

***United States – Subsidies on Upland Cotton***

**(WT/DS267)**

**Response of the United States of America  
to the Panel's February 3, 2004 Data Request,  
As Clarified on February 16, 2004**

March 3, 2004

## Introduction

1. The United States is submitting today 8 data files, as requested by the Panel in its February 3, 2004, supplementary request for information, as clarified by the Panel's communication of February 16, 2004. The files are in an EXCEL format.
2. The data has been prepared in response to those letters, and has been prepared as well as possible in the time allotted, involving much time and effort. We first address how the files were derived and issues involved in their preparation, such as the handling of 1999 and 2000 crop soybeans and 2002 peanuts. Because of the peanut and soybean issues, there were in essence two runs of data, and both sets of data are presented.
3. In the first run, the United States ran the figures for 1999 and 2000 treating soybeans as a non-base crop, and thus one which would not effect any categorizations based on comparing plantings of total program crops to total program crop bases (such as those necessary to sort farms into B1, B2, and B3 categories). In the second run, soybeans were treated as a full program crop for the Market Loss Assistance payments for those years in which oilseed payments were made (1999 and 2000) with an assigned base of zero for each farm as there were no farm bases for the soybean crops for 1999 and 2000.
4. Likewise, for peanuts, there were separate runs for 2002. In the first run, the peanut crops for Direct payments and Counter-cyclical payments were treated as a non-program crop for categorization purposes. In the second run, peanuts were treated as a program crop with a base of zero for each farm.
5. These two runs took into account the directive of the Panel of February 16. There, the Panel instructed us to treat soybeans for Market Loss Assistance (MLA) as a program crop and peanuts as a Direct and Counter-cyclical Payment (DCP) crop. As indicated, this did raise a question, one which is colored somewhat by a broader issue on the MLA payments themselves. There is no separate base acreage or yields for MLA purposes. And, the oilseed programs for 1999 and 2000 were not farm based programs. No farm had a soybean base for those years. Likewise, with peanuts, there was no farm base for 2002, the first year that peanuts became a program crop. Bases were not assigned for peanuts until 2003 and could not be effective until that year. For 2002, the peanut program was a producer-based program. The same was true for soybeans in 1999 and 2000.
6. Finally, we also present the results of our efforts to identify any farms that would not have protectable privacy interests under the Privacy Act of 1974, as requested in item (a) of the Panel's February 3 supplementary request for information.
7. We then indicate how the files were put together and identify the files.

**There were no Separate Market Loss Assistance Bases; Rather the Payments Were Made Proportionately to the Production Flexibility Contract (PFC) Payments**

8. The market loss assistance payments (MLAs) were after the fact and simply supplemented payments that were made to a person under a PFC contract. There were no new contracts, bases, or yields. There were four MLA programs. The first was for the 1998 crop. MLA programs followed for the 1999, 2000 and 2001 crops, each under separate legislation, each after the fact – that is after the crop was planted and in supplement of payments already made under the PFC contracts.

9. To respond to the Panel's data request of February 3, 2004, the United States was called upon to give information for the PFCs and the MLAs. The data request was for base acreage with respect to farms that were in the program. There were no bases as such for MLAs. The payments were proportional to what has been received in the PFC. The only slight difference was that for 2000, where Congress simply prescribed a rate, drawing from the previous statute for the previous crop. Thus, we have treated the request for MLA data (as explained below, soybeans aside) to be a request for the PFC data for the PFC year for which the PFC payment was supplemented by a particular MLA payment.

**There Was No Soybean Farm Base for the 1999 and 2000 Market Loss Assistance Program As There Were No Market Loss Assistance Programs for Soybeans, and Oilseed Payments in those Years were Producer-Based, Not Farm-Based**

10. Soybeans complicate the analysis. The United States reads the Panel's February 16 letter to indicate that for purposes of the data request, soybeans should be treated as an MLA crop. This presents an analytical problem because no farm had a soybean base. We note that the data files do contain for every category the soybean plantings for 1999 and 2000. (We note that there was no oilseed program, and therefore no payments for soybeans, for 2001.)

11. As an initial matter, soybean payments for 1999 and 2000 were part of an overall oilseeds program. There was no oilseed program for the 2001 crop; therefore, there was no soybean payment of any kind for that year. There was never, even for 1999 and 2000, a base or yield for a farm for oilseeds in the PFC era.

12. For the PFC program crops like cotton, the "farm" had a base. The "farm" had a yield. "Producers" on the farm received the payment even if they were not the same person who had produced the crops that produced the historic base or yield or had even been on the farm when the base or yield were created. If the producer had an interest in several farms with base under the PFC programs, the producer received several checks. The base acreage and yield derived from historical plantings on the farm.

