

September 21, 2009

The Honorable Ronald Kirk  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Kirk:

The undersigned organizations are writing to ask the U.S. government to request a new compliance panel to update the recent World Trade Organization (WTO) ruling on the U.S. Department of Agriculture's GSM-102 export credit guarantee program. We believe the WTO's decision does not reflect changes made to the GSM-102 program since 2005. We also believe, if implemented, the WTO decision would cause unwarranted harm to U.S. agricultural producers and U.S. agribusinesses.

We were disappointed that the original WTO compliance panel was not able to consider the many changes to the GSM-102 program made since 2005. The extent of the program changes is demonstrated in the president's budget for fiscal year 2010. According to the U.S. Office of Management and Budget, in 2010 the GSM program will generate a positive return to the federal government of \$54 million. In other words, the revenues from guarantee premiums charged to program participants more than offset the cost of program operations, including any credit losses. Under the WTO panel's ruling, each year moving forward Brazil would be entitled to place tariffs or other import penalties on an amount of U.S. products based on the use of a program that is clearly not a subsidy.

On July 1, 2005, USDA adopted measures to bring its three export credit guarantee programs into compliance with WTO obligations. USDA adopted risk-based guarantee premiums for the GSM-102 Program and the Supplier Credit Guarantee Program and suspended the GSM-103 program.

Congress made these changes permanent by enacting them into law as part of the 2008 Farm Bill. As part of that bill, Congress eliminated the GSM-103 program and abolished the statutory one percent "cap" on guarantee premiums that could be charged by USDA. Congress also eliminated the Supplier Credit Guarantee Program, leaving GSM-102 as the sole remaining USDA export credit guarantee program. In addition, Congress included language in the Farm Bill requiring USDA to operate the GSM-102 program at no net cost to the government, thereby ensuring that the program would not be a subsidy and would comply with the WTO obligation that guarantee premiums received under the program would cover its operating costs and losses.

The panel's decision to award Brazil retaliatory authority in amounts based on the future use of a program that is now compliant with WTO rules makes no sense. The panel's award decision seems to punish the U.S. for its compliance efforts. The panel's decision also is inconsistent with the WTO Doha trade negotiating text which permits export credit guarantee programs that have been subject to appropriate "disciplines."

The WTO panel also failed to recognize the benefits that have accrued to Brazil's banks as a result of their significant participation in the GSM-102 program. These benefits far

outweigh the costs arrived at by the arbitration panel. Ironically, Brazil's banks have been by far the largest users of the GSM-102 program since 2002 – the year in which Brazil initiated its WTO case against the United States. Since that time, Brazilian banks have taken more than \$5.4 billion in loans under the GSM-102 program.

Notably, the \$2 billion in GSM-102 loans taken by Brazil's banks during the country's 2002-2003 financial crisis constituted a vital source of foreign exchange liquidity at a time when Brazil was virtually cut off from the international credit and trade finance markets. In fact, the liquidity afforded by the GSM-102 program was instrumental in allowing Brazil to avert a collapse of its banking system, its balance of payments, and its economy as a whole. With the onset of the global credit crisis, Brazilian banks have again turned to the GSM-102 program as a source of vital trade finance liquidity, taking more than \$1.1 billion in GSM-102 loans during FY08-FY09.

We commend the efforts of the U.S. government led by the Office of the U.S. Trade Representative and the Agriculture Department on this case. They have clearly articulated the modifications to the program that put it in compliance and are consistent with the negotiating text. Unfortunately, however, the original WTO compliance panel was not permitted to consider these factors when determining the penalties awarded in the case. We believe that a new WTO compliance panel, authorized to fully consider all the information relevant to the case, is the best way to ensure a fair outcome for all sides.

We look forward to working with you to ensure that the many changes previously made to USDA's export credit guarantee programs are better understood by the WTO and others and urge you to request a new compliance panel.

Respectfully,

AMCOT	American Cotton Shippers Association
American Farm Bureau Federation	American Soybean Association
American Sugar Alliance	American Feed Industry Association
CoBank	Farm Credit Council
National Association of Wheat Growers	National Barley Growers Association
National Cattlemen's Beef Association	National Chicken Council
National Corn Growers Association	National Cotton Council
National Council of Farmer Cooperatives	National Farmers Union
National Grain and Feed Association	National Grange
National Milk Producers Federation	National Oilseed Processors Association
National Sorghum Producers	National Turkey Federation
North American Export Grain Association	North American Millers' Association
Pet Food Institute	USA Dry Pea and Lentil Council
USA Poultry and Egg Export Council	USA Rice Federation
U.S. Dairy Export Council	U.S. Grains Council
U.S. Meat Export Federation	US Rice Producers Association
U.S. Wheat Associates	United Egg Producers
United Egg Association	