

UNITED STATES – SUBSIDIES ON UPLAND COTTON

Joint Communication from Brazil and the United States

The following communication, dated 25 August 2010, from the delegations of Brazil and the United States to the Chairperson of the Dispute Settlement Body, is circulated at the request of those delegations.

On 30 April 2010, Brazil notified you that it had decided to postpone the imposition of countermeasures vis-à-vis the United States in the context of the dispute *United States – Subsidies on Upland Cotton* (DS267).¹ Brazil also indicated that no countermeasures would enter into force before 21 June 2010, since Brazil and the United States were engaged in a dialogue with a view to reaching a mutually satisfactory solution to the dispute.

In this connection, we wish to inform you that Brazil and the United States have concluded a *Framework for a Mutually Agreed Solution to the Cotton Dispute in the World Trade Organization* (WT/DS267), the text of which is attached to this letter. The *Framework* does not in itself constitute a mutually agreed solution to the dispute. It sets out parameters for discussions on a solution with respect to domestic support programs for upland cotton in the United States, as well as a process of joint operation reviews as regards export credit guarantees under the program GSM-102. Brazil and the United States also agreed to hold consultations not less than four times a year, unless they agree otherwise, with the aim of obtaining convergence of views in respect of a solution to the *Cotton* dispute. The *Framework* also provides that, upon enactment of successor legislation to the US Food, Conservation and Energy Act of 2008, Brazil and the United States will consult with a view to determining whether a mutually agreed solution to the *Cotton* dispute has been reached.

As long as the *Framework* is in effect, Brazil will not impose the countermeasures authorized by the DSB.

We would be grateful if you could circulate this notification to the DSB.

(Signed)

Paulo Estivallet de Mesquita
Chargé d'Affaires
Permanent Mission of Brazil

Michael Punke
Ambassador
Permanent Mission of the United States

¹ Document WT/DS267/44. The imposition of countermeasures was authorized by the Dispute Settlement Body ("DSB") in its meeting of 19 November 2009.

**Framework for a Mutually Agreed Solution to the
Cotton Dispute in the World Trade Organization
(WT/DS267)**

The Government of the United States of America ("United States") and the Government of the Federative Republic of Brazil ("Brazil") (collectively "the parties"),

Recalling the letter of April 5, 2010, from the United States to Brazil and the letter of April 6, 2010 in reply from Brazil to the United States regarding the *Cotton* dispute;

Recalling the Memorandum of Understanding Between the Government of the United States of America and the Government of the Federative Republic of Brazil Regarding a Fund for Technical Assistance and Capacity Building with Respect to the *Cotton* Dispute in the World Trade Organization (the "Memorandum");

Taking note of Section II.3 of the Memorandum, wherein the parties agreed to "jointly work on an understanding that is mutually satisfactory that will provide a framework for reaching a mutually agreed solution to the *Cotton* dispute;"

Expressing the desire and intent that this Framework serve as the basis to avoid countermeasures authorized by the World Trade Organization (WTO) in the *Cotton* dispute until enactment of successor legislation to the U.S. Food, Conservation and Energy Act of 2008;

Hereby agree as follows:

Section I

U.S. Domestic Cotton Support

Discussions on a mutually agreed solution to the WTO *Cotton* dispute with respect to domestic support for upland cotton will have as a basis an annual limit on trade-distorting domestic support provided for upland cotton by the United States ("the limit"), in accordance with the following parameters:

- a. The level of the limit would be significantly lower than the average annual level of trade-distorting domestic support provided for upland cotton in the period MY 1999-2005.
- b. The level of the limit would depend on the types of trade-distorting domestic support provided. The extent to and manner in which a type of trade-distorting support counts against the limit would depend on the trade-distorting effect of a program of that type.
- c. Domestic support measures that have no, or at most minimal, trade-distorting effects or effects on production (i.e. "green box"¹) would not be counted against the limit.

¹ For the purposes of this Framework, "green box" support means support provided to producers of cotton through the application of one or more measures that qualify as exempt from reduction commitments under the criteria set out in Annex 2 to the WTO Agreement on Agriculture.

