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### FEATURED Q&A

#### How Is the Threat of Trade Retaliation Affecting U.S.-Brazil Ties?

**Q** Last month, the Brazilian government published guidelines for an \$830 million retaliation against U.S. cotton subsidies in accordance with a World Trade Organization ruling. Brazilian officials have said retaliatory measures could include restricting intellectual property rights on some U.S. goods such as those in the medical and pharmaceutical sectors. Why is the Brazilian government targeting patents on pharmaceutical goods? Is so-called cross-retaliation justified in this case? How is possible trade retaliation over cotton subsidies affecting U.S.-Brazilian commercial relations?

**A** Carlos Márcio Cozendey, director of the Economic Department of Brazil's Ministry of External Relations: "On Nov. 19, the Dispute Settlement Body of the WTO authorized Brazil to suspend concessions or other obligations with respect to the United States in the cotton subsidies dispute (DS267), originally initiated in 2002. The authorization granted to Brazil included suspension of concessions with respect not only to the same sector of the dispute (goods), but also to services and intellectual property rights. This constitutes a recognition by the WTO that the circumstances of the case were serious enough and that retaliation only in goods would not be practical or effective. One of the possible areas of IP retaliation is patents on pharmaceutical goods. Brazil, however, is not

favoring any one aspect of the retaliation, but is currently only exploring several possibilities that may help induce the United States to abide by the decisions of the WTO. Thus, the WTO itself found 'cross-retaliation' justified in the present case. The Brazilian government's Feb. 10 decree allows for retaliation on copyrights, trademarks and geographical indications among other IP rights. The retaliation in IP is not yet in place and Brazil would like to emphasize the language of Article 22.1 of the Dispute Settlement Understanding that

*Continued on page 3*



#### Chile Asks For Aid After Quake, Struggles to Contain Looting

Chile's government sought aid Monday from the United Nations as it tried to begin recovering from Saturday's massive earthquake. Also, thousands of soldiers fanned out in efforts to re-establish order. See story on page 2.

*Photo: El Mercurio.*

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## NEWS BRIEFS

**Spanish Judge Accuses Venezuela of Plotting With Rebels**

A Spanish judge on Monday accused Venezuela of links to Basque separatist group ETA and Colombia's FARC who allegedly plotted assassinations of leaders including Colombian President Álvaro Uribe. Spanish Prime Minister José Luis Zapatero said he asked his foreign ministry to "request an explanation from the Venezuelan government," after a Spanish High court announced indictments for 13 FARC and ETA suspects that revealed alleged ties. Venezuela's foreign ministry immediately rejected the allegations, but Venezuelan officials later pledged to cooperate with Spanish investigators, the AP reported.

**USTR Vows to Continue Working on Panama, Colombia FTAs**

United States Trade Representative Ron Kirk on Monday sent Congress the administration's 2010 trade agenda, which includes a pledge to continuing working to resolve outstanding issues with pending free trade agreements with Panama, Colombia and South Korea. The report said the administration is working with Panama and Colombia on labor reforms.

**Bancolombia Reports 26 Percent Increase in Net Profit for Q4**

**Bancolombia**, Colombia's largest bank, on Monday reported a 26 percent increase in net profit year-on-year for the fourth quarter, Dow Jones reported. Net profit for the quarter totaled 371 billion Colombian pesos (\$U.S. 194 million), the bank said, adding that its investment portfolio profits fueled the increase. In 2009, the bank's net profit was 1.23 trillion pesos, a 2.6 percent decline from 2008.

**Political News****Chile Seeks Aid, Authorities Struggle to Contain Chaos After Earthquake**

Chile's government on Monday asked for international help to meet immediate needs in the wake of Saturday's massive 8.8-magnitude earthquake as thousands of soldiers fanned out to the hardest-hit areas in a struggle to contain looting. The

*Chile has requested water filtration equipment, generators and field hospitals, the U.N. said.*

earthquake, one of the largest ever recorded, has killed at least 723 people although officials have said the toll is likely to rise. The United Nations said Chile has requested water filtration equipment, generators and field hospitals in addition to experts to help determine the extent of the destruction, *The New York Times* reported. "Everything is now moving," Elisabeth Byrs, a spokeswoman for the U.N.'s Office for the Coordination of Humanitarian Affairs told the newspaper. "We are looking immediately to match the needs." The U.N. is also sending Chile satellite phones and is also poised to deliver 30 tons of food and other aid if the country needs it, Alicia Bárcena, executive secretary of the U.N. Economic Commission for Latin America and the Caribbean told reporters, according to *The Washington Post*. U.S. Secretary of State Hillary Clinton, who this week is visiting six countries in Latin America, said she was bringing 20 satellite phones with her when she arrives in Chile today. Clinton said she is continuing with the prearranged visit to "assess whatever else they might need and immediately to begin the process of providing it," *The Washington Post* reported. Chile also dispatched 10,000 troops in an effort to quell looting and other violence, while authorities in Concepción, near the epicenter,

extended a curfew to midday today, Reuters reported. President Michelle Bachelet condemned what she described as "pillaging and criminality" and said the government was sending food and other supplies.

