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UNITED STATES – DOMESTIC SUPPORT AND EXPORT CREDIT GUARANTEES FOR AGRICULTURAL PRODUCTS

Request for Consultations by Brazil

The following communication, dated 11 July 2007, from the delegation of Brazil to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the United States pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement), and Article 19 of the *Agreement on Agriculture*.

2. This request comprises two parts.

I. The measures at issue in the first part of Brazil's Request for Consultations are as follows:

(a) **for the years¹ 1999, 2000 and 2001:** all domestic support measures in favour of agricultural producers, within the meaning of Article 6.1 of the *Agreement on Agriculture* notified by the United States in the notifications of its domestic support² (the "Notifications") as part of its Aggregate Measurements of Support for those years, as well as the programs, legislation, regulations and other instruments by which any support was provided, as set forth in Title 7 of the *US Code*³ and Title 7 of the *US Code of Federal Regulations*,⁴ as well as the additional non-notified programs and support provided thereunder:

- Production Flexibility Contract payments⁵ for each of wheat, corn, grain sorghum, barley, oats, upland cotton, and rice; Non-insured Crop Disaster Assistance

¹ In this request, "year" has the meaning assigned to it in Article 1(i) of the *Agreement on Agriculture*.

² G/AG/N/USA/43 of 5 February 2003 for year 1999 and G/AG/N/USA/51 of 17 March 2004 for years 2000 and 2001.

³ Including Chapters 21C, 26, 35, 35A, 36, 38, 50, 55, 58, 63, 68, 76, 77, 79, 80, 82, 87, 89, 90, 91, 92, 97, 99, 100, 101, 105, 106, 107 and 108.

⁴ Including Chapters IV, VII, IX, X, XI, XIV, and XV.

⁵ Subtitle B, Title I, *Federal Agriculture Improvement and Reform Act of 1996*, Public Law 104-127.

payments;⁶ Crop Disaster payments;⁷ Emergency Feed⁸ and other feed program payments for each of beef and veal, dairy, hogs and pigs, sheep and lamb, and all other livestock; Livestock Indemnity⁹ payments for each of beef and veal, dairy, hogs and pigs, sheep and lamb, and all other livestock; Tree Assistance Program payments¹⁰ for each of apples, apricots, peaches, pears, and all other trees, bushes and vines; programs providing various forms of credit for US agricultural producers;¹¹ programs exempting US agricultural producers from payment of gasoline and diesel fuel taxes;¹² programs exempting US agricultural producers from tax based on overall farm income¹³; subsidies related to the operation and maintenance of irrigation works by the US Department of the Interior.¹⁴

- Any other non-notified domestic support measure or subsidies, and any other legislation, regulations and other instruments by which that support or those subsidies were provided or granted, that are not properly exempted from the US reduction commitments made pursuant to the terms of Article 6 of the *Agreement on Agriculture*.

(b) **for the years 2002, 2004 and 2005**, during which years the United States made no notifications of the domestic support included in its Total Aggregate Measurements of Support:

⁶ Section 109, *Agricultural Risk Protection Act of 2000*, Public Law 106-224; *Federal Crop Insurance Reform Act of 1994*.

⁷ "Food Security Act of 1985, Disaster Assistance Acts of 1988 and 1989 and subsequently" [sic]; *Fiscal Year 2000 Appropriations Act*, Public Law 106-78, October 22, 1999.

⁸ Notification G/AG/N/USA/43 indicates no public law or other references for this program. Notification G/AG/N/USA/51 lists several public law references but does not indicate which ones apply specifically to this program.

⁹ Notification G/AG/N/USA/43 indicates no public law or other references for this program. Notification G/AG/N/USA/51 lists several public law references but does not indicate which ones apply specifically to this program.