Section II

The GSM-102 Program

1. Beginning with the fiscal year that commences October 2010, the United States will annually announce allocations under the GSM-102 program in two approximately equal installments. The first installment will be announced near the beginning of the fiscal year and the second installment will be announced approximately half way through the fiscal year.
2. Each October and April, beginning in October 2010, the parties will convene to review the operation of the GSM-102 program ("Operation Review"). Each April, the parties will conduct an Operation Review for the preceding October through March, and each October, the parties will conduct an Operation Review for the preceding April through September.
3. During each Operation Review, the parties will examine information on uncanceled guarantees registered for the period of the Operation Review regarding: (1) the dollar value of such guarantees ("Uncanceled Guarantee Value"); and (2) the value-weighted average tenor of such guarantees ("Weighted Average Tenor").
4. If for the applicable period of an Operation Review the Uncanceled Guarantee Value is more than \$1.3 billion, then the United States, before announcing the next allocation of guarantee availability, will increase premia appropriately. Such increase will be no less than 11 percent of the average fee rate, calculated as a simple average, in effect at the time of the Operation Review. If, in a given Operation Review, the Uncanceled Guarantee Value is not more than \$1.3 billion, then, in the following Operation Reviews in which the Uncanceled Guarantee Value is more than \$1.5 billion, the United States, before announcing the subsequent allocation of guarantee availability, will increase premia no less than 15 percent of the average fee rate, calculated as a simple average, in effect at the time of the Operation Review. If, in any such following Operation Review, the Uncanceled Guarantee Value is more than \$1.3 billion, but less than \$1.5 billion, the United States, before announcing the subsequent allocation of guarantee availability, will increase premia no less than 11 percent of the average fee rate, calculated as a simple average, in effect at the time of the Operation Review.
5. If for the applicable period of an Operation Review the Uncanceled Guarantee Value is less than \$800 million, then the United States may decrease premia by a decrease in the average fee rate, calculated as a simple average, in an amount not greater than half of the most recent increase imposed pursuant to paragraph 4.
6. Notwithstanding the Uncanceled Guarantee Value, if for the applicable period of an Operation Review, the Weighted Average Tenor is more than 16 months, the United States will, after consultations with Brazil in the Operation Review, effect changes by an increase of premia, or a decrease in permissible tenor, or a combination of both, with a view to achieve by October 2012 a Weighted Average Tenor of not longer than 16 months.
7. Consistent with Section III, paragraph 3, and Section VI, the provisions of this section are without prejudice to the positions of the parties with regard to the implementation of the recommendations and rulings of the WTO Dispute Settlement Body in the *Cotton* dispute with respect to the GSM-102 program.

Section III

Consultation

1. Unless the parties otherwise agree, they will consult not less than four times annually.
2. During the consultations under paragraph 1, the parties will:
 - a. exchange information on U.S. cotton support in light of the status of discussions for successor legislation to the U.S. Food, Conservation and Energy Act of 2008 ("2008 Farm Bill"), with a view to obtaining convergence of views in respect of:
 - i. the level of the limit described in Section I and how to identify which types of domestic support are less trade-distorting and which are more trade-distorting;
 - ii. the extent to and manner in which non-product specific support measures count against the limit described in Section I; and
 - iii. other issues regarding a solution to the WTO *Cotton* dispute with respect to domestic support measures for upland cotton;
 - b. exchange information on the GSM-102 program in light of the operation of the GSM-102 program and status of discussions for successor legislation to the 2008 Farm Bill, with a view to obtaining convergence of views in respect of a solution to the WTO *Cotton* dispute with respect to the GSM-102 program; and
 - c. discuss any other matter regarding a solution to the WTO *Cotton* dispute or the operation of this Framework.
3. Upon enactment of successor legislation to the 2008 Farm Bill, the parties will consult with a view to determining, with respect to measures of domestic support for cotton and the GSM-102 program, whether a mutually agreed solution to the WTO *Cotton* dispute (WT/DS267) has been reached.

Section IV

Duration

This Framework will terminate on the earlier of:

- a. Sixty (60) days after termination of the Memorandum; or
- b. Twenty-one (21) days after Brazil or the United States provides written notice to the other party that it is withdrawing from this Framework.

Section V

Suspension of Countermeasures

No later than June 21, 2010, Brazil will publish in the Diário Oficial da União notice that, as long as this Framework is not terminated, it will not impose countermeasures authorized by the World Trade Organization in the *Cotton* dispute.

Section VI

Reservation of Rights

This Framework is without prejudice to the rights and obligations of Brazil and the United States under the Marrakesh Agreement Establishing the World Trade Organization.

Section VII

Effective Date

This Framework will be effective on the date of signature.

Done at Washington, on June 25, 2010, in two originals, each in the English and Portuguese languages, both texts being equally authentic. In case of divergence of interpretation, the English text will prevail.

For the Government of
the United States of America:

For the Government of the
Federative Republic of Brazil
