

GOVERNMENT CABINET

CHAMBER OF FOREIGN COMMERCE

RESOLUTION N^o. 16, OF MARCH 12TH 2010

THE PRESIDENT OF THE CABINET OF THE CHAMBER OF FOREIGN COMMERCE, using the power vested in him, taking note of the other Members, with grounds in the 2nd Article, I, 1st §, I, “a”, 2nd §, and in the 4th article, I, 7th § of Decree no. 4,732 of June 10th 2003 and of the 9th article of Executive Order No. 482 of February 10th 2010, resolves:

1st Article To commence, under the terms of Executive Order no. 482, of February 10th 2010, the process of public consultation regarding the suspension measures of concessions and obligations of Brazil concerning the intellectual property rights and other rights in relation to the United States of America, as a result of the non-compliance with the decisions and recommendations adopted by the World Trade Organization Dispute Settlement Body in the context of the controversial “United States of America – Cotton Subsidies”.

2nd Article The measures subject of the current consultation are additional to those predicted in Resolution no. 15 of CAMEX of March 5th 2010.

3rd Article The interested parties must respond within the deadline of 20 (twenty) days, counting from the publication of this Resolution, under the terms fixed in Annexes I to V.

4th Article This Resolution comes into force on its publication.

MIGUEL JORGE

ANNEX I – PURPOSE OF THE PUBLIC CONSULTATION

1. With the aim of assisting the implementation, separate or cumulative, of any suspension measures of concessions or other obligations of Brazil related to intellectual property and other rights (Annex III – “Draft of Measures”), the interested parties, preferably by means of Associations or Class Entities, will be able, within the deadline of 20 (twenty) days from the publication of this resolution, to deliver their responses by means of the completion of the Response Sheet (Annex V – “Response Sheet”). These measures will become effective on certain intellectual property rights, as well as on the remuneration that is due, and have the aim of affecting claimants, title-holders or licensed parties of intellectual property rights that are natural nationals of the United States of America or residents therein or companies resident therein or with an establishment in that country.

2. The printed format sheets should be sent to the Executive Secretary of the Chamber of Foreign Commerce by way of the General-Record of the Ministry for Development, Industry and Foreign Commerce, situated in the Ministerial Esplanade, Block “J”, Ground Floor, CEP (Postal Code) 70.053-900, Brasilia, Federal District, and by electronic means to the e-mail address: contenciosoalgodao@mdic.gov.br. Responses sent exclusively by electronic means will be discarded, the original printed version being necessary and which must also be signed.

3. With the object of consistency, the names of the files of the electronic replies must obey the following standard: name “Measure”, the symbol “_”, its number conforming to Annex III (with two digits), the symbol “_”, the letter “F” of “C”, indicating if the response is in favor or against, the symbol “_”, and the name of the respondent or their initials (example: Measure_03_F_AssociationXYZ.doc)

4. The responses of the interested parties must strictly observe the specified format on the sheet. Only Response Sheets in WORD (.doc) format will be accepted. Documents in any other format will be discarded.

5. Each completed Sheet must be restricted to a single measure.

6. The content of the Resolution and its Annexes, including the model Response Sheet that must be completed, will be available at the electronic address <http://www.mdic.gov.br>.

ANEX II – PRELIMINARY REPORT

1. In the process of dispute settlement carried out within the scope of the World Trade Organisation (WTO), the Panel and Appeal Body considered certain North American measures incompatible with Articles 3.1(a), 3.2, 6.3(c) and 5(c) of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) and with Articles 10.1 and 8 of the WTO Agreement on Agriculture. On March 21st 2005, the Dispute Settlement Body adopted the Appeal Body’s report (WT/DS267/AB/R) and the panel’s report (WT/DS267/R and WT/DS267/R/Corr.1), just as modified by the Appeal Body’s Report. The recommendations and decisions of the Dispute Settlement Body resulting from this process include recommendations that the United States of America (USA): remove the adverse effects of certain subsidies or withdraw the subsidies within a deadline of 6 months counting from the adoption of the report; make their measures compatible with the Agreement on Agriculture and withdraw the prohibited subsidies without delay.