13. In the oilseeds program, it was completely different. The producer had a base. The producer had a yield. The farm had no base. The farm had no yield. For the 1999 program, if the producer was on Farm X in 1999 and planted soybeans there, the producer could receive a payment based on plantings that the producer may have had on Farms A, B, C, and D in the historical period. Current producers on Farms A, B, C, and D, by contrast, would have no “base.” In short, there was no base for soybeans for any farm for oilseeds payments for 1999 or 2000.

14. Thus, this is the problem in terms of the data request for the Panel: the request considers soybeans as a covered commodity for MLAs and seeks information for base acreage on “farms,” but soybean base for 1999 and 2000 oilseed payments was producer-based, not farm-based. In order to be as responsive as possible, we have run the data two ways. First, for 1999 and 2000, we treat soybeans as a non-program crop for purposes of categorizing the farms into subcategories (as explained in more detail below), but show the actual soybean plantings for all farms. In the second run, we treat soybeans as a program crop and, for categorization purposes, treat all farms as having a soybean base of zero.

15. We respectfully refer the Panel to its February 3, 2004, letter. Category B farms are those with cotton “overplantings” – that is with more cotton plantings than cotton base. Category B2 farms are defined as those where, for all covered crops added together, the farm underplanted the total aggregated base. B3 is the mirror image of B2. It is where there was an aggregated overplanting for all program crops taken together.

16. Assume the following plantings on Farm A:

Cotton	Base 10	Plantings 12
Rice	Base 5	Plantings 0
Soybeans	--	Plantings 5

If soybean plantings do not matter for categorization, then this farm is a B2 farm since the plantings for rice and cotton would be 12 and the total base would be 15. But if soybeans are counted and treated as having a zero base, then this farm is a B3 farm because the countable base would still be 15, but the plantings would now be 17. This would only be the case for MLA. Since soybeans, under the Panel’s February 16 letter, would only be counted for MLAs, the farm would still be a B2 farm for purposes of the PFC calculations for the same year.

17. As we have indicated and set out further below, we have it covered both ways. We provide a file in which soybeans are treated as a covered commodity (for MLA purposes) with a farm base of zero. We also present a file in which soybeans are not considered a program crop, in which the PFC and MLA figures are the same.

### **Farms Had No Peanut Base in 2002 Because the 2002 Peanut Program was Producer-Based, Not Farm-Based**

18. The Peanut program presents the same problem for the 2002 Direct and Counter-cyclical Program (DCP) as do soybeans for the 1999 and 2000 programs, since it too was a producer-based, not a farm-based program. There were no peanut bases for 2002 for any farm. The base was assigned to a producer for 2002. That producer had to be a “historical peanut producer” – someone who had produced peanuts in the base period. For the 2002 crop year, the producer received one check for all of the producer’s base, calculated as the payment rate times the “payment acres of the historic cotton producer” times the “average peanut yield . . . for the historic cotton producer.”<sup>1</sup> However, starting in 2003, the base and yield had to be assigned by the historical producer to a farm of that producer’s choice. The designated farm did not have to be a farm in which the producer had an interest, or one on which the producer had ever produced peanuts, or, for that matter, one on which anyone had ever produced peanuts or would ever produce peanuts in the future.

19. The distinction is perhaps best demonstrated by example. Assume that a farmer had in 1998-2001 produced peanuts on rented Farms A, B, and C. Assume that for 2002 the farmer decided to get out of farming altogether, and was living in retirement in Denver, Colorado, far outside the peanut belt and with no interest in any farm or any farm production anywhere. Under the terms of the 2002 Farm Bill, that historical producer would receive a payment based on that producer’s base and that producer’s yield. If that farmer happened to be a producer in 2002 on Farm D, that farmer would nonetheless receive payment based on his or her production on Farms A, B, and C in the base period. Producers in 2002 on Farms A, B, and C would receive nothing (unless they of course had their own producer base).

20. For 2003, however, the farmer living in Denver would have to pick a farm on which to place his base.

21. In short, there were no bases for any peanut farm in 2002, and the problem is the same as for soybeans. As for soybeans, the data was run both ways – that is, treating peanuts as a covered commodity for 2002 with a farm base of zero and not treating peanuts as a covered commodity.

### **How the Data was Compiled**

22. The United States now explains the source of the data. We have previously mentioned the limitations of crop reports, which is from where all the planting data in the aggregations presented here are derived. Crop reports were not generally required until 2002, at which point they were required for persons seeking benefits for crops other than peanuts in the form of direct

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<sup>1</sup> 2002 Farm Bill, § 1303(c) (direct payments) (Exhibit US-1); *see id.* § 1304(e) (counter-cyclical payments).

payments, counter-cyclical payments, or marketing loans. As for peanuts, similar reporting requirements apply where the payments are in connection with farms for which a base is assigned. Hence, the peanut reporting provision only begins to apply with the 2003 crop.

