping and margins of dumping "are defined in relation to a product under investigation as a whole, encompassing all of the export transactions of the product pertaining to an investigated exporter, and they cannot be found to exist only for a type, model, or category of that product." The Appellate Body reports relied upon by Brazil for this proposition are unpersuasive because they cannot alter the simple fact that the relevant text of these provisions, the relevant context for interpreting the meaning of these terms, and the well-established prior understanding of these concepts all confirm that dumping and margins of dumping do have a meaning in relation to individual transactions. Our written submission sets forth the textual, contextual, and other evidence that the concepts of dumping and margins of dumping, as defined in the Antidumping Agreement and GATT 1994, are applicable to individual transactions. That evidence is too extensive to describe in this brief statement, but it cannot be ignored. It conclusively establishes that the terms dumping and margins of dumping as used in Article 2.1 of the Antidumping Agreement and Article VI of the GATT 1994 do not support the existence of an obligation to provide offsets for instances of non-dumping in assessment proceedings.

29. Brazil has not demonstrated any inconsistency with Article 9.3 of the Antidumping Agreement or Article VI:2 of the GATT. Article 9.3 requires that the amount of the antidumping duty assessed shall not exceed the margin of dumping. The term "margin of dumping" may be applied to individual transactions; individual transactions are both the means by which less than fair value prices are determined and by which the product is introduced into commerce. Antidumping duties are similarly assessed on individual entries resulting from those individual transactions. The obligation in Article 9.3 to assess no more in antidumping duties than the margin of dumping, just like the term "margin of dumping" itself, may be applied at the level of individual transactions.

30. In this same vein, Brazil attempts to tie an obligation to provide offsets to a determination of injury, arguing that "injury cannot be found to exist in relation to an individual transaction, but only for the *product as a whole*." However, Brazil's argument actually reinforces the interpretation that any such obligation would be limited to the context of investigations. This is because, in contrast to investigations, there is no obligation to address existence of injury in Article 9.3 duty assessment proceedings.

31. In addition, Brazil's interpretation of Article 9.3, requiring that antidumping duty liability be determined for the product "as a whole," cannot be reconciled with the specific provision in Article 9 that recognizes the existence of prospective normal value systems of assessment. Under such systems, the amount of liability for payment of antidumping duties is determined at the time of importation on the basis of a comparison between the price of the individual export transaction and the prospective normal value. If the margin of dumping must relate exclusively to the "product as a whole", as Brazil argues, the administration of such an assessment system is simply an impossibility. This is because, among other reasons, future transactions that would

need to be taken into account in such a margin of dumping would not yet have occurred. An obligation to account for other imports in assessing antidumping duties on a particular entry is contrary to the very concept of a prospective normal value system and, if accepted, would effectively render prospective normal value systems WTO-inconsistent unless they were converted to a retrospective system by adopting periodic retrospective assessment reviews.

32. Antidumping duties are applied at the level of individual entries for which importers incur the liability. In this way, an importer's cost of acquiring the entered merchandise is the sum of the dumped price and the antidumping duty. Accordingly, the importer has an incentive to raise resale prices to cover the full normal value of the merchandise, thereby providing an effective remedy for the dumping. If, instead, the amount of the antidumping duty must be reduced to account for the amount by which some other transaction was sold at above normal value, possibly involving an entirely different importer, then the antidumping duty will be insufficient to have this effect. The importer would remain in a position to profitably resell the exporter's dumped product at a price that continues to be less than normal value. For this reason, if Brazil's reading of "margin of dumping" is accepted as the sole permissible interpretation of Article 9.3, the remedy provided under the Antidumping Agreement and the GATT 1994 will be prevented from fully addressing dumping.

33. In addition, as the panel in *US – Softwood Lumber Dumping (21.5)* observed, and as described in detail in our written submission, providing offsets creates perverse incentives and "absurd results" that undermine the remedial effect of antidumping duties.

34. With respect to all of the relevant provisions of the Antidumping Agreement and the GATT 1994, any interpretation that gives rise to a general prohibition of zeroing also renders the second sentence of Article 2.4.2 inutile. This is because the exceptional methodology provided for in Article 2.4.2 mathematically must yield the same result as an average-to-average comparison if, in both cases, non-dumped comparisons are required to offset dumped comparisons.

