

Talking Points to BRAZTAC Members

WTO COTTON CASE OVERVIEW

1. **Brazil challenged the U.S. cotton program in the WTO** and had most of its claims accepted by the WTO panel and upheld by the WTO Appellate Body twice.
2. Congress and the Administration made several changes to the program in 2006 and in the context of the 2008 Farm Bill. However, the WTO accepted Brazil's claim that **these changes were not enough** to bring the U.S. program into compliance with its international obligations.
3. As a result, Brazil requested and was granted by the WTO **trade retaliation rights against the United States**.
4. The trade retaliation has a fixed annual amount of \$147.3 million plus a variable annual amount linked to U.S. use of export subsidies. Based on 2008 U.S. trade data, Brazil was granted **\$829.3 million** in trade retaliation, the second largest amount ever authorized by the WTO. It is expected that with 2009 U.S. trade data this amount grows to over \$1 billion.
5. When applying the nearly \$1 billion in trade retaliation against the United States, Brazil can both **target U.S. goods and intellectual property rights** – the so-called “cross-retaliation”.
6. In March 5, 2010, the Government of Brazil published a final list of U.S. goods including **102 products whose retaliatory tariffs would range from 14% to 100%**.
7. In March 12, 2010, the Government of Brazil also published a **preliminary list of U.S. intellectual property rights-related sectors** to be affected by retaliation, including agricultural chemicals, biotech, motion pictures, music, pharmaceuticals, and publishing. These sectors could face reduction of protection time, issuance of compulsory licenses, parallel importation, and additional taxes.
8. According to Department of Commerce data, every \$165,000 in U.S. exports supports one U.S. job. Using Commerce Department analysis, **Brazil's trade retaliation of \$829.3 million would cost the U.S. more than 5,000 jobs!**
9. To avoid the nearly \$1 billion in trade retaliation including unprecedented use of cross-retaliation by a WTO member against another member, **the U.S. and Brazil reached a temporary agreement in 2010** embodied in a Memorandum of Understanding (MOU) and a Framework Agreement.
10. The 2010 U.S.-Brazil temporary agreement has **five pillars**: 1) adjustments of the U.S. export credit guarantee program (called GSM-102); 2) transfer of U.S. technical assistance and capacity building funds to Brazil amounting to \$147.3 million per year; 3) actions on pending trade issues of interest to Brazil, particularly the opening of the U.S. market to pork exports of the Brazilian State of Santa Catarina; 4) regular meetings between both governments to monitor commitments and discuss a definitive solution to the dispute; and 5) the U.S. commitment to reach a definitive solution to the dispute in the context of the 2012 Farm Bill.
11. Since entry of the Framework Agreement, **the Administration and Members of Congress have engaged directly with the Government of Brazil** in regular bilateral meetings to pave the way for a definitive solution to the dispute.

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TECHNICAL ASSISTANCE AND CAPACITY BUILDING FUNDS OF \$147.3 M

1. One of the five pillars of the 2010 U.S.-Brazil temporary agreement to avoid nearly \$1 billion in Brazilian trade retaliation against U.S. goods and intellectual property rights is the **transfer of U.S. technical assistance and capacity building funds to Brazil amounting to \$147.3 million per year.**
2. The funds are transferred by the USDA to the Brazilian Cotton Institute (IBA), a private institute who's Board of Directors includes 3 members of the Brazilian cotton industry and 3 Brazilian government officials, respectively from the ministries of agriculture, industry and trade, and foreign affairs. There is **NO DIRECT TRANSFER** of funds to Brazilian cotton farmers.
3. The Institute can only use the funds to implement 12 pre-authorized technical assistance and capacity building activities outlined in a bilateral MOU agreed between the U.S. and Brazil. **NONE OF THE FUNDS** can be used to 1) direct payment of Brazilian cotton farmers; 2) export promotion; or 3) research and development.
4. In addition to these restrictions, all use of the funds by the Institute is subjected to **U.S. Government surveillance** through regular meetings with Brazilian government officials and through strict transparency and auditing requirements established by the bilateral MOU agreed between both countries. All information is available in English at www.iba-br.com/eng/eng-index.html.
5. The \$147.3 million expenditure is far less than the resulting trade retaliation of nearly \$1 billion against U.S. goods and intellectual property rights. These sanctions would **impact thousands of American jobs and hurt U.S. businesses and farmers** who would effectively be shut out of the Brazilian market.
6. Congress is currently working on the 2012 Farm Bill, which will address the underlying issues that formed the basis of Brazil's WTO cotton case. **Congress needs time to work its will** without short circuiting the process through amendments to Appropriations Bills.
7. Over the last year there have been several efforts in the House and the Senate to stop the temporary payment of funds under the Framework Agreement. The last attempts were made by Rep. Ron Kind (D-WI), through the inclusion of **an amendment to the House FY2012 Agriculture Appropriations Bill, H.R. 2112**, and in the Senate by Sen. John McCain (R-AZ). The Senate, however, did not ultimately act on the McCain Amendment to the FY2012 Agriculture Appropriations Bill.
8. **Congress is currently reconciling the House and Senate versions of the FY2012 Agriculture Appropriations Bills** through a conference on H.R. 2112. A broad coalition of manufacturing, technology, pharmaceutical, agricultural, and other sectors are strongly urging Congress to strip the Kind Amendment language from the final bill.
9. **If Congress includes the Kind Amendment language in H.R. 2112, it will:** 1) dismantle the 2010 U.S.-Brazil temporary agreement; 2) trigger Brazilian trade retaliation against U.S. goods and intellectual property rights; 3) undermine USTR and USDA negotiators in their regular bilateral talks with Brazilian government officials; 4) harm U.S. credibility in any future WTO-related challenge or temporary settlement agreement; and 5) signal to Brazil Congress unwillingness to reach a definitive solution to the dispute.
10. **Therefore, the U.S. private sector respectfully requests members of the Conference to eliminate the Kind Amendment from the final version of the FY2012 Agriculture Appropriations Bill, as well as to reject any similar attempt made in the future.**