

February 11, 2004

Mr. Dariusz Rosati
Chairman
United States – Subsidies on Upland Cotton (DS267)
World Trade Organization
Centre William Rappard
154 Rue de Lausanne
1211 Geneva 21

Dear Mr. Chairman:

Attached please find answers of the United States to 29 additional questions from the Panel following the second substantive meeting in the dispute *United States – Subsidies on Upland Cotton (DS267)* and the comments of the United States on Brazil's 28 January 2004 comments and new arguments on the extensive data provided by the United States.

The United States wishes to inform the Panel that it continues to work on preparing information requested by the Panel in its supplementary request for information pursuant to Article 13 of the DSU as well as certain information requested under the Panel's additional questions. Unfortunately, the very extensive nature of those requests for information have rendered it impossible for the United States to prepare and provide that information within the eight days requested by the Panel.

- For example, the Panel has requested that the United States provide “such of the information requested on 12 January 2004 in the format requested, as regards payment recipients who do not have interests protected under the Privacy Act [of] 1974, if any.”¹ More than 250,000 farms fell within the farm criteria set out in Brazil's request in Exhibit BRA-369,² to which the Panel's January 12 request referred. While it would not be possible to examine singly the records relating to each of these 250,000 farms, the United States continues to seek some means by which the identities of payment recipients who

¹ Panel's Supplementary Request for Information Pursuant to Article 13 of the DSU, item (a) (February 3, 2004).

² See U.S. Letter to the Panel at 3 (December 18, 2003).

may not have protectable privacy interests could be identified. Eight days has not been sufficient time to complete that effort.

- In addition, the Panel has asked for a very substantial amount of acreage information for “covered commodities” over four marketing years under four different programs and for all commodities for which planting information is maintained in marketing year 2002. A significant amount of time was required to generate the data in response to the Panel’s earlier requests. That effort and the programming errors encountered in that response demonstrate that the response to the supplemental request also requires more than eight days.

Thus, the United States continues to work on responses to item (a) and all the bulleted subparts of item (b) of the Panel’s supplementary request for information, as well as to Question 264(b) of the Panel’s additional questions. Based on the work completed to date, our current understanding of the scope of the Panel’s requests, and our experience completing (and revising) a similar, but smaller, computerized search for electronic files in December, the United States estimates that it would be able to provide the requested information by four weeks from the date the Panel provides the clarifications requested below. Of course, should the United States complete its preparation of the requested information prior to that date, we would make that information available to the Panel and Brazil at that time.

With respect to item (b) of the Panel’s supplementary request for information, the United States would seek clarification of that request. First, the United States would ask the Panel to specify which commodities are “covered commodities” as that term is used in several of the bullet points and subbullets. Second, the United States would seek confirmation that, with respect to the information sought for marketing year 2002 “with respect to all crops on cropland covered by the acreage reports,” the relevant portions of the “above questions” are those that ask for planted acreage information for each Category of farm. Clarifications of these points will assist the United States greatly in preparing data responsive to the Panel’s request.

Finally, the United States notes that the Panel’s communication of 3 February invites the parties “to submit, by Wednesday 18 February 2004, any comments on material submitted on 11 February by the other party.” The United States understands this procedure to mean that, with respect to Brazil’s January 28 comments on the data submitted by the United States on December 18 and 19, 2003, Brazil would be permitted to file comments on the U.S. comments filed today. If this is not the case, the United States would appreciate the Panel providing clarification to the parties at its earliest convenience.

However, to the extent that the Panel has given Brazil the opportunity to file a reply on February 18 to the U.S. comments filed today, and Brazil chooses to do so, the United States would request an opportunity to respond to Brazil’s comments. The procedure set out by the Panel in its communications of December 8 and 24, 2003, originally set out one opportunity for Brazil to comment on the U.S. data (on January 20, 2004) and one opportunity for the United States to respond to Brazil’s comments (on January 28, 2004). As the responding party, the United States believes that it is important that it have the opportunity to respond to Brazil’s

arguments, particularly in this dispute where Brazil's arguments and legal positions have changed from submission to submission. To the extent that Brazil as complaining party is now being provided two opportunities to comment on the U.S. data, the United States would feel bound to request a similar second opportunity to comment. We suggest that the deadline for the U.S. reply could be set for Wednesday, February 25.

The United States is providing a copy of this letter and copies of the attached submissions directly to Brazil.

Sincerely,

Steven F. Fabry
Senior Legal Advisor

cc: H.E. Mr. Luiz Felipe de Seixas Corrêa, Permanent Mission of Brazil