**Former Guerrilla Mujica Sworn in as Uruguay's President**

Former guerrilla fighter José "Pepe" Mujica was sworn in Monday as Uruguay's president. Mujica, 74, was a member of the National Liberation Movement-Tupamaros, which used bombings and kidnappings in attempts to depose elected governments in the 1960's. He said Monday that he no longer agrees with past "stupid ideologies," the Associated Press reported. Mujica, who maintained his informal style by being inaugurated in a tieless blue shirt, has vowed to extend the policies of his predecessor, Tabaré Vázquez. The outgoing president used income tax revenue to lower Uruguay's unemployment and provide health care to all minors. Mujica has also pledged to work toward Latin American unity. U.S. Secretary of State Hillary Clinton met with Mujica Monday as she began a tour of six Latin American nations. "I wish to not only congratulate the president-elect and the new government, but to applaud the way in which the government is unifying and bringing together even opposition parties," Clinton told reporters before the swearing-in.



Mujica  
*Photo: Uruguayan Government.*

**Economic News****Argentina's Fernández Scales Back Amount of Reserves in Debt Plan**

Argentine President Cristina Fernández on Monday signed a new decree to use \$4.2 billion in central bank reserves to meet debt obligations, scrapping a previous measure to use \$6.6 billion,

Bloomberg News reported. The decree was signed in accordance with a 2006 law that allows the government to use reserves to pay \$9.5 billion in debt to the International Monetary Fund, Fernández said. An Argentine court had blocked the

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*An Argentine court had blocked the plan, which opposition lawmakers promised to vote down.*

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earlier decree to use \$6.6 billion in reserves, and opposition lawmakers promised to vote it down when Congress resumed from its recess. In January, Fernández fired central bank chief Martín Redrado over his refusal to support the measure. [Editor's note: See related Q&A in the Feb. 18 [issue](#) of the *Advisor*.]

## Company News

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### Chile's Codelco Will Meet Supply Contracts After Earthquake

Chilean state-owned copper producer **Codelco** said Monday that it will meet its supply contracts even after power outages caused by Saturday's massive earthquake, Bloomberg News reported. Codelco, the world's largest producer of the metal, was forced to temporarily shut down some mine operations after the outages as were rivals **Anglo American** and **Antofagasta**. Codelco will be able to use shipments from undamaged plants in northern Chile to compensate for shortfalls from the El Teniente and Andina mines, which were affected by the earthquake, a company official told Bloomberg News. Codelco began restarting operations Sunday at the El Teniente mine in central Chile after re-establishing power to the site though a power outage kept the Andina mine closed through Sunday.

### Featured Q&A

*Continued from page 1*

'neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements.' Brazil expects the United States to bring all cotton subsidy programs condemned by the WTO (GSM 102, marketing loan and counter-cyclical payments) into compliance. It would be positive for our bilateral relations to reach a mutually agreed solution to this case, one that would preserve the multilateral trading system of rules and avoid commercial losses to U.S. companies. After years without any concrete indication that the United States is moving to comply with WTO recommendations, Brazil has no alternative but to have recourse to retaliation."

**A Steven Bipes, executive director of the U.S. Section of the Brazil-U.S. Business Council:**

"The Brazil-U.S. Business Council is leading a broad coalition of U.S. private sector interests in the Brazil Trade Action Coalition (BRAZTAC). This coalition represents millions of American jobs that would be negatively impacted if the U.S. and Brazil cannot reach a negotiated solution to avoid retaliatory sanctions against the United States related to the WTO cotton case. BRAZTAC has been working closely with key government officials in both countries to encourage dialogue and a constructive and timely alternative to retaliatory sanctions. We have been pleased to hear reports of positive movement in these discussions, and we remain hopeful that the parties can resolve the matter before sanctions take effect. Under cross-retaliation, the Brazilian government has threatened to target all forms of American innovation and intellectual property from various sectors, including literary, artistic and scientific works, pharmaceuticals, medical devices and patents. Such a form of cross-retaliation would be unprecedented in its scope and impact. Brazil has the legal right under

WTO rules to retaliate against the U.S. to compensate for market distortions caused by U.S. cotton subsidies. This retaliation can be direct via the form of import taxes of up to 100 percent (on

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“Such a form of cross-retaliation would be unprecedented in its scope and impact.”

