

VIII. Findings and Conclusions

448. For the reasons set out in this Report, the Appellate Body:

- (a) as regards the scope of these Article 21.5 proceedings:
 - (i) upholds the Panel's finding, in paragraph 9.27 of the Panel Report, that Brazil's claims relating to export credit guarantees for pig meat and poultry meat are properly within the scope of these Article 21.5 proceedings. Because the condition on which it is predicated has not been fulfilled, the Appellate Body does not find it necessary to consider Brazil's other appeal that the Panel erred when it found that the measure that is the subject of Brazil's claims is not the revised GSM 102 programme itself; and
 - (ii) upholds the Panel's finding, in paragraph 9.81 of the Panel Report, that Brazil's claims against marketing loan and counter-cyclical payments made by the United States after 21 September 2005 are properly within the scope of these Article 21.5 proceedings. Because the condition on which it is predicated has not been fulfilled, the Appellate Body does not find it necessary to consider Brazil's other appeal that the Panel erred in finding that the original panel's conclusions and recommendations addressed only the payments made under the marketing loan and counter-cyclical payments programmes, and not the programmes themselves;
- (b) as regards the revised GSM 102 export credit guarantee programme:
 - (i) finds that the Panel failed to make an objective assessment of the matter, under Article 11 of the DSU, because it dismissed the import of the re-estimates data submitted by the United States on the basis of internally inconsistent reasoning. Consequently, the Appellate Body reverses the Panel's intermediate finding, in paragraph 14.89 of the Panel Report, that "the initial subsidy estimates provide a strong indication that GSM 102 export credit guarantees are provided against premia which are inadequate to cover the long-term operating costs and losses of the GSM 102 programme";
 - (ii) upholds the Panel's finding, in paragraph 14.131 of the Panel Report, that "the GSM 102 programme is not designed to cover its long term operating costs and losses";

- (iii) upholds, albeit for reasons that differ from those of the Panel, the Panel's conclusion, in paragraph 14.133 of the Panel Report, that "the GSM 102 export credit guarantee programme constitutes an 'export subsidy' because it is provided against premiums which are inadequate to cover its long term operating costs and losses under the terms of item (j) of the Illustrative List". Consequently, upholds the Panel's finding, in paragraph 14.134 of the Panel Report, that GSM 102 export credit guarantees issued after 1 July 2005 are export subsidies within the meaning of Article 3.1(a) of the *SCM Agreement* and Article 10.1 of the *Agreement on Agriculture*; and
- (iv) in the light of this, the following findings, in paragraphs 14.140, 14.149, 14.150, 14.156, 14.157, and 15.1(c) of the Panel Report, also stand:
 - regarding export credit guarantees issued under the revised GSM 102 programme after 1 July 2005 the United States acts inconsistently with Article 10.1 of the *Agreement on Agriculture* by applying export subsidies in a manner which results in the circumvention of United States' export subsidy commitments with respect to certain unscheduled products and certain scheduled products, and as a result acts inconsistently with Article 8 of the *Agreement on Agriculture*;

- regarding export credit guarantees issued under the revised GSM 102 programme after 1 July 2005, the United States also acts inconsistently with Articles 3.1(a) and 3.2 of the *SCM Agreement* by providing export subsidies to unscheduled products and by providing export subsidies to scheduled products in excess of the commitments of the United States under the *Agreement on Agriculture*; and
 - by acting inconsistently with Articles 10.1 and 8 of the *Agreement on Agriculture* and Articles 3.1(a) and 3.2 of the *SCM Agreement*, the United States has failed to comply with the DSB recommendations and rulings. Specifically, the United States has failed to bring its measures into conformity with the *Agreement on Agriculture* and has failed "to withdraw the subsidy without delay"; and
- (c) as regards whether the effect of marketing loan and counter-cyclical payments is significant price suppression:
- (i) upholds the Panel's findings, in paragraphs 10.256, 10.257, and 15.1(a) of the Panel Report, that:
 - the United States acts inconsistently with its obligations under Articles 5(c) and 6.3(c) of the *SCM Agreement* in that the effect of marketing loan and counter-cyclical payments provided to United States upland cotton producers pursuant to the FSRI Act of 2002 is significant price suppression, within the meaning of Article 6.3(c) of the *SCM Agreement*, in the world market for upland cotton, constituting "present" serious prejudice to the interests of Brazil within the meaning of Article 5(c) of the *SCM Agreement*; and
 - by acting inconsistently with Articles 5(c) and 6.3(c) of the *SCM Agreement*, the United States has failed to comply with the DSB's recommendations and rulings; specifically, the United States failed to comply with its obligation under Article 7.8 of the *SCM Agreement* "to take appropriate steps to remove the adverse effects or ... withdraw the subsidy"; and

(ii) finds that the Panel did not fail to make an objective assessment of the matter before it, as required by Article 11 of the DSU, in its analysis of Brazil's claim that the effect of the marketing loan and counter-cyclical payments is significant price suppression.

449. The Appellate Body recommends that the DSB request the United States to bring its measures, found in this Report, and in the Panel Report as modified by this Report, to be inconsistent with the *Agreement on Agriculture* and the *SCM Agreement*, into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 16th day of May 2008 by:

Luiz Olavo Baptista
Presiding Member

Jennifer Hillman
Member

David Unterhalter
Member