
COTTON UPDATE – 26th October 2007

The Upland Cotton Compliance Panel Ruling - Summary

The Context

On 15 October 2007 the WTO compliance panel examining the US's efforts at bringing its legislation into line with the findings of the 2005 decision, confirmed by the WTO Membership through the Dispute Settlement Body, made its findings. In short the panel has ruled that the US has failed to fully implement the earlier ruling both on domestic support and export subsidy programmes. This is the penultimate step in a process likely to end in June 2008. To date the US administration has not announced any specific initiative to address the domestic support programs deemed to have had a prejudicial impact to Brazil's trade interests. It is reported that in particular the compliance panel found the US's domestic countercyclical payments and marketing loan payments to cotton producers as trade distorting, and secondly that that US legislative amendments to export credit guarantee programmes have not corrected the original reasons for ruling these measures as prohibited.

Brazil's Response

The Brazilian Agriculture Minister Reinhold Stephanes indicated in the wake of the ruling that Brazil is considering leaving the actual retaliation that will likely be granted through the remainder of the process and settle for a so-called 'moral victory'. Retaliation would allow Brazil to impose tariffs on goods imported from the US above MFN rates and to apply other sanctions such as deliberate infringements of US intellectual property rights. The dynamic at play is the fact that the US is Brazil's biggest trading partner, hence the need to consider wider long term diplomatic relations on a wider front than just trade on just this one product, cotton.

Africa's Comment

The President of the African Cotton Producers Association, Francois Traoré, expressed satisfaction at the result, the underlying basis of which has long hampered West Africa's development interests in his opinion. He expressed the view that the ruling holds some form of moral suasion that could 'oblige' the international community to pressure the US to respect the ruling. While not part of the DSU process

per se, this is certainly an externality that may come into play, most likely within the mix of the Doha agriculture negotiations. It is reported that government officials in Burkina Faso are not overly optimistic about the prospects of their cotton industry in the immediate future despite the ruling. They also hope that at the Executive level US officials will feel embarrassed and thus retain the hope that 'something can be done to implement the ruling'.

The US Response

The US National Cotton Council expressed 'disappointment' with the decision. In this regard the NCC is of the view that the serious prejudice claims, now confirmed by 3 different WTO legal tribunals, are 'contrary to the facts in the world cotton market both then and now'. The actual position, as the NCC likely understands, is not that puzzling due to the simple fact that the WTO compliance panel simply takes its cue from the initial case which covered the years 1999-2002 and their terms of reference have nothing to do with current market conditions. This being said the latest WTO subsidy case being prepared by Brazil and Canada will cover the years 1999-2005, and based on initial analysis this case is also likely to come to the same finding as to the illegality of inter alia US cotton subsidies under international law.

Closing Observation

It is highly unlikely that any US compliance with the WTO compliance panel findings will be able to be divorced for the passage of the 2007 US Farm Bill. Based upon the current passage of the Farm Bill thus far, the legislative necessity for reform to align with WTO standards has proven to be completely absent. Aside from the final conclusion of the cotton dispute in June 2008, the present dispute action by Canada and Brazil on US farm subsidies more generally, probably holds the best chance of bringing further reform pressure to bear on the US.

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IDEAS Centre, 10, rue de l'Arquebuse, 1204 Geneva, Switzerland
T +41 22 807 17 40, F +41 22 807 17 41