

## ANNEX N

### REQUEST FOR CONSULTATIONS AND REQUEST FOR THE ESTABLISHMENT OF A PANEL

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**ANNEX N-1**

**WORLD TRADE  
ORGANIZATION**

**WT/DS267/1  
G/L/571  
G/SCM/D49/1  
G/AG/GEN/54  
3 October 2002  
(02-5314)**

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Original: English

**UNITED STATES – SUBSIDIES ON UPLAND COTTON**

- Subsidies provided contingent upon the use of US upland cotton;
- Subsidies and domestic support provided under the Farm Security and Rural Investment Act of 2002 (FSRIA), including the regulations, administrative procedures and other measures implementing FSRIA related to marketing loans, loan deficiency payments (LDPs), commodity certificates, direct payments, counter-cyclical payments, conservation payments

The Government of Brazil considers that these measures are inconsistent with the obligations of the United States under the following provisions:

1. Article 5(c) of the SCM Agreement;
2. Article 6.3(b), (c) and (d) of the SCM Agreement;
3. Article 3.1(a) of the SCM Agreement including item (j) of the Illustrative List of Export Subsidies in Annex I thereto;
4. Article 3.1(b) of the SCM Agreement;
5. Article 3.2 of the SCM Agreement;
6. Article 3.3 of the Agreement on Agriculture;
7. Article 7.1 of the Agreement on Agriculture;
8. Article 8 of the Agreement on Agriculture;
9. Article 9.1 of the Agreement on Agriculture;
10. Article 10.1 of the Agreement on Agriculture; and
11. Article III:4 of GATT 1994.

Brazil is of the view that the US statutes, regulations, and administrative procedures listed above are inconsistent with these provisions as such and as applied.

The United States has no basis to assert a defense under Article 13(b)(ii) of the Agreement on Agriculture that the domestic support measures listed above are exempt from action based on Articles 5 and 6 of the SCM Agreement, because these measures provide support to upland cotton in marketing years 1999-2002 in excess of the support decided by the United States in the 1992 marketing year. Similarly, the United States has no basis to assert a defense under Article 13(c)(ii) of the Agreement on Agriculture that the export subsidies listed above are exempt from action based on

2001 from 16.7 to 20.6 percent in violation of Articles 5(c) and 6.3(d) of the SCM Agreement.

The statutes, regulations, and administrative measures listed above and the subsidies they mandate threaten – as such and as applied –



- The volume of US exports of US upland cotton increased significantly from 946.000 metric tons in marketing year 1998 to 1.829.000 metric tons in marketing year 2001, with 1.960.000 metric tons expected to be exported in marketing year 2002;
- The effect of the US subsidies over the period of marketing years 1999-2001 was an increase in production of US upland cotton, an increase in US exports, and a corresponding significant decrease in Brazilian, world, and US prices of upland cotton;
- US year-end surplus stocks of upland cotton in marketing year 2001 increased steadily between marketing years 1999-2001 with the additional surplus creating a depressing and suppressing effect on US and world prices;
- Brazilian upland cotton is like or has characteristics closely resembling US upland cotton, is used interchangeably by customers in third country markets with US upland cotton and competes in the same markets for the same customers. Thus, the overproduction of US upland cotton suppresses and depresses the price that Brazilian producers can obtain for their upland cotton on the world and Brazilian market;
- Prices for upland cotton in Brazil follow trends created in the US and Northern European markets and experienced significant declines between marketing years 1999-2002;
- Brazilian production of upland cotton decreased between marketing year 2000 and 2001 from 939.000 to 718.000 metric tons;
- Prices for upland cotton in the Brazilian, worldwide, and other regional and third country markets were significantly depressed and suppressed over the period of marketing years 1999-2002 as a result of the effect of US subsidies;
- Prices for upland cotton in the Brazilian, worldwide, and other regional and third country markets continue to be suppressed in marketing year 2002 as a result of US subsidies;
- The world market share of the United States for upland cotton in marketing year 2001 increased over the average share of the United States between marketing years 1998-2000. In addition, the United States increased its world market share for the production of upland cotton in the period from marketing year 1985 (the first year in which LDP and marketing loan payments were made for upland cotton) to marketing year 2001 from 16.7 to 20.6 percent;
- The United States' notifications of subsidies to the WTO Committee on Agriculture provide information indicating that the loan deficiency payments (LDP), marketing loan gains, crop insurance programs, marketing loss payments, and Step 2 certificate payments made in connection with upland cotton are not "green" box payments;
- USDA econometric analyses demonstrate the actual or potential production enhancing effects for particular crops in the United States of LDP, marketing loan payments, crop insurance subsidies, and even production flexibility payments. Certain of these studies demonstrate the production enhancing effects of such subsidies on US production of upland cotton;
- Econometric studies by the International Cotton Advisory Committee, the World Bank, and the International Monetary Fund demonstrate that many of the US subsidies at issue in the consultation request have a price suppressive and depressive effect on prices of upland cotton and other crops;

