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UNITED STATES – SUBSIDIES ON UPLAND COTTON

NOTIFICATION OF A MUTUALLY AGREED SOLUTION

The following communication, dated 16 October 2014, from the delegation of Brazil and the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 3.6 of the DSU.

In connection with the dispute *US – Subsidies on Upland Cotton* (WT/DS267) ("*Cotton*"), we wish to notify you in accordance with Article 3.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") that, having consulted in accordance with paragraph 3 of Section III of the Framework for a Mutually Agreed Solution to the *Cotton* Dispute in the World Trade Organization (WT/DS267), Brazil and the United States have concluded the attached understanding. In light of this notification, Brazil and the United States have agreed that the *Cotton* dispute is hereby terminated. As a result, under DSU Article 22.8 no suspension of concessions or other obligations pursuant to the authorization previously granted by the Dispute Settlement Body ("DSB") in this dispute shall be applied, and no further action shall be taken under DSU Article 21.5 based on a disagreement as to the existence or consistency of any measure taken to comply with the DSB's recommendations or rulings in this dispute.

This notification is otherwise without prejudice to the rights and obligations of Brazil and the United States under the *Marrakesh Agreement Establishing the World Trade Organization*. It also does not imply recognition of the consistency with the covered agreements of the measures discussed in the *Cotton* dispute and other measures contained in the US Agricultural Act of 2014, nor does it prejudice whether the DSB recommendations and rulings in the *Cotton* dispute have been implemented. The commitments of Brazil and the United States with respect to new disputes are as set forth in the attached understanding.

We would be grateful if you could circulate this notification to the Members of the Dispute Settlement Body.

(Signed)
Márcia Donner Abreu
Minister Counsellor
Chargée d'affaires, a.i.
Permanent Mission of Brazil

(Signed)
Michael Punke
Ambassador
Permanent Mission of the United States

Memorandum of Understanding Related to the Cotton Dispute (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"),

Hereby agree as follows:

Section I

Transfer of Funds

1. Promptly and no later than 21 days after signature of this agreement, the United States shall transfer to the Brazilian Cotton Institute (IBA) by wire to the Banco do Brasil – New York Branch the amount of US\$300 million.

2. The United States shall transfer funds for IBA to the following account at XXXXXX:

XXXXXX

XXXXXX

XXXXXX

XXXXXX

XXXXXX

XXXXXX

Section II

Brazilian Cotton Institute and Authorized Activities

1. Brazil shall ensure that monies transferred to IBA by the United States under this Memorandum of Understanding and under the Memorandum between the Government of the Federative Republic of Brazil and the Government of the United States of America Regarding a Fund for Technical Assistance and Capacity Building with Respect to the *Cotton* Dispute (WT/DS267) in the World Trade Organization, signed on April 20, 2010, and any investment income of IBA on such transfers, are used only for authorized activities, including related reasonable administrative expenses. For purposes of this Memorandum, "reasonable administrative expenses" means expenses necessary to the operation of IBA, including payment of taxes.

2. Brazil shall ensure that IBA has the capacity to ensure that its funds are used only for authorized activities and related reasonable administrative expenses, and to meet all other requirements of this Memorandum.

3. Brazil shall ensure that IBA, or any entity that receives monies from IBA, employs the monies only for authorized activities, including related reasonable administrative expenses. In the event any amount transferred by the United States is used for other than an authorized activity or related reasonable administrative expense, Brazil shall take the appropriate measures to address the situation, including imposition of additional safeguards to prevent unauthorized use of the monies from IBA.

4. For purposes of this Memorandum, authorized activities are technical assistance and capacity building activities related to the cotton sector in Brazil and related to international cooperation in the same sector in countries in sub-Saharan Africa, in Mercosur member and associate member countries, in Haiti, or in any other developing country as the parties may agree.

5. For purposes of this Memorandum, technical assistance and capacity building activities consist of:

- (a) Pest and disease control, mitigation and eradication;
- (b) Application of post harvest technology;
- (c) Purchase and use of capital equipment (e.g., storage and ginning equipment);
- (d) Promotion of use of cotton;
- (e) Adoption of plant varieties;
- (f) Observance of labor laws;
- (g) Training and education of workers and employers;
- (h) Market information services;
- (i) Natural resources management and conservation;
- (j) Application of technologies to improve quality of cotton;
- (k) Application of methods to improve grading and classing services;
- (l) Design, planning and implementation of infrastructure projects required and solely used for storage, conservation and transportation of cotton, cotton seeds, and cotton inputs such as fertilizer;
- (m) Research by Brazilian public or private institutions where such research is conducted in collaboration with research agencies of the U.S. Department of Agriculture or with a college, university, or research foundation located in the United States. Such research activities, subject to agreement between the Brazilian and U.S. institutions involved, may be open to partnerships with third country institutions; and
- (n) Extension services related to items a-m above.