Brazil Has Not Satisfied Its Burden of Proving That "Zeroing" Was Applied To, Or Had An Impact On, The Challenged Margins Of Dumping

35. As detailed in our first submission, Brazil has also failed to make a *prima facie* case as to the facts for certain of its claims. Specifically, Brazil has challenged the calculation of dumping margins determined for two respondents, Fischer and Cutrale, in two administrative reviews. However, aside from the fact that the second administrative review is outside the Panel's terms of reference, in each of the reviews, the margin was zero or *de minimis* for one of these two respondents. Consequently, Brazil cannot establish that the margin should have been any lower to be consistent with the covered agreements.

36. Moreover, with respect to the assessment for Fischer in the first administrative review,

Brazil has failed to meet its burden of proof because the exhibits Brazil submitted in support of its claim, the purported computer program logs of Commerce's calculations, are not the actual logs created by Commerce. Indeed, they cannot be, as they were run almost two years after the end of the first administrative review. We understand that Brazil has tried to address this issue today, but we have not yet had an opportunity to review the documents provided by Brazil.

The "Continued Use Of the U.S. 'Zeroing Procedures'"

37. Brazil's claim with respect to the "continued use of the U.S. 'zeroing procedures'" should also be rejected. Aside from the fact that this alleged "measure" is outside the Panel's terms of reference, as explained in our first written submission, even were there an obligation to provide offsets outside the context of average-to-average comparisons in investigations, there is no basis for concluding that such "continued use" constitutes "ongoing conduct" that violates Article VI:2 of the GATT 1994 or Articles 2.4.2 and 9.3 of the Antidumping Agreement.

38. First, Brazil's own evidence refutes its claim that "zeroing" had any impact on the dumping margins in the original investigation. As such, even applying Brazil's interpretations of the relevant provisions of the covered agreements, there is no basis for finding the margins in the original investigation were inconsistent with any provision of the covered agreements.

39. The evidence with respect to each of the first and second administrative reviews also undermines Brazil's claims regarding the alleged "continued use" of "zeroing." One of the two companies reviewed had a *de minimis* margin in the first administrative review, which Commerce essentially treats as zero. One of the two companies reviewed had a zero margin in the second administrative review.

40. Thus, each of the proceedings concluded to date in the orange juice case – the investigation, the first administrative review, and the second administrative review – include margins that were not impacted (or "inflated") by "zeroing." As explained in our submission, at most Brazil has shown that "zeroing" applied to one company in one proceeding covering a one-year period. This does not reflect a sequential string of determinations applying "zeroing," contrary to Brazil's assertion. It does not provide a basis for in turn projecting that the United States will act inconsistently in the future with respect to measures that may never come into existence.

41. As noted in our first written submission, our experience in the *US – Zeroing II (EC)* dispute demonstrates further that there is no basis to assume that "zeroing" will be used in any antidumping proceeding. In that dispute, the Dispute Settlement Body adopted recommendations and rulings with respect to the use of "zeroing" in four original investigations. Commerce then issued new determinations with respect to those four investigations. In doing so, however, Commerce discovered that in three of the four investigations there were no offsets to provide (that is, there was no "zeroing") because all of the comparisons demonstrated dumping, or the

rates determined in the original determinations were based upon facts available rates that did not involve "zeroing." As such, the dumping margins did not change in Commerce's new determinations. Accordingly, among the many problems under Brazil's approach would be the fact that any recommendation with respect to a future measure would need to be conditioned on the use of zeroing, but there would be no mechanism to determine if that condition were fulfilled – that is, if zeroing were in fact used in any individual proceeding.

42. As noted in our first written submission, we have serious concerns about the approach taken by the Appellate Body in the *US – Zeroing II (EC)* dispute. However, because Brazil relies heavily upon the Appellate Body's reasoning in that dispute, it bears repeating that, as a factual matter, there is no basis for such an approach in this case. The facts of this case are not "virtually identical" to the cases in that dispute found to be WTO-inconsistent. They are instead more similar to the cases where the evidence was considered insufficient to support such a finding.

43. In summary, even were the alleged "continued use of the U.S. 'zeroing procedures'" within the Panel's terms of reference, Brazil has failed to establish that any such "ongoing conduct" exists or is likely to continue into the future. Brazil has not and cannot demonstrate a basis for concluding that any measures that may come to be with respect to imports of orange juice will involve the application of "zeroing" and be inconsistent with the covered agreements. It has not shown that to be the case in past proceedings, and what might happen in future proceedings is only speculation.

44. Mr. Chairman, members of the Panel, this concludes our opening statement. We would be happy to respond to any questions you might have.