- The US Step 1 and Step 2 programs, since their origin and up to the present, enhance the



- Agricultural Outlook December 1999: Ag Policy: Marketing Loan Benefits Supplement Market Revenues for Farmers  
<http://www.ers.usda.gov/publications/agoutlook/dec1999/ao267b.pdf>
- Farm and Commodity Policy: 1996-2001 Program Provisions  
<http://www.ers.usda.gov/briefing/FarmPolicy/1996malp.htm>
- Farm and Commodity Policy: Questions and Answers  
<http://www.ers.usda.gov/briefing/FarmPolicy/questions/index.htm>
- Farm and Commodity Policy: Crop Insurance  
<http://www.ers.usda.gov/briefing/FarmPolicy/cropInsurance.htm>
- Cotton: Background Issues for Farm Legislation  
<http://www.ers.usda.gov/publications/CWS-0601-01/>
- Cotton Policy: Special Program Provisions for Upland Cotton  
<http://www.ers.usda.gov/briefing/cotton/specialprovisions.htm>
- List of Studies Analyzing Market Effects of US Agricultural Policy  
<http://www.ers.usda.gov/publications/tb1888/tb1888ref.pdf>
- Major Agricultural and Trade Legislation, 1933–1996  
<http://www.ers.usda.gov/publications/aib729/aib729a3.pdf>

US Department of Agriculture, Farm Service Agency:

<http://www.fsa.usda.gov>

- Statistics on Price Support Loans and Loan Deficiency Payments  
<http://www.fsa.usda.gov/pscad/>
- FSA Fact Sheets:  
<http://www.fsa.usda.gov/pas/publications/facts/pubfacts.htm>
- Fact Sheet: Upland Cotton: Locking the Adjusted World Price (AWP) by Loan Deficiency Payments on Upland Seed Cotton  
<http://www.fsa.usda.gov/pas/publications/facts/html/upcotlock00.htm>
- Price Support Programs  
<http://www.fsa.usda.gov/dafp/psd/default.htm>
- Loan Deficiency Payment and Price

World Trade Organization:

- US notification on Domestic Support for Marketing Year 1998 - G/AG/N/USA/36

International Monetary Fund:

- World Economic Outlook September 2002  
<http://www.imf.org/external/pubs/ft/weo/2002/02/pdf/chapter2.pdf>

World Bank:

- Cotton Producers Face Losses Because of Rich Country Subsidies  
<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20053593~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html>
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**ANNEX N-2**

**WORLD TRADE  
ORGANIZATION**

**WT/DS267/7**  
7 February 2003

(03-0838)

Original: English

**UNITED STATES – SUBSIDIES ON UPLAND COTTON**

Request for the Establishment of a Panel by Brazil

The following communication, dated 6 February 2003, from the Permanent Mission of Brazil to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 27 September, the Government of Brazil requested consultations with the Government of the United States pursuant to Articles 4.1, 7.1 and 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), Article 19 of the Agreement on Agriculture, Article XXII of GATT 1994 and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). This request was circulated to the WTO Members on 3 October 2002 as document WT/DS267/1, "United States – Subsidies on Upland Cotton". Consultations were held on 3, 4 and 19 December 2002 and on 17 January 2003 with a view to reaching a mutually satisfactory solution. Unfortunately, these consultations failed to settle the dispute.

The Government of Brazil therefore hereby requests that a panel be established pursuant to Articles 6 of the DSU, Article XXIII:2 of GATT 1994, Article 19 of the Agreement on Agriculture, and Articles 4.4, 7.4 and 30 of the SCM Agreement (to the extent that Article 30 incorporates by reference Article XXIII of GATT 1994).

The Government of Brazil further requests that the DSB initiate the procedures provided in Annex V of the SCM Agreement pursuant to paragraph 2 of that Annex. The Government of Brazil intends to put forward suggestions as to the information that should be sought under this procedure once the panel is established.

The measures that are the subject of this request are prohibited and actionable subsidies provided to US producers, users and/or exporters of upland cotton<sup>1</sup>, as well as legislation, regulations and statutory instruments and amendments thereto providing such subsidies (including export credit guarantees), grants, and any other assistance to the US producers, users and exporters of upland cotton ("US upland cotton industry"). The measures include the following:

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<sup>1</sup> The term "upland cotton" means raw upland cotton as well as the primary processed forms of such cotton including upland cotton lint and cottonseed. The focus of Brazil's claims relate to upland cotton with the exception of the US export credit guarantee programs as explained below.

