

**UNITED STATES – SUBSIDIES ON UPLAND COTTON**

Communication from Brazil

The following communication, dated 25 September 2009, from the delegation of Brazil to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

1. On 31 August 2009, the WTO circulated the Decision by the Arbitrator in the proceedings *United States – Subsidies on Upland Cotton – Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*. In that Decision (contained in document WT/DS267/ARB/1), the Arbitrator provided a formula<sup>1</sup> for the calculation of the permissible amount of annual countermeasures that Brazil would be entitled to take with respect to measures which were found to be prohibited subsidies in the above-mentioned dispute.

2. According to the Arbitrator, the amount of such countermeasures shall depend, inter alia, on the transaction value secured by General Sales Manager 102 ("GSM 102") export credit guarantees. In that regard, the Decision by the Arbitrator provides as follows:

"The United States shall provide the most recent fiscal year data on GSM 102 transactions. The data on GSM 102 transactions by commodity and by obligor shall be supplied in the exact format (and software) as Exhibit US-78."<sup>2</sup>

3. Furthermore, the Arbitrator determined that the formula shall be applied to scheduled products (pig meat, poultry meat and rice) only to the extent that the export subsidies provided to volumes of exports of the products are in excess of US quantity or budgetary outlay reduction commitments. According to the Arbitrator, this shall require a deduction to be made to the transaction value secured by GSM 102 export credit guarantees issued for a particular fiscal year, so that only export subsidies that exceed US WTO commitments are included.

4. In order for Brazil to be able to calculate this deduction, the Arbitrator decided as follows:

"The United States shall provide the most recent data on US export prices of the scheduled products.

[Original footnote: The period covered by the data on US export prices must correspond to the fiscal year of the GSM 102 data, i.e. if GSM 102 data of fiscal year 2008 is used, data on US export prices for calendar year 2008 shall be employed.]"<sup>3</sup>

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<sup>1</sup> See document WT/DS267/ARB/1, paragraph 6.5(a) and Annex 4.

<sup>2</sup> See document WT/DS267/ARB/1, and Annex 4, paragraph 5.

5. Bearing in mind that fiscal years 2008 and 2009 ended on 30 September 2008 and 30 September 2009, respectively, I hereby request that the United States provide Brazil with (i) the data on GSM 102 transactions for fiscal years 2008 and 2009, by commodity and by obligor, in the format and software indicated by the Arbitrator; and (ii) most recent data on US export prices of the above-mentioned scheduled products for 2008 and 2009.

6. A copy of this letter is being sent to the Chairman of the Dispute Settlement Body, with the request that it be circulated to its Members.

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<sup>3</sup> See document WT/DS267/ARB/1, and Annex 4, paragraph 6.