¹⁰ Notification G/AG/N/USA/43 refers to descriptions in the "1988 and subsequent disaster assistance acts". Notification G/AG/N/USA/51 seems to refer to the *Disaster Assistance Act of 1988*, Public Law 100-387, and also to "Public Law 105-174, May 1, 1998", whose name appears to be "1998 Supplementary Appropriations and Rescissions Act" and in which Title II identifies a "Tree assistance program".

¹¹ The guaranteed loans program provides lenders (e.g., banks, Farm Credit System institutions, credit unions) with a guarantee of payment should the borrower default on the loan. The guarantee permits lenders to offer loans to farmers who would not otherwise be eligible for credit. See "Expect More Program Assessment of the Agriculture Credit Insurance Fund," available at <http://www.whitehouse.gov/omb/expectmore/detail/10001009.2003.html>. Given the United States' failure to notify these measures, Brazil is unable to identify the precise statutory or regulatory provisions at issue, but anticipates that the United States will provide such information during consultations.

¹² Diesel fuel and gasoline used on farms are exempt from various excise and sales taxes. See e.g., Diesel Fuel Tax Exemption 26 U.S.C. §4041(f) and Gasoline Tax Exemption 27 U.S.C. §6420.

¹³ Including deductions from taxable incomes from farming, farmers' marketing and purchasing co-operatives and export transactions of agricultural commodities.

¹⁴ The OECD defines these subsidies as a proportion (38.7 per cent) of the annual expenditure of the Bureau of Reclamation (US Department of the Interior) estimated to apply to the construction, operation and maintenance of irrigation works for agriculture. Details available in Section III.E.1 of OECD "United States: Estimates of Support to Agriculture", available at <http://www.oecd.org/dataoecd/11/24/37003207.htm>. Given the United States' failure to notify these measures, Brazil is unable to identify the precise statutory or regulatory provisions at issue, but anticipates that the United States will provide such information during consultations.

- all domestic support measures in favour of agricultural producers within the meaning of Article 6.1 of the *Agreement on Agriculture*, and the programs, legislation, regulations and instruments by which that support was provided, as set forth in Title 7 of the *US Code*¹⁵ and Title 7 of the *US Code of Federal Regulations*,¹⁶ including the measures identified in the Annex I to this request; and
- Any other domestic support measure or subsidies, and any other legislation, regulations and other instruments by which that support or those subsidies were provided or granted, that are not properly exempted from the US reduction commitments made pursuant to the terms of Article 6 of the *Agreement on Agriculture*.

3. Pursuant to Article 3.2 of the *Agreement on Agriculture*, the United States committed that it would limit its Total Aggregate Measurement of Support to the annual levels specified in section I of Part IV of Schedule XX of the United States: for the year 1999 USD 19,899.264 million and for each subsequent year USD 19,103.294 million. Despite these commitments, the United States' Current Total Aggregate Measurement of Support appears to have exceeded its commitment levels in each of the years 1999, 2000, 2001, 2002, 2004 and 2005 in violation of Article 3.2.

4. For the years 1999, 2000, and 2001, the Notifications of the United States purport to show that its domestic support did not exceed its commitment levels. However, in its Notifications, the United States failed to include in its Aggregate Measurements of Support certain non-exempt domestic support measures that the United States provided, within the meaning of Article 6.1 of the *Agreement on Agriculture* as described above. The United States also failed to properly notify certain of the measures identified under (a) above which must be included in the United States' Total Aggregate Measurement of Support. Among other aspects of the Notifications that understated the Total Aggregate Measurement of Support, the United States:

- incorrectly claimed that its Production Flexibility Contract payments conformed to the criteria for Decoupled income support (paragraph 6 of Annex 2 of the *Agreement on Agriculture*);
- incorrectly claimed that payments under its Non-insured Crop Disaster Assistance, Crop Disaster Assistance, Emergency Feed, Livestock Indemnity, and Tree Assistance programs conformed to the criteria for Payments for relief from natural disasters (paragraph 8 of Annex 2 of the *Agreement on Agriculture*);
- incorrectly included its crop Market Loss Assistance payments¹⁷ in its non-product-specific Aggregate Measurement of Support instead of product-specific Aggregate Measurements of Support (paragraph 1 of Annex 3 of the *Agreement on Agriculture*).

