

UNITED STATES – SUBSIDIES ON UPLAND COTTON

Understanding between Brazil and the United States
Regarding Procedures under Articles 21 and 22 of the DSU
and Article 4 of the SCM Agreement

The following communication, dated 5 July 2005, from the delegation of Brazil and the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of those delegations.

Brazil and the United States would like to inform the Dispute Settlement Body that they have agreed on the following "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding and Article 4 of the SCM Agreement in the follow-up to the dispute *United States – Subsidies on Upland Cotton* (WT/DS267)".

**Agreed Procedures
under Articles 21 and 22 of the Dispute Settlement Understanding
and Article 4 of the SCM Agreement
in the follow-up to the dispute
*United States – Subsidies on Upland Cotton (WT/DS267)***

Noting that the Dispute Settlement Body (DSB) adopted, on 21 March 2005, the Appellate Body report (WT/DS267/AB/R) and the Panel report (WT/DS267/R and Corr.1), as modified by the Appellate Body report, in this dispute.

Considering that in paragraphs 8.3(b) and 8.3(c) of its report, the Panel recommended that the United States withdraw the prohibited subsidies referred to in paragraphs 8.1(d)(i), 8.1(e), and 8.1(f) of the same report by at the latest within six months of the date of adoption of the Panel report by the Dispute Settlement Body or 1 July 2005 (whichever is earlier).

Noting that the United States informed the DSB, on 20 April 2005, that it intends to implement the recommendations and rulings of the DSB in this dispute.

Recognizing:

- that the United States Department of Agriculture announced, on 30 June 2005, changes to the Commodity Credit Corporation's (CCC) Export Credit Guarantee Program (GSM 102), Intermediate Export Credit Guarantee Program (GSM 103), and Supplier Credit Guarantee Program (SCGP); and
- that a legislative proposal has been sent to the United States' Congress with a view to repealing, as soon as possible, the user marketing (Step 2) program for exporters of upland cotton and domestic users of upland cotton.

Brazil and the United States ("the parties") have agreed on the following procedures:

1. In order to fully safeguard its rights under the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Brazil will, at the DSB meeting of 15 July 2005, request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU and to adopt appropriate countermeasures pursuant to Article 4.10 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement).
2. Under Article 22.6 of the DSU including Article 4.11 of the SCM Agreement, the United States will object to the level of suspension of concessions or other obligations and the appropriateness of the countermeasures and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed, and the matter will be referred to arbitration pursuant to Article 22.6 of the DSU. Brazil will not pose any objection to referral of the matter to such arbitration ("Article 22.6 arbitration").
3. Brazil and the United States will, at the earliest possible moment, request the arbitrator appointed under paragraph 2 ("the arbitrator") to suspend its work.
4. At any moment after the DSB meeting of 15 July 2005, Brazil is entitled to request the establishment of a panel pursuant to Article 21.5 of the DSU ("Article 21.5 compliance panel").

5. At the first DSB meeting at which Brazil's Article 21.5 compliance panel request appears as an item on the agenda, the United States will accept the establishment of that panel.
6. Brazil and the United States will cooperate to enable the Article 21.5 compliance panel to circulate its report within 90 days of its establishment, excluding any time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
7. Either party may request the DSB to adopt the report of the Article 21.5 compliance panel at a DSB meeting held at least 20 days after the circulation of the report unless either party appeals the report.
8. In case of an appeal of the Article 21.5 compliance panel report, Brazil and the United States will cooperate to enable the Appellate Body to circulate its report within no more than 90 days of the date of notification of the appeal.
9. In the event of an appeal, either party may request the DSB to adopt the reports of the Appellate Body and the Article 21.5 compliance panel (as modified by the Appellate Body report) at a DSB meeting held within 15 days of the circulation of the Appellate Body report.
10. In the event that the DSB finds that measures taken by the United States to comply with the relevant recommendations and rulings of the DSB are inconsistent with the covered agreements referred to in the Article 21.5 compliance panel request, the arbitrator will resume its work at Brazil's request. Brazil and the United States will cooperate to enable the arbitrator to circulate its report within 60 days of the resumption of its work.
11. In the event that the DSB finds that the measures taken by the United States to comply with the relevant recommendations and rulings of the DSB are not inconsistent with the covered agreements referred to in the Article 21.5 compliance panel request, Brazil will withdraw its request under Article 22.2 of the DSU, thereby terminating the Article 22.6 arbitration procedure.
12. In case the parties reach a mutually agreed solution, it shall be notified to the DSB under DSU Article 3.6 and Brazil will withdraw its request under Article 22.2 of the DSU, thereby terminating the Article 22.6 arbitration procedure.
13. Brazil and the United States will cooperate to facilitate the participation of the original panelists in the Article 21.5 compliance panel and the Article 22.6 arbitration.
14. If any of the original panelists are not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), the parties will immediately request the WTO Director-General to appoint, as soon as possible, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, the parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
15. Brazil and the United States will continue to cooperate in all matters related to this Understanding and not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, Brazil and the United States consider that a procedural aspect has not been properly addressed in this Understanding, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

16. This Understanding does not prejudice either party's rights to take any action or procedural step to protect its rights or interests, including the activation of any aspect of the provisions of the DSU.

Geneva, 5 July 2005

(signed)
H.E. Mr Luiz Felipe de Seixas Corrêa
Ambassador
Permanent Representative of the Federative
Republic of Brazil

(signed)
Mr David Shark
Chargé d'Affaires, a.i.
Alternate Permanent Representative
of the United States of America
