

E-ALERT | International Trade

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BRAZIL ANNOUNCES RETALIATORY TARIFFS ON 102 U.S. PRODUCTS AND COULD RETALIATE BROADLY AGAINST U.S. INTELLECTUAL PROPERTY AND SERVICES

The Brazilian Government issued today a list of 102 U.S. products that it plans to subject to increased tariffs. This marks the latest move by Brazil in its ongoing challenge to U.S. cotton subsidies in the World Trade Organization (WTO). The WTO already has found that U.S. cotton subsidies are inconsistent with WTO obligations and has authorized Brazil to retaliate against the United States as long as the U.S. remains out of compliance.

Significantly, the WTO took the unusual step of authorizing Brazil to “cross-sector retaliate,” by which Brazil could choose to suspend its WTO obligations as they pertain to U.S. intellectual property and services. Such retaliation could have serious consequences for U.S. sectors that rely heavily on intellectual property, such as pharmaceuticals, information technology, and entertainment. Although Brazil has focused its public remarks on intellectual property, U.S. service sectors also could be in jeopardy of seeing their market access to Brazil withdrawn or curtailed.

WTO Decision Authorizing Cross-Sector Retaliation

In August 2009, a WTO arbitration panel issued a decision authorizing Brazil to enact “countermeasures” in response to the United States’ failure to bring its cotton subsidies into compliance with WTO obligations. The arbitrators approved a formula for Brazil to calculate a variable, annual level of retaliation based on U.S. export subsidies in a given year. Using 2006 subsidy figures, Brazil was authorized to retaliate up to \$294.7 million annually.

The Brazilians have argued, however, that given increases in U.S. cotton subsidies after 2006, the authorized level of retaliation based on the arbitrators’ formula is currently more than \$800 million annually. This higher figure gives Brazil the opportunity to move beyond raising tariffs on U.S. goods and to suspend its intellectual property and services commitments vis-à-vis the United States. Specifically, Brazil is authorized to suspend obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and services commitments under the General Agreement on Trade in Services (GATS). This is a rare and significant authorization that could have far-ranging consequences for U.S. intellectual property rights holders in many areas of technology, as well as U.S. service providers in almost every sector, from distribution to financial services.

Brazil’s Recent Actions to Retaliate

Under the WTO arbitration formula, Brazil has calculated that it has the right to retaliate in the amount of \$829 million annually (based on 2008 figures), including \$591 million in retaliation in the goods sector and the remaining \$238 million in the sectors of intellectual property and services, according to a press release issued by the Brazilian Government today.

Higher Tariffs

Brazil issued a final list of 102 U.S. products that will face higher tariffs. The list raises tariffs on a wide range of U.S. exports, from wheat and shampoo, to bar-code readers and other electronics. Brazil imposed the highest (100 percent) tariffs on cotton products, such as cotton trousers and shorts. A full list of the increased tariffs can be found in the attached document. Brazil announced that the new tariffs will take effect in 30 days.

Suspension of Intellectual Property Obligations

Brazil also has moved forward with plans to retaliate against U.S. intellectual property rights. In February 2010, the Brazilian Government issued a Provisional Measure which provides domestic legal authority for Brazil to implement cross-sector retaliation against U.S. intellectual property rights. The measure is written broadly and provides a wide range of options for taking action against U.S. rights holders, including: reducing the term of intellectual property protection; licensing technology without the authorization of the right holder (with or without remuneration); suspending a patent holder's exclusive right of importation; and assessing taxes on royalty payments.

Prospects for Retaliation

Whether Brazil decides to implement retaliation will depend, in part, on Brazil's assessment of whether the United States will seriously consider changes to the U.S. cotton program in order to comply with the WTO's ruling. Brazil's latest actions suggest that Brazil is seriously considering moving forward with retaliation in both the goods and intellectual property sectors.

While cross-sector retaliation has been authorized in two other WTO disputes, Brazil would be the first WTO member to execute such retaliation. Cross-sector retaliation raises serious policy concerns and economic consequences for U.S. companies. It is imperative that U.S. companies who could be affected by Brazil's retaliation, including the loss of their intellectual property rights in Brazil, understand these consequences and make their views known to U.S. policy makers.

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U.S.-COTTON DISPUTE
**LIST OF GOODS SUBJECT TO SUSPENSION OF BRAZIL'S
 CONCESSIONS AND OTHER OBLIGATIONS IN THE WTO**

Note: Brazil adopts the description contained in Mercosur Common Nomenclature (NCM), which is based on the Harmonized Commodity Description and Coding System (HS). The Mercosur Common Nomenclature has authentic versions in Portuguese and Spanish. The translation below is non-official and is provided for reference purposes only.

NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to U.S. goods only)
0303.51.00	Frozen Herrings (<i>Clupea harengus</i> , <i>Clupea pallasii</i>)	10%	30%
0402.10.10	Milk and cream in solid forms, of a fat content by weight of <= 1,5%, of an arsenic, lead or copper content, taken separately, of less than 5 ppm	28%	48%
0404.10.00	Whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter	28%	48%
0504.00.13	Guts of swine, fresh, chilled, frozen, salted, in brine, dried or smoked	8%	28%
0802.21.00	Fresh or dried hazelnuts or filberts <i>Corylus</i> spp., in shell	6%	26%
0802.31.00	Fresh or dried walnuts in shell	10%	30%
0802.32.00	Fresh or dried walnuts, shelled and peeled	10%	30%
0806.20.00	Dried grapes	10%	30%
0808.20.10	Fresh pears	10%	30%
0809.20.00	Fresh cherries	10%	30%
0809.40.00	Fresh plums and sloes	10%	30%
1001.90.90	Wheat and meslin (excl. seed and durum wheat)	10%	30%
1502.00.11	Fats of bovine animals, raw	6%	26%
1507.90.90	Other soya-bean oils	10%	30%
1514.11.00	Low erucic acid rape or colza oil, crude	10%	30%
1514.19.10	Low erucic acid rape or colza oil, refined	10%	30%
2005.20.00	Potatoes, prepared or preserved (excl. frozen)	14%	34%
2009.90.00	Mixtures of juices, unfermented	14%	34%
2103.20.10	Tomato ketchup and other tomato sauces in immediate containers holding not more than 1 kg	18%	38%
2103.90.91	Preparations for sauces and prepared sauces in immediate containers holding not more than 1 kg	18%	38%
2106.10.00	Protein concentrates and textured protein substances	14%	34%
2106.90.30	Preparations often referred to as food supplements	16%	36%
2106.90.50	Sugar-free chewing gum	16%	36%
2106.90.90	Other food preparations	16%	36%
2202.90.00	Other non-alcoholic beverages (excl. water, fruit or vegetable	20%	40%

NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to U.S. goods only)
	juices and milk)		
2303.20.00	Beet-pulp, bagasse and other waste of sugar manufacture	6%	26%
2905.11.00	Methanol (methyl alcohol)	12%	22%
2929.10.21	Isomer mixtures of toluene diisocyanates	14%	28%
3003.90.55	Medicaments containing paracetamol or bromopride, not in measured doses	14%	28%
3004.20.19	Medicaments containing amphenicols or their derivatives, put up in measured doses	8%	14%
3004.20.79	Other medicaments containing polypeptides or their derivatives, put up in measured doses	8%	14%
3004.39.39	Medicaments containing other oestrogens or progestogens, put up in measured doses	8%	14%
3004.40.90	Other medicaments containing alkaloids or derivatives thereof, not containing hormones, steroids used as hormones or antibiotics, put up in measured doses	8%	14%
3004.90.49	Other medicaments consisting of mixed or unmixed products, put up in measured doses	8%	14%
3005.10.90	Other adhesive dressings and other articles having an adhesive layer	0%	12%
3006.10.90	Other sterile surgical catgut and similar sterile suture materials for surgical wound closure	12%	22%
3303.00.20	Toilet waters	18%	36%
3304.10.00	Lip make-up preparations	18%	36%
3304.99.10	Beauty creams; tonic lotions	18%	36%
3304.99.90	Other beauty or make-up preparations and preparations for the care of the skin	18%	36%
3305.10.00	Shampoos	18%	36%
3305.90.00	Other preparations for use on the hair	18%	36%
3306.10.00	Dentifrices	18%	36%
3306.90.00	Other preparations for oral or dental hygiene	18%	36%
3307.10.00	Pre-shave, shaving or after-shave preparations	18%	36%
3307.20.90	Other personal deodorants and antiperspirants	18%	36%
3307.90.00	Other depilatories and other perfumery, toilet or cosmetic preparations	18%	36%
3401.19.00	Other soap and organic surface-active products and preparations	18%	36%
3402.90.39	Other surface-active and washing preparations	18%	36%
3923.30.00	Carboys, bottles, flasks and similar articles	18%	36%
4011.10.00	New pneumatic tyres, of rubber, of a kind used on motor cars (including station wagons and racing cars)	16%	32%
4011.20.90	Other new pneumatic tyres, of rubber, of a kind used for	16%	32%

NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to U.S. goods only)
	buses and lorries		
4908.90.00	Other transfers decalcomanias	16%	32%
5201.00.20	Cotton, neither carded nor combed, not further prepared than ginned	6%	100%
5201.00.90	Other types of cotton, neither carded nor combed	6%	100%
5203.00.00	Cotton, carded or combed	8%	100%
5208.21.00	Plain woven fabrics of cotton, containing $\geq 85\%$ cotton by weight and weighing ≤ 100 g/m ² , unbleached	26%	100%
5209.32.00	Woven fabrics of cotton, containing $\geq 85\%$ cotton by weight and weighing > 200 g/m ² , in three-thread or four-thread twill, incl. cross twill, dyed	26%	100%
5703.20.00	Carpets and other floor coverings, of nylon or other polyamides, tufted needle punched	35%	60%
5903.90.00	Textile fabrics impregnated, coated, covered or laminated with plastics other than polyvinyl chloride or polyurethane	26%	48%
6116.10.00	Gloves impregnated, coated or covered with plastics or rubber	35%	60%
6203.42.00	Men's or boys' trousers, bib and brace overalls, breeches and shorts, of cotton	35%	100%
6204.62.00	Women's or girls' trousers, bib and brace overalls, breeches and shorts of cotton	35%	100%
6303.92.00	Curtains, incl. drapes, and interior blinds, curtain or bed valances of synthetic fibres	35%	60%
6307.90.10	Other made-up articles of textile materials, of synthetic fibres	35%	60%
6307.90.90	Other made-up articles of textile materials	35%	60%
7113.19.00	Articles of jewellery and parts thereof, of other precious metal other or not plated or clad with precious metal	18%	36%
8212.10.20	Non-electric razors	18%	36%
8212.20.10	Safety razor blades of base metal	18%	36%
8418.40.00	Freezers, upright, not exceeding 900 litres capacity	20%	40%
8433.11.00	Mowers for lawns, parks or sports grounds, powered, with the cutting device rotating in a horizontal plane	18%	36%
8471.90.12	Bar-code readers	12%	22%
8506.80.90	Other primary cells and primary batteries, electric	16%	32%
8516.60.00	Other ovens; cookers, cooking plates, boiling rings, grillers and roasters, for domestic use	20%	40%
8517.12.31	Portable telephones for cellular networks (excl. satellite)	16%	32%
8518.10.90	Other microphones and stands therefor	20%	40%
8518.21.00	Single loudspeakers, mounted in their enclosures	20%	40%
8518.22.00	Multiple loudspeakers, mounted in the same enclosure	20%	40%
8518.30.00	Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or	20%	40%

NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to U.S. goods only)
	more loudspeakers		
8518.50.00	Electric sound amplifier sets	20%	40%
8521.90.90	Other video recording or reproducing apparatus	20%	40%
8525.80.19	Other television cameras	20%	40%
8525.80.29	Other digital cameras and video camera recorders	20%	40%
8527.21.90	Other radio-broadcast receivers, of a kind used in motor vehicles, combined with sound recording or reproducing apparatus	20%	40%
8528.49.29	Other colour cathode-ray tube monitors	20%	40%
8703.21.00	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $\leq 1,000 \text{ cm}^3$	35%	50%
8703.23.10	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $> 1,500 \text{ cm}^3$ but $\leq 3,000 \text{ cm}^3$, with a seating capacity of not more than 6, including the driver	35%	50%
8703.24.10	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $> 3,000 \text{ cm}^3$, with a seating capacity of not more than 6, including the driver	35%	50%
8703.24.90	Motor cars and other motor vehicles with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity $> 3,000 \text{ cm}^3$, with a seating capacity exceeding 6	35%	50%
8703.33.10	Motor cars and other motor vehicles with compression-ignition internal combustion piston engine diesel or semi-diesel engine of a cylinder capacity $> 2,500 \text{ cm}^3$, with a seating capacity of not more than 6, including the driver	35%	50%
8711.50.00	Motorcycles, incl. mopeds, with reciprocating internal combustion piston engine of a cylinder capacity $> 800 \text{ cm}^3$	20%	40%
8903.92.00	Motorboats, other than outboard motorboats	20%	40%
8903.99.00	Other vessels for pleasure or sports, including rowing boats	20%	40%
9004.10.00	Sunglasses	20%	40%
9008.30.00	Other image projectors	18%	36%
9018.32.19	Other tubular metal needles	16%	32%
9018.39.10	Other needles	16%	32%
9021.10.20	Splints and other fracture appliances	4%	14%
9021.39.80	Other artificial parts of the body	14%	28%
9102.11.10	Wrist-watches, whether or not incorporating a stop-watch facility, electrically operated, with mechanical display only with case of base metal	20%	40%
9403.70.00	Furniture of plastics	18%	36%

NCM Code	Description	Current Applied Tariff	Increased Tariff (applied to U.S. goods only)
9603.21.00	Tooth brushes, including dental-plate brushes	18%	36%