Domestic support subsidies provided to the US upland cotton industry during marketing years 1999-2001<sup>2</sup>;

Domestic support subsidies that are mandated to be provided to the US upland cotton industry during marketing years 2002-2007;

Export subsidies provided to the US upland cotton industry during marketing years 1999-2001;

Export subsidies that are mandated to be provided to the US upland cotton industry during marketing years 2002-2007;

Subsidies provided contingent upon the use of US over imported upland cotton in marketing years 1999-2001 and that are mandated to be provided to the US upland cotton industry during marketing years 2002-2007;

Subsidies and domestic support provided under the Farm Security and Rural Investment Act of 2002 (FSRIA), including the regulations, administrative procedures and other measures implementing FSRIA related to marketing loans, loan deficiency payments (LDPs), commodity certificates, direct payments, counter-cyclical payments, conservation payments (to the extent they exceed the costs of complying with such programs), Step 2 certificate programme payments, export credit guarantees, crop insurance, and any other provisions of

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Assistance Act (August 2001), the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (October 2000), the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2000 (October 1999), and the Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1999 (October 1998);

All subsidies or support measures benefiting upland cotton that have trade-distorting effects or effects on production by the US upland cotton industry, or that have an effect of providing price support for upland cotton, or that are otherwise not exempt from the reduction commitments of the United States, as described in Annex 2 of the Agreement on Agriculture, because they do not meet the policy-specific criteria and conditions set out in paragraphs 2-13 of Annex II of the Agreement on Agriculture (*i.e.* they are not so-called "green box" subsidies);

Export subsidies, domestic support, and other subsidies provided under regulations, administrative procedures, administrative practices and any other present measures or future measures implementing or amending any of the measures listed above, that provide for or facilitate the payment of domestic support, export subsidies, and other subsidies for the production, use and/or export of US upland cotton and upland cotton products.

The measures, and any amendments to these measures, are inconsistent with the obligations of the United States under the following provisions:

1. Article 5(a) of the SCM Agreement;
2. Article 5(c) of the SCM Agreement;
3. Article 6.3(b), (c) and (d) of the SCM Agreement;
4. Article 3.1(a) of the SCM Agreement including item (j) of the Illustrative List of Export Subsidies in Annex I thereto;
5. Article 3.1(b) of the SCM Agreement;
6. Article 3.2 of the SCM Agreement;
7. Article 3.3 of the Agreement on Agriculture;
8. Article 7.1 of the Agreement on Agriculture;
9. Article 8 of the Agreement on Agriculture;
10. Article 9.1 of the Agreement on Agriculture;
11. Article 10.1 of the Agreement on Agriculture; and
12. Article III:4 of GATT 1994
13. Article XVI.1 and Article XVI.3 of GATT 1994

The US statutes, regulations and administrative procedures and any amendments thereto listed above are inconsistent with these provisions as such and as applied.

The United States has no basis to assert a defense under Article 13(b)(ii) of the Agreement on Agriculture that the domestic support measures listed above are exempt from action based on Articles 5 and 6 of the SCM Agreement, because these measures provide support to upland cotton in marketing years 1999-2001 in excess of the support decided by the United States in the 1992 marketing year. Similarly, the United States has no basis to assert a defense under Article 13(c)(ii) of the Agreement on Agriculture that the export subsidies listed above are exempt from action based on Article 3, 5 and 6 of the SCM Agreement, because these export subsidies do not conform fully to the provisions of Part V of the Agreement on Agriculture, as reflected in the Schedule of the United States.

The measures listed above are subsidies because in each instance there is a financial contribution by the US government, or an income or price support in the sense of Article XVI of GATT 1994, and a benefit is thereby conferred within the meaning of Article 1.1(a) and (b) of the SCM Agreement. Each of the listed subsidies is specific to US producers of primary agricultural

products

With respect to subsidies provided under the so-called "Step 2" programmes, one type of subsidy under the programme provides payments to exporters contingent upon the export of US upland cotton and is inconsistent with Articles 3.3, 8, 9.1, and 10.1 of the Agreement on Agriculture, and with Articles 3.1(a) and 3.2 of the SCM Agreement. Another type of subsidy under the Step-2 programme provides payments to US domestic mill users contingent upon the use of US upland cotton and is inconsistent with Article 3.1(b) and 3.2 of the SCM Agreement, and Article III:4 of GATT 1994. Brazil challenges these two types of subsidies under the Step 2 programme as such and as applied. These two Step 2 subsidies are actionable for the purpose of Brazil's claims under Articles 5 and 6.3 of the SCM Agreement.

Regarding export credit guarantees and export and market access enhancement provided under the Agricultural Trade Act of 1978, as amended, and export credit guarantee measures relating to eligible US agricultural commodities, such as the GSM-102, GSM-103, and SCGP programmes, these programs violate, as applied and as such, Articles 3.3, 8, 9.1, and 10.1 of the Agreement on Agriculture and are prohibited export subsidies under Articles 3.1(a), 3.2 and item (j) of the Illustrated List of Export Subsidies included as Annex I to the SCM Agreement. Subsidies provided under these programs are also actionable subsidies for the purpose of Brazil's claims under Articles 5 and 6.3 of the SCM Agreement.

Brazil requests that a Panel be established with standard terms of reference, in accordance with Article 7 of the DSU.

Brazil asks that this request for the establishment of a Panel be placed on the agenda for the next meeting of the Dispute Settlement Body, which is scheduled to take place on 19 February 2003.