
COTTON UPDATE – 23rd March 2005

On the 21st of March, the WTO's Dispute Settlement Body adopted the Appellate Body report on the complaint of Brazil against the United States concerning "Subsidies on Upland Cotton". The Appellate Body confirmed most of the findings of an earlier WTO panel that ruled that US cotton subsidies were in violation of WTO rules on agriculture and subsidies.

In particular, the Appellate Body stated that certain US payments to farmers, such as "production flexibility contract payments" (PFC) and "direct payments" could no longer be categorised as "Green Box" support, but as "Amber Box" support.

In WTO terminology, subsidies are identified by "boxes" which are given the colours of traffic lights: green (permitted) and amber (slow down — i.e. be reduced). There is no red (forbidden) box, although domestic support exceeding the reduction commitment levels in the amber box is prohibited. There is a blue box for subsidies that are tied to programmes that limit production. (cf. www.wto.org)

The implication of this ruling is that a constraint is placed on the current (and future) use of such payments to farmers in both the US (and elsewhere) – as newly categorised support leads to an overflowing of the "Amber Box". The ruling also vindicates those who have long suggested that some Members illegally reallocate distorting "Amber Box" support to permitted "Green Box" support.

If the US wants to continue supporting its farmers to the same extent, it will need to reorganise its domestic support regime – so that these "Amber Box" subsidies are no longer trade distorting. They can do this by ensuring that payments fall under "Green Box" support safety-net programmes; structural adjustment assistance programmes; environmental programmes and/or regional assistance programmes.

Alternatively, the US could make direct payments under production limiting programmes (otherwise known as "Blue Box" measures). Such payments should be made dependent on fixed areas and yield (or on a fixed number of livestock) and should apply to 85 per cent or less of production relating to a defined base period.

Alternatively, the US could change the way it measures and notifies its AMS or it could simply cut back on Amber Box support - in line with reduction commitments as agreed in the ongoing WTO agricultural negotiations.

The US, however, has been remarkably quiet about what (if anything) it intends to do. US Trade Representative spokesman Richard Mills said that the US “would study the report carefully and work closely with Congress and [the] farm community on [the] next steps”. Several statements by US officials also indicate that the US may attempt to link its reform of the cotton of the cotton sector with the outcome of the Doha Round negotiations.

Under WTO rules, the Appellate Body’s ruling had to be formally adopted by the Dispute Settlement Body (DSB) by the beginning of April. The DSB was faster than that. Now, the US has 30 days to announce its intentions to comply with the ruling – although it does not need to reveal its intended timeframe for doing so. The implementation deadline will be fixed through negotiations between Brazil and the US, or failing that, through arbitration. Arbitration proceedings must normally be completed within 90 days of the DSB’s adoption of the ruling.

There is concern within the trade community - and especially amongst the for the four countries (Benin, Burkina Faso, Chad and Mali) behind the “Cotton Initiative” – that negotiations on the definitions of the boxes will lead to the introduction of new types of subsidies. Given the fact that the principles applied by the Appellate Body also affect EU some support measures, more relaxed disciplines may also be introduced.

Although the US and Brazil could find a mutually acceptable arrangement, such an outcome would not be in the spirit of the rules based organisation. A panel and the Appellate Body have confirmed that the US’s cotton subsidy regime is in violation of WTO rules. It is time for these subsidies to be phased out.

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