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.

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.

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. 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.

9. The 2010 U.S.-Brazil temporary agreement has **five pillars**: 1) <u>initial adjustments</u> of the U.S. export credit guarantee program (called GSM-102); 2) the transfer of U.S. technical assistance and capacity building <u>funds</u> to Brazil amounting to $147.3 million per year; 3) actions on <u>pending trade issues</u> of interest to Brazil, particularly the opening of the U.S. market to pork exports of the Brazilian State of Santa Catarina; 4) <u>regular meetings</u> between both governments to monitor commitments and discuss a definitive solution to the dispute; and 5) the U.S. commitment to reach a <u>definitive solution to the dispute in the context of the 2012 Farm Bill</u>.

Talking Points to BRAZTAC Members

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.

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. However, a few members of the House have tried to stop the transfer of funds to Brazil. The last attempt was made by Rep. Ron Kind (D-WI) through the inclusion of **an amendment in the House version of the FY2012 Agriculture Appropriations Bill**.

8. If approved by Congress, **the Kind Amendment 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.

9. **Therefore, the U.S. private sector respectfully requests members of the Senate not to approve the Kind Amendment and work to eliminate it from the final version of the FY2012 Agriculture Appropriations Bill, as well as to reject any similar attempt made in the future.**