2. The dispute settlement process was carried out with the support of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO (“Understanding”), Annex 2 of the WTO Agreement, in accordance with the Annex of the Final Act of the Round of Uruguay Multilateral Trade Negotiations of the

General Agreement on Tariffs and Trade – GATT, approved by Legislative Decree no. 30 of December 15th 1994 and enacted by Decree no. 1,355 of December 30th 1994.

3. The deadlines for the compliance with the recommendations of the Dispute Settlement Body expired on July 1st and September 21st 2005. On July 4th and October 6th 2005, Brazil asked for the authority from the Dispute Settlement Body to adopt counter measures, under the terms of Articles 4.10 and 7.9 of the ASCM and of Article 22.2 of the Understanding (WT/DS267/21 and WT/DS267/27).

4. On July 14th and October 17th 2005, the United States objected to the Brazilian requests (WT/DS267/23 and WR/DS267/27) and the matter was submitted to arbitration, under the terms Articles 22.6 of the Understanding and of Articles 4.11 and 7.10 of the ASMC. On August 18th and December 7th of 2005, the arbitration proceedings were suspended (WT/DS267/25 and WT/DS267/29).

5. On August 18th 2006, Brazil requested the establishment of an Implementation Panel under the terms of Article 21.5 of the Understanding. On December 18th 2007, the Implementation Panel's report was circulated to the members of the WTO (WT/DS267/RW). The Implementation Panel considered that the USA had not complied with recommendations of the Dispute Settlement Body and that they continued to act in a manner incompatible with Articles 3.1(a), 3.2, 6.3(c) and 5(c) of the ASCM and with the Articles of 10.1 and 8 of the WTO Agreement on Agriculture. The Appeal Body's report, circulated on June 2nd 2008, confirmed the conclusions of the Implementation Panel (WT/DS267/ABR). On June 20th 2008 the Dispute Settlement Body adopted the Appeal Body's report and the Implementation Panel's report, just as modified by the Appeal Body's report.

6. On August 25th 2008, Brazil requested that the arbitration proceedings be resumed (WT/DS267/38 and WT/DS267/39). On August 31st of 2009, the Arbitrator announced his decisions (WT/DS267/ARB/1 and WT/DS267/ARB/2) on the countermeasures to which Brazil had right.

7. Under the terms of these decisions, Brazil was authorized by the WTO Dispute Settlement Body on November 19th 2009 to adopt countermeasures not just in the area of goods but also in the areas of intellectual property services.

8. On February 11th 2010, Executive Order no. 482 of February 10th 2010 was published which "provides suspension measures of Brazilian concessions or other obligations relating to intellectual property and other rights, in cases of non-compliance with the requirements of the World Trade Organisation (WTO) Agreement". On February 12th 2010 the correction to the signatures of Executive Order no.482 of 2010 was published.

9. By virtue of these legal authorizations to adopt the suspensions measures and other obligations of Brazil concerning intellectual property and other rights, the

Brazilian Government chose, under the terms of Executive Order no. 482 of 2010, a set of possible additional measures to those incident to the area of goods.