Section III

IBA Transparency and Auditing Requirements

1. Brazil shall require that IBA meet all applicable requirements of Brazilian law with respect to accounting, auditing, and public disclosure of information. In addition, the governing documents of IBA, such as by-laws, shall provide for appropriate transparency and auditing regarding the funds of IBA and for governmental control over its operation.
2. Brazil shall require that IBA publish on a publicly-accessible internet website information regarding all activities authorized for payment or paid for using monies received by IBA within 30 days of such authorization or payment. This information shall include a description in English of these activities sufficient to confirm that they are authorized activities described in Section II, paragraph 5.
3. Brazil shall ensure that IBA's by-laws require that it undergo internal control and regular external auditing by recognized auditing firms.
4. Brazil shall semi-annually provide to the United States:
 - (a) a report on each disbursement from IBA, including the amount, purpose, and recipient;
 - (b) any official audit reports and reports on activities of IBA or any recipient entity related to disbursements from IBA done by or on behalf of IBA; and
 - (c) a summary of all available information regarding IBA or monies disbursed from IBA, including with respect to any activities of any recipient entity related to disbursements from IBA.
5. Brazil shall notify the United States in advance of any changes to the operation of IBA, including changes in the governing documents of IBA, such as by-laws.

Section IV

Operation of the GSM-102 Program

1. The United States shall not offer guarantees under the GSM-102 Program for loans of longer than 18 month tenor. The United States shall not extend or renew the tenor of a guarantee after it is issued. However, debt arising from default under a guaranteed obligation may be rescheduled. Guarantees under the GSM-102 Program shall not be used for debt rescheduling purposes.
2. The United States shall ensure that the fees for the GSM-102 program guarantees meet the following conditions:
 - (a) The United States will calculate and charge risk-based fees for the GSM-102 program, including for guarantees for loans 12 months or shorter, that cover the program's long-term operating costs and losses;
 - (b) Through adding an additional fee component, if needed, to the risk-based fee described in subparagraph (a), for a given country risk grade, no fee within the country risk grade for a guarantee with tenor longer than 12 months but less than 18 months will be less than 90% of the OECD minimum premia rate (MPR) that corresponds to the U.S. country risk grade; and
 - (c) Through adding an additional fee component, if needed, to the risk-based fee described in subparagraph (a), for a given country risk grade, no fee within the country risk grade for a guarantee with tenor of 18 months will be less than 95% of the OECD MPR that corresponds to the U.S. country risk grade.
3. OECD MPRs are set out in the OECD Arrangement on Officially Supported Export Credits, Annex VIII: Calculation of Minimum Premium Rates or its successor.

Section V

GSM Transparency Requirements

The United States shall semi-annually provide to Brazil information on the operation of the GSM-102 program, including information on uncanceled guarantees registered for the period, the tenor of the guarantees allocated, the fees applied and the volumes of guarantees granted for each tenor, as well as a list of obligors whose debt was initially rescheduled during the period and the total amount initially rescheduled.

Section VI

Peace Clause

1. Brazil shall not request consultations under Articles XXII or XXIII of GATT 1994 as elaborated and applied by the *Understanding on Rules and Procedures Governing the Settlement of Disputes* with respect to any of the following:
 - (a) the Commodity Credit Corporation GSM-102 export credit guarantee program, or any export credit guarantees provided under the program, while the program operates in a manner consistent with the requirements described in Section IV; and
 - (b) any current domestic support program or policy specific to upland cotton such as the Stacked Income Protection Program described in Section 11017 of the U.S. Agricultural Act of 2014, payments under any such program or policy, or support to upland cotton producers under any other domestic support program under current agricultural domestic support policies such as marketing loans described in Subtitle B of Title I of the U.S. Agricultural Act of 2014, until September 30, 2018.
2. Until September 30, 2018, before requesting consultations under Articles XXII or XXIII of GATT 1994 as elaborated and applied by the *Understanding on Rules and Procedures Governing the Settlement of Disputes* on any current domestic support program or policy other than those

described in paragraph 1(b), Brazil shall inform the United States and provide a reasonable opportunity for informal bilateral consultations with a view to avoiding WTO dispute settlement.

Section VII

Consultation

Brazil and the United States shall consult at least annually, on request of either party, on matters concerning this Memorandum. In addition, the parties shall enter into consultations not later than 30 days after receipt by a party of a written request of the other party to consult under this Memorandum.

Section VIII

Duration

1. This Memorandum, except as provided in paragraphs 2 and 3 of this Section, shall terminate on 30 September 2018, unless the parties agree otherwise.
2. Sections II and III of this Memorandum shall be in effect until the date projects funded under this Memorandum are completed and no funds remain available for allocation by IBA.
3. The obligations contained in Section V and paragraph 1(a) of Section VI shall remain in force while the GSM-102 program operates in a manner consistent with the requirements described in Section IV.

Section IX

Status of 2010 Memorandum of Understanding and 2010 Framework Agreement

This Memorandum supersedes the Memorandum of Understanding between the Government of the Federative Republic of Brazil and the Government of the United States of America Regarding a Fund for Technical Assistance and Capacity Building with Respect to the *Cotton* Dispute (WT/DS267) in the World Trade Organization, signed on April 20, 2010, and the Framework for a Mutually Agreed Solution to the Cotton Dispute in the World Trade Organization (WT/DS267), signed on June 25, 2010.

Section X

Reservation of Rights

This Memorandum is otherwise without prejudice to the rights and obligations of Brazil and the United States under the *Marrakesh Agreement Establishing the World Trade Organization*. It also does not imply recognition of the consistency with the covered agreements of the measures discussed in the *Cotton* dispute (WT/DS 267) and other measures contained in the U.S. Agricultural Act of 2014, nor does it prejudice whether the DSB recommendations and rulings in the *Cotton* dispute have been implemented.

Section XI

Effective Date

Sections I and XI of this Memorandum are effective on the date of signature. All other sections of this Memorandum are effective on the date of transfer of funds in accordance with Section I.

Done at Washington, on October 1, 2014, in two originals, each in the English and Portuguese languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.