23. We note that the total number of acres accounted for in 2002 may exceed the total cropland numbers set out in the December 18-19, 2003 data, as corrected on January 28, 2004. Differences may result because: (1) farmers may have reported plantings of grass on noncropland; (2) there can be double-cropping in some areas; and (3) CRP acres may not have been reported and counted as available cropland.

### **The Categories of Farms for the Aggregated Data Files Responsive to Part “(b)” of the Panel’s Request**

24. We have sorted and aggregated the relevant farms into those categories set out in the February 3 supplementary request from the Panel. Category A farms are those for which the farms underplanted their cotton base. The panel also asked for farms that did not plant any other covered commodities and we have classified those as “A1” farms.

25. Category B farms are farms that overplanted their base. Subcategory B1 farms are farms that, in total for all base crops, planted exactly their covered commodity base, while B2 farms under-planted and B3 farms over-planted those total bases.

26. Category C farms planted cotton but had no base.

### **Data on Farms Without Privacy Interests Under the Privacy Act of 1974 As Set Out in Item (a) of the Panel’s Request**

27. We now address what was item (a) of the Panel’s February 3 supplementary request for information. The Panel asked for information relating to those farms that do not have a privacy interest and thus who could potentially be subject to a detailed release of planted and base acreage information. This information appears to be of little interest to Brazil at this point as Brazil indicated in its February 13 letter that “because the United States apparently intends only to provide farm-specific information for far less than the total amount of farms (i.e., those that are not held by ‘individuals’) this information will be useless for calculating the exact amount of total contract payments.”<sup>2</sup> By way of contrast, Brazil commented that, “[i]f the United States provides the complete information requested in part (b) of the 3 February 2004 Request, then most of Brazil’s 28 January Data Comments would be rendered moot,” and “[w]ith the actual

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<sup>2</sup> Brazil’s February 13, 2004, Letter to the Panel, at 2.

and complete data, the Panel would be in a position to apply any methodology it deems acceptable.”<sup>3</sup>

28. For non-closely held corporations, information *voluntarily* received from a corporation is to be withheld if it is not the type of information customarily released by the corporation to the public. *See Center for Auto Safety v. National Highway Traffic Safety Administration*, 244 F.3d 144 (D.C. Cir. 2001).

29. Such is the case with respect to plantings prior to 2002. It would therefore, be necessary to examine, on a case by case basis, the circumstances of each “corporate” farming operation to determine if it is a closely held corporation which might enjoy a privacy interest and if the information was voluntarily submitted and not the type of information customarily released by the corporation to the public.

30. Given the time available, we used the year 2002 when in all cases, crop reports were mandatory with the limits indicated above. The United States conducted an electronic sort of cotton farms to narrow the number of files to a manageable number, which we then examined on a farm-by-farm basis to see if they were closely-held corporations. The data file containing farm-by-farm base, yield, and planted acreage information for these farms is described below.

### **The Data Files**

31. The United States is providing the following data files via CD-ROM. This information is sensitive, and we do not consent to the release of this information to the public domain. Therefore, as with the data submitted on December 18 and 19, 2003, as corrected on January 28, 2004, pursuant to paragraph 3 of the Panel's working procedures, we designate this information as confidential.

32. File Name: PFC1999W.xls: This file is the first 1999 PFC and MLA file treating soybeans as a non-base crop and showing soybeans plantings.

33. File Name: PFC99-2W.xls: This file is the second 1999 PFC and MLA file. Soybeans is treated as a crop with a zero base on all farms.

34. File Name: PFC2000W.xls: This file is the 2000 PFC and MLA files with soybeans treated as a non-base crop and showing soybeans plantings.

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<sup>3</sup> Brazil's February 13, 2004, Letter to the Panel, at 5. Brazil further commented that “by producing the complete aggregated information, there would no longer be a need to draw adverse inferences.” *Id.* In light of the filing today of a complete response to item (b) of the Panel's supplementary request, the United States welcomes Brazil's withdrawal of its request that the Panel draw adverse inferences in this dispute.

35. File Name: PFC00-2W.xls: This file is the 2000 PFC and MLA files treating soybeans as a crop with a zero base on all farms.
36. File Name: PFC2001W.xls: This file is the 2001 PFC and MLA file.
37. File Name: DCP2002W.xls: This file is the 2002 Direct and Counter-cyclical file with peanuts treated as a non-base crop and showing peanuts plantings.
38. File Name: DCP02-2W.xls: This file is the 2002 Direct and Counter-cyclical file with peanuts treated as a crop with a zero base on all farms.
39. File Name: notclose.xls: This is the result of the search for not closely held farms as described above. (Each line corresponds to one farm. The base, yield, and planting fields are set out in the file and are the same as those in the base/yield and planted acres data files provided on January 28, 2004 (as set out in Exhibit US-145).)