APPENDIX III – DRAFT MEASURES

#	MEASURE
1	Reduction, for a limited time, of the protection term for rights over medicine (including veterinary) product or process patents.
2	Reduction, for a limited time, of the protection term for rights over agrochemical products or process patents.
3	Reduction, for a limited time, of the protection term for rights over agrobiological products or process patents.
4	Reduction, for a limited time, of the protection term for rights over crop cultivations.
5	Reduction, for a limited time, of the protection term de copyright and neighbouring rights on modes of public musical performances.
6	Licensing of product or process patents for drugs(including veterinary) , without authorization from the owner and royalty-free..
7	Licensing of agrochemical products or process patents, without authorization from the owner and royalty-free.
8	Licensing of agrobiological products or process patents, without authorization from the owner and royalty-free.
9	Licensing of copyright and neighbouring rights over literary works, without authorization from the owner and royalty-free..
10	Licensing of copyright and neighbouring rights for the exercise of public communication of audio-visual works, without authorization from the owner and royalty-free.
11	Suspension of the owner's exclusive right to prevent the import and commercialization at the domestic market of medicines (including veterinary) that incorporate patent rights, even if the imported item has not been placed on the external market directly by the owner of the intellectual property rights or with his consent.
12	Suspension of the owner's exclusive right to prevent the import and commercialization at the domestic market of agricultural chemical products the incorporate patent rights, even if the imported item has not been placed on the external market directly by the owner of the intellectual property rights or with his consent.
13	Suspension of the owner's exclusive right to prevent the import and commercialization at the domestic market of agricultural biotechnological products that incorporate patent rights, even if the imported item has not been placed on the external market directly by the owner of the intellectual property rights or with his consent.
14	Increase or adoption of asurcharge over official fees charged by the Brazilian National Institute of Industrial Property (<i>INPI</i>) for the processing and issuance of registrations of industrial property rights, including the obtainment and maintenance thereof.
15	Increase or adoption of a surcharge over official fees charged by the National Crop Cultivation Protection Service (<i>SNPC</i>) for the processing and issuance of registrations of intellectual property rights, including the obtainment and

	maintenance thereof.
16	Increase or adoption of a surcharge on amounts due to registration agencies of copyright and neighbouring rights to grant such registrations.
17	Application of rights of a commercial nature on the remuneration to which the owner of the intellectual property rights is entitled in matters of patents.
18	Application of rights of a commercial nature on the remuneration to which the owner of the intellectual property rights is entitled in matters of trademarks.
19	Application of rights of a commercial nature on the remuneration to which the owner of the intellectual property rights is entitled in matters of copyright and neighbouring rights, except those relating to computer programs.
20	Application of rights of a commercial nature on the remuneration to which the owner of the intellectual property rights is entitled in matters of copyright and neighbouring rights relating to computer programs.
21	Creation of compulsory registration for obtainment and maintenance of copyrights and neighbouring rights.

1. For Measures 1, 2, 3, 4 and 5, the reduction of said protection term may occur in any protection period and will be for a limited time. The reduction of this term, under the terms of Provisional Measure # 482 of 2010, shall not mean the restoration of the denied term, even if the right depends on the grant of rights or registration act executed subsequently to the cessation, nor the extension of the protection term.

2. Regarding Measures 6, 7, 8, 9 and 10, in contrast to the usual mechanisms of compulsory Licensing, the subject Licensing of rights, without authorization from the owner does not contemplate remuneration for the applicant, owner or licensee of the rights.

3. Concerning Measures 11, 12 and 13, there will be no form of remuneration for the applicant, owner or licensee of the patent rights. Additionally, it is not required that the imported item has been placed at the foreign market directly by the owner of the patent rights or with his consent.

4. Measures 14, 15 and 16 establish the possibility of charging increased amounts for the grant of registration of industrial property rights, in the case of the INPI, of rights over new crops, in the case of the SNPC, and copyrights, in the case of the respective registration agencies; and that surcharges be introduced for the performance of different activities relating to said registrations.

5. Measures 17, 18, 19 and 20 refer to the application of rights of a commercial nature on the remuneration to which the owner of the intellectual property rights is entitled in relation to patents, trademarks, copyright and neighbouring rights, including those relating to computer programs.

6. These measures will be executed through application of a compensation percentage, for a limited term, with due regard for the Resolution by the Council of Ministers of CAMEX (Chamber of Foreign Commerce) that introduces the measure, and will be due on the date of payment, remittance or credit to the owner of the intellectual property rights, as provided for in Art. 7 of Provisional Measure # 482 of 2010.