5. For each of the years 1999, 2000 and 2001, the domestic support that the United States provided, and which constituted its Current Total Aggregate Measurement of Support, exceeded its commitment levels, contrary to Article 3.2 of the *Agreement on Agriculture*.

¹⁵ Including Chapters 21C, 26, 35, 35A, 36, 38, 50, 55, 58, 63, 68, 76, 77, 79, 80, 82, 87, 89, 90, 91, 92, 97, 99, 100, 101, 105, 106, 107 and 108.

¹⁶ Including Chapters IV, VII, IX, X, XI, XIV, and XV.

¹⁷ Section 802, Subtitle A, Title VIII, *Emergency and Disaster Assistance for Producers*, Public Law 106-78; *Agricultural Risk Protection Act of 2000*, Public Law 106-224. The Notifications refer to crop Market Loss Assistance payments as "Crop market loss assistance payments", "market loss payments (MLP)", and "market loss payments (MLA)".

6. Although the United States has not notified its domestic support since 2001, for each of the years 2002, 2004 and 2005, available public information indicates that the domestic support that the United States provided and which constituted its Current Total Aggregate Measurement of Support also exceeded its commitment levels, contrary to Article 3.2 of the *Agreement on Agriculture*.

7. Given the US failure to notify any domestic support programs after 2001, Brazil has endeavored to identify as many domestic support measures as possible for the purposes of this consultation request in view of available public sources. These are set forth in the Annex I to this request and/or are referenced above. However, in view of the nature of the affirmative US obligation under Article 3.2 of the *Agreement on Agriculture* not to exceed its commitment levels, coupled with the US failure to notify its domestic support programs after 2001, it is sufficient (and, indeed, the most that Brazil can be expected to do) for purposes of this consultation request, for the years subsequent to 2001, to describe the general universe of domestic support measures provided for in US legislation, regulations and other instruments by which domestic support or subsidies were provided or granted, and that are not properly exempted from the US reduction commitments made pursuant to the terms of Article 6 of the *Agreement on Agriculture*.

II. The measures at issue in the second part of Brazil's Request for Consultations are as follows:

- Export credit guarantee programs under the *Agricultural Trade Act of 1978* and other measures such as the General Sales Manager 102 ("GSM 102") program and the Supplier Credit Guarantee Program ("SCGP"), as well as other statutory and regulatory instruments providing the guarantees, and guarantees provided under those programs or other measures, in respect of agricultural products for which the United States has made export subsidy reduction commitments in Section II of Part IV of the Schedule of the United States ("scheduled products"), and in respect of all other agricultural products ("unscheduled products").

8. Through these measures, the United States makes available export credit guarantees, contingent on the export of US agricultural products, at premium rates and on other terms more favourable than those which are otherwise available in the market. These measures therefore constitute export subsidies under the *Agreement on Agriculture* and the *SCM Agreement*. The United States provides these export subsidies: (i) in excess of its export subsidy reduction commitments for scheduled products; and, (ii) for unscheduled products. These measures therefore violate Articles 3.3, 8, 9.1 and 10.1 of the *Agreement on Agriculture*. Additionally, these measures are prohibited export subsidies contrary to Article 3.1(a) and 3.2 of the *SCM Agreement*.

9. In respect of Part II of this request for consultations, Article 4.2 of the *SCM Agreement* requires the inclusion of a statement of available evidence with regard to the existence and nature of the subsidies in question. The Annex II to this request contains Brazil's statement of available evidence.

10. Brazil looks forward to receiving the United States' reply to this request and to selecting a mutually acceptable date on which consultations may take place. Brazil also expects that the United States will supply information during the consultations regarding *all* of its domestic support measures existing in 1999, 2000, 2001, 2002, 2004, and 2005, as well as on the measures at issue in the second part of this request for consultations.