— Steven Bipes

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top of existing taxes) on a list of goods including cotton and its derivatives and various other products up to a threshold of \$560 million. Under the WTO, Brazil has also been granted the right to cross-retaliate against other sectors above this threshold level up to a value of \$829 million. While such cross-retaliation would certainly maximize the impact and damages of the sanctions in the U.S., it could also have a strong negative and counter-productive impact on Brazil. Global markets could misread the cross-retaliation as evidencing a lack of commitment to strong intellectual property rights in Brazil, which is certainly not the case."

**A Roberto Giannetti da Fonseca, general director of foreign and trade affairs for the Federation of Industries of the State of São Paulo:**

"Retaliation is counterproductive to both Brazil and the United States, and may even be insufficient to cease unfair U.S. trade practices and distortion of trade programs. However, it is the only legally justified instrument to promote conformity with international trade rules in the present case. The crucial issue is not whether Brazil will exercise its rights, but whether the United States will comply with the WTO ruling. Some American cotton programs are inconsistent with multilateral trade

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**Featured Q&A***Continued from page 3*

rules, and the U.S. government has made no significant efforts to push required reforms forward. Brazil represents less than 2 percent of the United States' trade flow whereas the American market is

tailored for this specific dispute between the United States and Brazil but rather to any WTO dispute that may authorize suspension of IP rights due to noncompliance with WTO rulings. Although the

“Brazil represents less than 2 percent of the United States' trade flow whereas the American market is eight times more important for Brazil's foreign trade.”

— Roberto Giannetti da Fonseca

eight times more important for Brazil's foreign trade. Regular retaliation on goods has limited impact in this case and cross-retaliation may prove much more effective. Some of the changes necessary to bring the United States into compliance with the trade rules depend on a reformed farm bill. Meanwhile, an offering of a comprehensive package that offsets the damages caused by U.S. subsidies in the Brazilian cotton and agribusiness sector is in U.S. decision makers' hands. Brazil recognizes the United States as an important trading partner and it is committed to further deepening its commercial and political ties. Thus, it is not in either country's best interest to allow trade disputes to remain at the center of the bilateral agenda. Nonetheless, it is fundamental that the U.S. government comply with the WTO's Appellate Body ruling under risk of undermining the overall influence and credibility of the multilateral trading system.”

**A** **Sandra Leis, attorney at Dannemann Siemsen Advogados in Rio de Janeiro:** “As a result of last year's WTO decision favorable to Brazil in the cotton subsidies case, the Brazilian government is expected to release a list of U.S. products that may suffer an import tax surcharge of up to 100 percent in early March. Brazil also published an executive order on Feb. 10 as a preparatory measure for applying cross-sector retaliation on intellectual property. This order is not

scope of the order is broad and targets a variety of sectors, the pharmaceutical sector is particularly important because it is one of the most sensitive areas for the United States. As a result of these recent developments, coalitions of U.S. businesses, farmers and workers have had meetings with the U.S. Trade Representative, the U.S. ambassador in Brazil has declared that an amicable solution is feasible and Secretary of State Hillary Clinton is coming to Brazil. On the other hand, there is a lobby in the United States to counter-retaliate against Brazil by lowering the country from the USTR's simple 'watch list' to its 'priority watch list,' which comprises countries that do not provide effective protection to U.S. IP rights. Being on the 'priority watch list' means that a country can be removed from the U.S. Generalized System of Preferences (GSP) and no longer enjoy commercial preferences on exports to the United States.”

*Editor's note: In response to the Advisor's request for a commentary, Office of U.S. Trade Representative spokeswoman Nefeterius Akeli McPherson said in a statement, "We hope to reach a solution to the issues in this dispute without Brazil resorting to countermeasures."*

*The Advisor welcomes reactions to the Q&A above. Readers can write editor Gene Kuleta at [gkuleta@thedialogue.org](mailto:gkuleta@thedialogue.org) with comments.*

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**Erik Brand**

General Manager, Publishing  
[ebrand@thedialogue.org](mailto:ebrand@thedialogue.org)

**Gene Kuleta**

Editor  
[gkuleta@thedialogue.org](mailto:gkuleta@thedialogue.org)

**Matthew Schewel**

Reporter, Assistant Editor  
[mschewel@thedialogue.org](mailto:mschewel@thedialogue.org)

**Inter-American Dialogue:**

Peter Hakim, President

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**Subscription Inquiries** are welcomed at [fretrial@thedialogue.org](mailto:fretrial@thedialogue.org)

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