7. Measure 21 consists of the possibility of requiring a registration to obtain and maintain copyrights and neighbouring rights. In the specific case, similar to other intellectual property segments which demand registration for the grant of a right, the obtention and maintenance of copyrights and neighbouring rights will be subject to a mandatory prior registration.

8. Pursuant to Provisional Measure # 482 of 2010, the restoration, in the ambit of the WTO, at any time, of grants or other suspended Brazilian obligations shall not mean the restoration of rights as may have been affected by applying the measures, nor shall it prejudice the legitimate interests of third parties deriving from agreements entered into or uses authorized by the Government, during the application of measures adopted.

9. Whatever measures are adopted will have a limited term, as established in the resolutions issued by the Council of Ministers of CAMEX that introduces them, with due regard for the provision of Art. 10 of Provisional Measure # 482 of 2010.

ANNEX IV - GROUNDING

1. The application of counter measures within the sphere of the dispute "USA – Subsidies to Cotton (DS267)" in the intellectual property and services area was authorized on November 19, 2009 by the WTO's Controversy Settlement body. The authorization was made in compliance with the arbitral decisions of August 31, 2009, included in documents WT7DS267/ARB/1 and WT/DS267/ARB/2 of the WTO. These decisions, in its turn, were grounded on the analysis of the circumstances of the matter at the light of Article 22.3 of WTO'S Agreement to Standards and Procedures on Controversy Settlement, which allows, under certain conditions, the interruption of grants or obligations in sections other than the one that is the subject matter of the controversies ("Goods", in the case hereunder).

2. The authorization granted to Brazil to apply counter measures also in the intellectual property area and in relation to services is the acknowledgment that, in this case, the adoption of counter measures just in relation to goods would not be feasible or effective, and that "the circumstances are not serious enough" to justify appealing to measures in other areas, pursuant to the terms of article 22.3 of the said Understanding.

3. WTO'S Agreement to Standards and Procedures on Controversy Settlement referred to above is included in Annex II of the Final Minutes of Uruguay's Round of Multilateral Commercial Negotiations of the General Agreement on Tariffs and Trade - GATT of 1994, approved by Legislative Decree No. 30, of December 15, 1994, and promulgated by Decree No. 1.355, of December 30, 1994.

4. In the internal plan, the Temporary Measure No. 482, of February 10, 2010, regulates the application of measures for interrupting the grants or other obligations of the Country related to the intellectual property rights and others, in case of failure to comply with the multi lateral obligations by a Member of the World Trade Organization – OWT, when the Federative Republic of Brazil has been authorized by the WTO's Controversy Settlement body to stop the application, for the said Member, of grants or other obligations under WTO's Agreements.

5. Annex III of this Resolution also includes a draft of the measures that may be taken by the Brazilian government, either separately or cumulatively, and that are assessed on

certain intellectual property rights, as well as over the due compensation, and it aims at US nationals or persons domiciled in the USA, or, further, legal persons domiciled or with office in that country. The measures listed in Annex III are grounded on Temporary Measure No. 482, of 2010, especially items II, III, IV, V, VII and VIII of its Section 6.

ANNEX V – MANIFESTATION COURSE

Measure No: Note: Each Course shall be restricted to one sole Measure.

Opinion on application of the Measure:

For

Against

1. DATA ON OPINION'S PROVIDER

1.1) Name:

1.2) CNPJ/CPF:

1.3) Address:

1.4) Telephone/Fax (with Code Area (DDD)):

1.5) Contact Person / e-mail:

1.6) Occupation of Opinion's Provider (importer, distributor, licensee, etc.):

2. OPINION

2.1 Brief description of the object protected by intellectual property rights to which this opinion refers to, if any.

2.2 Briefly define which the reason for the opinion is and what the potential impact from application of the measure can be (25 lines, at the most):

Signature:
