

## **BRAZIL AND US REACH INTERIM AGREEMENT IN COTTON DISPUTE**

Brazil and the United States have reached an agreement in the ongoing WTO cotton dispute which should suspend any retaliation by Brazil against the US, either in the form of increased tariffs on goods or measures against IP rights, until sometime in 2012.

The interim agreement, called the Framework, provides for quarterly meetings between representatives of the two countries to discuss a base annual maximum limit of expenditures on, and agricultural subsidies to, the US domestic cotton industry, plus benchmarks for the US to meet in changing its GSM-102 Export Credit Guarantee Program. According to a statement posted on the website of the Brazilian Ministry of Development, Industry, and Foreign Commerce on June 17, 2010, once the US Congress has passed the 2012 Farm Bill, the two countries “will examine the modifications introduced in that law and evaluate the possibility of informing the WTO” that the dispute has been resolved.

The Ministry’s statement also advises that “Brazil undertakes not to apply countermeasures ... while the Framework is in effect,” but that the country “does not waive its rights to apply countermeasures and either party can renounce the Framework at any moment.”

In early June 2010, the Brazilian Congress approved the law which provides the legal framework for Brazil to take countermeasures against IP rights. Up until that point, the legal basis for the countermeasures had been a Presidential decree with the temporary effect of law, which would have expired had it not been approved by Congress. The law, No. 12.270, was signed by President Lula on June 24, 2010. The text (in Portuguese) can be found here: <http://www.planalto.gov.br/ccivil/ Ato2007-2010/2010/Lei/L12270.htm>.

### **Commentary**

The Framework is the third consecutive agreement between the two countries to continue talking without Brazil immediately imposing countermeasures, which would have a negative effect on overall negotiations.

Given the Brazilian government’s restraint to date, and the overall progress achieved towards resolving this dispute since February 2010, we believe that, so long as negotiations between Brazil and the US continue in good faith, and the US meets the benchmarks for its export credit guarantee program, no countermeasures, including limitations on IP rights, will be imposed until sometime after the passage of the US 2012 Farm Bill, if at all.

It is important to note, however, that the final decision regarding changes to subsidies to the US cotton industry rests with the United States Congress, not the Office of the US Trade Representative, which is leading negotiations with the Brazilian government.