ANNEX I

List of Various US Domestic Support Measures

Measure type	Policy authority
Availability of Recourse Loans for High Moisture Feed Grains and Seed Cotton	Section 1209, Subtitle B of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Certificate Exchange Gains	Section 812, Subtitle B, Title VIII of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Public Law 106-78) & 7 CFR, Part 1401, § 1401.4
Commodity Loan Forfeit	7 CFR, Part 1405, § 1405 (Equivalent to authorities notified in ST DS: 6 in G/AG/N/USA/51)
Commodity Loan Interest Subsidy	7 CFR, Part 1401, § 1401.4 (Equivalent to authorities notified in ST DS:7 in G/AG/N/USA/51)
Cotton User Marketing Certificates	Section 136(a), Title 1 of the Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104-127)
Cottonseed Payments	Section 206, Title II of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7)
Countercyclical Payments (for covered commodities)	Subtitle A, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Countercyclical Payments (for peanuts)	Subtitle C, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Crop and Revenue Insurance Subsidized by the Federal Crop Insurance Corporation	Title 7 U.S.C., Chapter 36, § 1516
Crop Disaster payments	Title II, Consolidated Appropriations Resolution, 2003 (Public Law 108-7)
Dairy Indemnities	Title 7 U.S.C., Chapter 17, § 450j & § 450k
Dairy Forward Pricing Pilot Program	Title 7 U.S.C., Chapter 26, Subchapter III, § 627
Direct Payments (for covered commodities)	Subtitle A, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171), as amended
Direct Payments (for peanuts)	Subtitle C, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171), as amended
Emergency Loans for Seed Producers	Section 10103, Subtitle B, Title X of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
<u>Energy Subsidies</u>	As identified by the OECD at http://www.oecd.org/dataoecd/11/24/37003207.htm
Diesel Fuel Tax Exemption	26 U.S.C. §4041(f)
Gasoline Tax Exemption	26 U.S.C. §6420
Farm Ownership Loans	Subtitle A, Title V of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Farm Storage Facility Loan Program	Commodity Credit Corporation Charter Act (62 Stat.1070; 15 U.S.C. 714), as amended

Measure type	Policy authority
<u>Feed Assistance</u>	
Emergency Feed Assistance Program	7 U.S.C. §1471 Emergency Livestock Feed Assistance Act of 1998 (reauthorized by the Farm Security and Rural Investment Act of 2002 (Sec. 10104))
Forage Assistance Program	7 U.S.C. §1471 Emergency Livestock Feed Assistance Act of 1998
Livestock Assistance Program	Military Construction and Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005
Disaster Reserve Assistance Program	Agricultural Act of 1970, as amended, 7 U.S.C. 1427a
American Indian Livestock Feed Program	Section 101, Division B, Military Construction and Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005 (Public Law 108-324)
Pasture Recovery Program and Flood Compensation Program	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act
Flexible Marketing Allotments for Sugar	Section 1403, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Grazing Payments	Grazing Payments identified by the OECD at http://www.oecd.org/dataoecd/11/24/37003207.htm
Hard White Wheat Incentive Payments Program	Section 1616, Subtitle F, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Income Tax Concessions	Tax Concessions identified by the OECD at http://www.oecd.org/dataoecd/11/24/37003207.htm
Irrigation on Bureau of Reclamation Projects in 17 Western States	Equivalent to Authorities Notified in Supporting Table DS:9 in G/AG/N/USA/51.
Livestock Pilot Program	Section 132, Subtitle C of the Agricultural Risk Protection Act of 2000 (Public Law 106-224)
Loan Deficiency Payments (for loan commodities)	Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Loan Deficiency Payments (for peanuts)	Section 1307, Subtitle C, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Marketing Loan Repayment provision	Section 1204, Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Market Loss Assistance payments	Section 1617, Subtitle F, Title I of the Farm security and Rural Investment Act of 2002 (Public Law 107-171)
National Dairy Market Loss Payments (Milk Income Loss Contract, i.e., MILC)	Section 1502, Subtitle E, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
National Dairy Market Loss Payments (the authorized extended period of the MILC program, i.e., MILCX)	Section 1101, Subtitle A, Title 1 of the Deficit Reduction Act of 2005 (Public Law 109-171)
Net Federal Budget Outlays for Grazing Livestock on Federal Land	Equivalent to authorities notified in Supporting Table DS:9 in G/AG/N/USA/51
Noninsured Crop Disaster Assistance Program	Section 109, Subtitle A, Title I of the Agricultural Risk Protection Act of 2000 (Public Law 106-224)

