

**MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATIVE
REPUBLIC OF BRAZIL REGARDING A FUND FOR TECHNICAL ASSISTANCE AND
CAPACITY BUILDING WITH RESPECT TO THE COTTON DISPUTE (WT/DS267)
IN THE WORLD TRADE ORGANIZATION**

The Government of the United States of America ("United States") and the Government of the Federative Republic of Brazil ("Brazil") (collectively the "parties"),

Recalling the letter of April 5, 2010, from the United States to Brazil and the letter of April 6, 2010 in reply from Brazil to the United States regarding the Cotton dispute,

Affirming that a negotiated solution to the Cotton dispute is in the best interests of both parties, including their interest in promoting agricultural trade,

Desiring to make further progress on the path forward that they have identified to enable them to reach a mutually agreed solution to this dispute,

Hereby agree as follows:

Section I

Organization

1. The Government of Brazil shall designate a recipient entity (hereafter "Entity") to receive transfers from the Government of the United States as described in Section II for a fund (hereafter "Fund") for the activities described in Section IV of this Memorandum of Understanding (hereafter "Memorandum").
2. The Government of Brazil shall ensure that monies in the Fund are used only for authorized activities, including related reasonable administrative expenses.
3. The Government of Brazil shall ensure that the Entity, or any other entity that receives monies from the Entity, employs the monies only for authorized activities, including related reasonable administrative expenses.

Section II

Transfers to the Fund

1. The Government of Brazil shall provide to the Government of the United States for review the necessary information, including relevant governing documents, such as by-laws, to assess whether the Entity has the capacity to meet all criteria for use of the monies as described in this Memorandum, in particular sections III and IV. Where the information is not in English, the Government of Brazil shall provide a translation at the same time it provides the information in the original language or promptly thereafter. The Government of the United States may seek additional clarification or information from the Government of Brazil. In addition, to assist the

Government of the United States in conducting its review of the information, the parties shall consult on the information provided by the Government of Brazil. The parties shall seek to begin consultations no later than five business days after receipt by the Government of the United States of the information in English.

2. After the Government of Brazil has provided to the United States the information described in paragraph 1 and the parties have consulted regarding the capacity of the Entity, the Government of the United States shall, in accordance with this Memorandum, make contributions to the Fund as follows:

a. Within five business days of receipt by the Government of the United States of a notification in writing by the Government of Brazil providing the payment instructions necessary for the United States to effect the transfers under this Memorandum to the Entity by wire transfer to a bank in the United States that is part of the U.S. Federal Reserve System, the Government of the United States shall transfer to the Entity the amount of US\$30 million. The Government of the United States shall not be required to make a transfer in the absence of the necessary payment instructions;

b. In June 2010, on or before the last day that the remitting and recipient banks are open for business, the Government of the United States shall transfer to the Entity US\$4.3 million, and each month thereafter, on or before the last day that the remitting and recipient banks are open for business, the Government of the United States shall transfer to the Fund US\$12.275 million.

3. Not later than 22 April 2010, the Government of Brazil shall publish in the Diário Oficial da União notice that it will not impose countermeasures in the Cotton dispute for a period of 60 days. During this 60-day period, the Government of Brazil and the Government of the United States will jointly work on an understanding that is mutually satisfactory that will provide a framework for reaching a mutually agreed solution to the Cotton dispute.

Section III

Transparency and Auditing Requirements for the Fund

1. The Government of Brazil shall require that the Entity meet all applicable requirements of Brazilian law with respect to accounting, auditing, and public disclosure of information.

2. The Government of Brazil shall require that the Entity publish on a publicly-accessible internet website information regarding all activities paid for using monies received by the Entity. This information shall include a description in English of these authorized activities.

3. The Government of Brazil shall ensure that the Entity's by-laws require that it undergo internal control and regular external auditing by recognized auditing firms.

4. The Government of Brazil shall semi-annually provide to the Government of the United States:

a. a report on each disbursement from the Fund, including the amount, purpose, and recipient;

b. a report on any audits and activities of any recipient entity related to disbursements from the Fund; and

c. a summary of all publicly available information regarding the Fund or monies disbursed from the Fund, including with respect to any activities of any recipient entity related to disbursements from the Fund.

5. The Government of Brazil shall notify the Government of United States in advance of any changes to the operation of the Entity, including changes in the governing documents of the Entity, such as by-laws.

6. In the event any amount transferred by the Government of the United States is used for other than an authorized activity or related reasonable administrative expense, the Government of Brazil shall take the appropriate measures to address the situation, including imposition of additional safeguards to prevent unauthorized use of the monies from the Fund.

Section IV

Authorized Activities

1. The Government of Brazil shall ensure that monies in the Fund are used only for authorized activities, including related reasonable administrative expenses. Authorized activities are technical assistance and capacity building activities, excluding research, 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.

2. 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; and
- l. Extension services related to items a-k above.

3. During the 60 day period following the effective date of this Memorandum, the Government of the United States and the Government of Brazil shall consult regarding the scope of authorized activities.

Section V

Definitions

1. The "Entity" means a non-profit civil association established under Brazilian law that has the capacity to ensure that the funds are used only for authorized activities and related reasonable administrative expenses, and meet all other requirements of this Memorandum. The governing documents of the Entity, such as by-laws, shall provide for appropriate transparency and auditing regarding the Fund and for governmental control over its operation; and
2. "Reasonable administrative expenses" means expenses necessary to the operation of the Entity, including payment of taxes.

Section VI

Duration

This Memorandum, except for Section VIII, shall terminate upon the earliest of:

- a. Written notice to the Government of Brazil by the Government of the United States in light of imposition of countermeasures by the Government of Brazil related to the Cotton dispute;
- b. Written notice to the Government of the United States by the Government of Brazil in light of a lack of timely transfer of funds under Section II.2;
- c. Written notice to the Government of the United States or the Government of Brazil by the other party in light of the review described in Section II.1;
- d. Enactment of successor legislation to the Food, Conservation, and Energy Act of 2008, without prejudice to (1) the position of the Government of Brazil regarding whether the successor legislation results in implementation of the recommendations and rulings of the WTO Dispute Settlement Body in the Cotton dispute; or (2) the November 19, 2009 authorization by the WTO Dispute Settlement Body for countermeasures in that dispute;
- e. The date as provided for in a mutually agreed solution reached by the Government of the United States and the Government of Brazil to the Cotton dispute; or

f. Twenty-one (21) days after the Government of Brazil or the Government of the United States provides written notice to the other party that it is withdrawing from this Memorandum.

Section VII

Consultation

The Governments of the United States and Brazil shall consult at least semi-annually on the operation of the Fund and any other matter concerning this Memorandum. In addition, the parties shall enter into consultations not later than 28 days after receipt by a party of a written request of the other party to consult under this Memorandum.

Section VIII

Transition

Upon termination of this Memorandum, any monies remaining in the Fund shall be expended in accordance with Section IV.

Section IX

Reservation of Rights

This Memorandum is without prejudice to the rights and obligations of the Government of Brazil and the Government of the United States under the Marrakesh Agreement Establishing the World Trade Organization.

Section X

Effective Date

This Memorandum shall be effective on date of signature.

Done at Punta del Este, on 20 of April, 2010, 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.