
COTTON UPDATE – 22 August 2006

Cotton Panel: USA implement elimination of STEP 2 payments – a step in the right direction – when do the next steps follow suit?

The implementation of abolishment of the Step 2 program, decided by the US congress time ago, has been announced to become effective as of August 1, 2006. With this, and with a delay of nearly a year, the USA have now complied with one of the several requests of the DSB in the case Brazil / USA on upland cotton¹.

The specific components of the US cotton support system challenged by Brazil within its panel proceedings are the following:

- Marketing loan payments
- Step 2 payments to exporters and to domestic users
- Export credit guarantees
- Production flexibility contract payments
- Market loss assistance payments
- Direct payments
- Counter-cyclical payments
- Plus some other payments and guarantees of lesser significance in the context of this panel.

Without re-launching the discussion on the legal merits of the case, the findings of the cotton case can be summarized as follows:

1. Measures pertaining to the Amber instead of the Green Box

The production flexibility contracts and the direct payments were considered, by the USA, as having little or no trade distorting effect and were accordingly classified and notified as “green box” measures. These measures did not qualify for the green box exemption and the DSB requested these to be included within the amber box of trade distorting measures subject to the overall AMS (Aggregate Measurement of Support) cap.

Corrective action needed: Include measures in the amber box.

¹ For more information on the cotton panel, please refer to the following WTO internet page:
http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm

2. Amber Box Measures with Price Suppression Effect

The marketing loan, the marketing loss assistance and the counter-cyclical payments were measures considered by the USA as trade-distorting, amber box measures and were notified by the USA within their amber box. The panel affirmed the amber box nature of these measures and found that they caused an effect of price depression onto the world cotton market. This price depression effect was found in violation of WTO law.

Corrective action needed: Reformulate the measures such as to eliminate their price depression effect.

3. Prohibited Measures

The panel found that step 2 payments and export credit guarantees constituted prohibited subsidies. Step 2 payments to exporters and export credit guarantees were found to be export subsidies, to which the US is not entitled in the case of cotton; step 2 payments to domestic users were found to give a preference to national cotton in violation of WTO law.

Corrective action needed: Withdrawal of the measures.

Implementation of the Panel's Recommendations

The decision of the USA to withdraw finally the Step 2 program is an encouraging signal. However, this withdrawal is just one element of the overdue, full implementation of the decisions of the Dispute Settlement Body in the cotton case. Moreover, it remains to be confirmed whether the USA's announcement covers both types of step 2 payments, or just one.

The following actions remain to be taken and implemented:

- a) Regarding export credit guarantees, no information on the withdrawal of these prohibited subsidies seems to have been made available by the US.

- b) Reformulation of the amber box measures found to have price suppressive effects: Economically, these measures are those that affect most cotton producers in other countries, for the sheer amount spent on these measures and their corresponding effects on international markets. The US government so far

does not appear to have initiated steps for withdrawing the price depression effects of the measures and programmes in question.

- c) Reclassification of measures declared “green” but found “amber”. In as much as the most recent notifications of the USA to the Committee of Agriculture cover the calendar / marketing years of 2000 / 2001, it results impossible to assess the overall compliance of the USA with the Uruguay Round commitments in respect of domestic support and under the application of the DSB’s decisions.

In order to comply fully with the results of the proceedings and to allow Members to monitor and assess this compliance, it is imperative that the USA reformulate the measures at issue and provide transparency to Members by bringing their notifications to the Committee on Agriculture of the WTO up to date – which means to furnish the notifications within 90 days² after the closure of the respective reporting period.

Brazil to launch new Panel request

After having waited for more than a year for the US to implement the DSB’s decisions, Brazil has now decided to take the case to the Dispute Settlement Body, again. Within the ongoing negotiations, Brazil has been patient in respect of news on the implementation of sector reforms by the USA.

While the dates may be coincidental, this still shows us that, with the suspension of the Doha Development Agenda (DDA) negotiations, dispute settlement has again become the only instrument in the defence of trade interests.

The WTO dispute settlement is a powerful tool for the safeguarding of legitimate trade interests among WTO Members. However, dispute settlement cannot replace trade negotiations. The ambitious development goals of the DDA cannot be achieved with dispute settlement. Dispute settlement can only go as far as ensuring the correct implementation of existing commitments among Members. Only the negotiation process can achieve new commitments that will further strengthen the power of trade in its role of driving force of development.

² The WTO document G/AG/2 contains the detailed decisions of Members on agricultural notification requirements and frequencies. This document is available to the public and can be downloaded from the WTO website.

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