

UNITED STATES – SUBSIDIES ON UPLAND COTTON

Recourse to Article 21.5 of the DSU by Brazil

Notification of an Other Appeal by Brazil
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 25 February 2008, from the Delegation of Brazil, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17.4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23 of the *Working Procedures for Appellate Review*, Brazil appeals certain issues of law and legal interpretations in the Panel Report in *United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil*.¹

2. Brazil's first appeal is contingent on the Appellate Body reversing the compliance Panel's finding, in accordance with the United States' appeal, that payments made after 21 September 2005 pursuant to the Marketing Loan Payments ("ML") program and Counter-Cyclical Payments ("CCP") program were within the scope of this proceeding under Article 21.5 and, therefore, properly before the compliance Panel.²

3. In that event, Brazil seeks reversal of the compliance Panel's finding that the DSB's recommendations and rulings in the original proceedings, and the original panel's recommendations and conclusions, included only the ML and CCP payments, and not also the ML and CCP programs.³ This finding constitutes an error by the compliance Panel under Article 21.5 of the DSU. Alternatively, in making this finding, the compliance Panel failed to make an objective assessment of the matter under Article 11 of the DSU.

4. Brazil furthermore requests that the Appellate Body find:

- (a) that the ML and CCP payments made after 21 September 2005 constitute measures taken to comply with the DSB's recommendations and rulings in the original proceedings within the meaning of Article 21.5 of the DSU, because of the close connection to the ML and CCP programs subject to those recommendations and rulings; or, alternatively,

¹WT/DS267/RW, circulated on 18 December 2007.

²Panel Report, paras. 9.75 to 9.81, as challenged in the United States' Appellant's Submission, Section II.B, paras. 56 to 74.

³Panel Report, paras. 9.44 to 9.55, in particular para. 9.47.

- (b) that the United States, through the continued use of the ML and CCP programs, causes serious prejudice to Brazil's interests within the meaning of Articles 5(c) and 6.3(c) of the *Agreement on Subsidies and Countervailing Measures*.

5. Second, in the event that the Appellate Body reverses, in accordance with the United States' appeal, the compliance Panel's finding that Brazil's claims "relating to export credit guarantees ["ECGs"] for exports of pig meat and poultry meat" were properly before the compliance Panel⁴, Brazil requests that the Appellate Body find that the compliance Panel erred in rejecting Brazil's view that "the measure that is the subject of [Brazil's] claims is the amended [General Sales Manager ("GSM")] programme itself".⁵ This finding is inconsistent with Article 21.5 of the DSU. Alternatively, in making this finding, the Panel failed to make an objective assessment of the matter under Article 11 of the DSU. Brazil requests that the Appellate Body find, instead, that the amended GSM program itself was the measure taken to comply for purposes of Article 21.5 of the DSU, was the measure subject to Brazil's claims, and was properly before the compliance Panel.

6. As part of this conditional appeal relating to ECGs, Brazil further requests that the Appellate Body find that the United States applies the GSM 102 program in a manner that results in circumvention of U.S. export subsidy commitments with respect to pig meat and poultry meat, contrary to Articles 10.1 and 8 of the *Agreement on Agriculture*, as well as to Articles 3.1(a) and 3.2 of the *SCM Agreement*.

⁴Panel Report, para. 9.27, as challenged in the United States' Appellant's Submission, Section II.A, paras. 33 to 55.

⁵Panel Report, para. 9.25.