The Maize Trust: Core Drafting Team
CONFIDENTIAL

The United States WTO Domestic Support Measures
Questions to Brazil through Sidley Austen

[8 July 2008]

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1. Please review the South African 3rd party submission and confirm that nothing in the draft would hinder the case of the co-complainants. Thereafter we have some specific questions which may assist us in refining the text.
2. Is the Peace Clause likely to be raise by the US as a defence for the years 1999-2002, before it expired? We note that nullification is one of the items that would be granted a peaceful ride. If so should SA prepare something on the peace clause?
3. We note that through the course of 2007 the basis of the claims dwindled substantially. We are interested to know why the claims on a) export credits and b) ASCM claims for adverse effects/serious prejudice were dropped.
4. Will the co-complainants address each of the approximately 104 measures listed in the panel requests on a technically descriptive level, or will only the main 'sins' be unpacked in the submission.
5. Realising that at heart the whole case is actually just about measurement of US support against the +/- $19,1 billion TAMS level: Is the ensuing logic then that making a case that proves just $1 over the level is sufficient to find a contravention? Otherwise is the logic to prove as big an overspend as possible with a view to what future retaliation might entail when the matter later goes through compliance proceedings?
6. Our model, based on the model used by Sumner, takes account of the whole of domestic support provided to US farmers and not only that portion which exceeds the committed level of support ($19.1 Billion). Do you base your claim of nullification or impairment on the impact of the whole of the subsidy program or only that portion exceeding the allowable amount of support? Given that we do understand that the case is not about serious prejudice, we are merely trying to

indicate the impact of US subsidies programmes on the South African maize industry.

7. Will the co-complainants essentially re-write the entire US notification to prove the TAMS overspend? In other words configuring the green to amber and amber to product specific amber to non-de minimis product specific amber?
8. Allied to this concept have the BC considered making a so-called 'counter notification under AoA article 18 to the CoA outside of the dispute?
9. SA has noted that in collecting subsidies to reclassify and count against the TAMS limit; not all individual products where one makes a case that they should be product specific then necessarily count towards the TAMS total as some of them then still escape under the de minimis exemption, we suspect primarily that they did not receive great boosts from marketing loans. SA was daunted by the scope of these calculations and simply took a short cut by saying that we relied on the calculations performed by BC. Do BC have these calculations by measure and by product, and how should SA deal with the matter i.e. is referencing to the assumed BC calculations an acceptable strategy for this item?
10. As regards 'base acres' and product specific classification: We noted the difficult issue in Upland Cotton as regards what was called the 'cotton-to-cotton' methodology. In the current dispute, does one have to have a cotton-to-cotton type methodology for every product that was planted on base acres? SA has (probably naively?) taken the view that in the US official budgets, payments are listed clearly under different commodities (for SA notably maize), hence product specific according to the US's own national accounting system. Our economists also had difficulty in matching the figures in the US national accounts to what was on the WTO notifications of the US. Does this relate to a crop vs. financial year issue?
11. What is the key to unlocking the non-conformity of Crop Disaster payments with the green box? SA was unable to get behind where the contravention lay.
12. SA understands that since the claim has moved out of the realm of the ASCM, it is no longer necessary to prove market effects and hence, strictly, no economic modelling work is required. None the less, SA has made a modelling calculation. The aim of this was to generate some numbers to give people a tangible handle on why we are in the dispute. This is particularly a need in the SA home context – politically, press etc. In the draft we have justified this by making it part of defining

what has been ‘nullified’ and in our view describing what SA’s ‘substantial interest’ is in the dispute. Is it acceptable to use the modelling in this way, or does this create a shaky tower for the US to attack in their defence which ultimately detracts from the main thrust of the argument.

13. In AoA Article 6.1 we find the word ‘except’. How does this word affect the burden of proof, if at all?
14. It seems to SA that it would be useful to cite AoA Article 7.2 (for instance in arguing that PFC payments into the AMS). However BC do not cite this article in their claims. Why did BC leave this out?