Measure type	Policy authority
Nonrecourse Marketing Assistance Loans (for loan commodities)	Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Nonrecourse Marketing Assistance Loans (for peanuts)	Section 1307, Subtitle C, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Payments in lieu of Loan Deficiency Payments for Grazed Acreage	Section 1206, Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Payment to Processor (Sugar)	Section 1401, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Price support/quota: Milk Price Support Program	Section 1501, Subtitle E, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Price support/quota: Sugar program	Section 1401, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Producer Retention of Erroneously Paid Loan Deficiency Payments and Marketing Loan Gains	Section 1618, Subtitle F, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Production Flexibility Contract payments	Subtitle B, Title I of the Federal Agriculture Improvement and Reform Act of 1996
Recourse loans available for seed cotton	Section 1209(b), Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Sheep and Lamb Adjustment Assistance Program	Clause 3 of Section 32 of the Agricultural Adjustment Act of August 24, 1935, (Public Law 74-320), as amended (See also Lamb Meat Adjustment Assistance Program FSA Fact Sheets, August 14, 2000 and April 2002)
Special Competitive Provisions for Extra Long Staple Cotton	Section 1208, Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Special Marketing Loan Provisions for Upland Cotton	Section 1207, Subtitle B, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
State Credit Programs	Equivalent to authorities notified in Supporting Table DS:9 of G/AG/N/USA/51
Storage Payments	Equivalent to authorities notified in Supporting Table DS:7 in G/AG/N/USA/51 under Cotton
Strengthening Markets, Income and Supply	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 H.R. 2330 (Public Law No: 107-76)
Sugar Storage Facility Loan	Section 1402, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Supplemental Loan (Sugar)	Section 1401, Subtitle D, Title I of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
Support Under Assistance for Livestock Producers (includes Livestock Indemnity, Livestock Compensation and Livestock Assistance payments)	Section 10104, Subtitle B, Title X of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171), as amended & Section 203(d) of the Agricultural Assistance Act of 2003 (Public Law 108-7), as amended
Tree Assistance Program	Subtitle C, Title X of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171)

ANNEX II

Statement of Available Evidence

Brazil's request for consultations dated 11 July 2007 identifies the subsidy measures that are part of this request for consultations. The evidence set out below is evidence presently available to Brazil regarding the existence and nature of those subsidy measures. Brazil reserves the right to supplement or alter this list in the future, as required.

The evidence presently available to Brazil includes, in addition to the relevant legislation, regulations and statutory instruments, the following:

USDA Export Credit Guarantee Programs

<http://www.fas.usda.gov/excredits/ecgp.asp>

Eligible Commodities Under the GSM 102 and SCGP Programs

<http://www.fas.usda.gov/excredits/gsmcommodities.html>

GSM 102 Guarantee Fee Rate Schedule

<http://www.fas.usda.gov/excredits/gsm102fees.html>

Monthly Summary of Export Credit Guarantee Program Activity

<http://www.fas.usda.gov/excredits/Monthly/ecg.html>

Budget of the United States Government. Office of Management and Budget.

<http://www.whitehouse.gov/omb/budget/fy2007/>

Agricultural Export Credit Guarantee Programs Assessment

<http://www.whitehouse.gov/omb/expectmore/detail.10002020.2005.html>
