
COTTON UPDATE – 8 December 2005

Brazil's Retaliation in Upland Cotton is off the Table

In terms of the Appellate Body ruling on US Upland Cotton in March 2005, the WTO Dispute Settlement Body (DSB) found that US export subsidies on cotton (both the US Step 2 cotton programmes and the export credit guarantee programmes) to be prohibited subsidies, and gave the US a 1 July 2005 deadline to withdraw them. They further found that certain domestic subsidies were causing adverse effects to the interests of Brazil and had to be amended to change these adverse effects or otherwise withdraw the programmes. The date for this compliance was agreed between Brazil and the US to be 21 September 2005.

Export Subsidies

On 30 June 2005 the USDA announced changes only to the export credit guarantee programmes. This drew criticism from many, including the International Food and Agricultural Trade Policy Council (IPC) because the Step 2 payments were far more important than the export credits, and the WTO found that Step 2 was suppressing world cotton prices.

On 5 July 2005, the USDA announced proposed statutory changes to the Step 2 cotton subsidy scheme as well as to export credit guarantee programmes that benefit cotton farmers. The USDA described the changes, which would be sent to Congress for approval, as a move to comply with the WTO ruling that US cotton subsidies were in violation of WTO rules on subsidies and agriculture. US Agriculture Secretary Mike Johanns said that "By implementing these proposed changes, we are being fully responsive to the WTO decision."

Brazil then informed the WTO on 5 July that it would request the right to impose US\$ 3 billion in sanctions on US imports as a retaliatory measure against the US delay in withdrawing the prohibited subsidies. Brazilian officials stated that they had no intention of pursuing retaliation. The WTO request was to preserve their legal right to retaliate in light of the fact that under WTO rules Brazil could lose the right to do so if it does not act by 15 July. Brazil's deputy trade negotiator was quoted as saying that 'we still hope the US will comply in a manner so we don't have to carry these [retaliation measures] out.'

Brazil thus asked the DSB for the right to retaliate on 15 July 2005. The US objected to the level of retaliation put forward by Brazil, where after both countries requested and accepted that the matter be referred to arbitration. The parties then called for the arbitrators to suspend their work. According to the settlement, Brazil remains entitled to request the establishment of a new WTO panel at any time after 15 July 2005 in order to determine whether the steps taken by the US to comply with the original WTO ruling were sufficient.

Domestic Subsidies

On 6 October 2005 Brazil put forward that the US had missed the 21 September 2005 deadline to comply with the March 2005 Appellate Body ruling on its domestic cotton subsidy programme. Brazil thus formally requested the right to retaliate against US patents, copyrights, and services providers by suspending obligations under WTO rules on services (GATS) and intellectual property rights (TRIPS); quantified at US\$1.037 billion. To justify doing this Brazil argued that imposing large amounts of retaliatory tariffs on the importation of US goods would be harmful to its own domestic industry. It is for this reason that Brazil sought to 'cross-retaliate' against US services providers and intellectual property right holders. No WTO Member has ever applied these cross retaliation measures. This tactic was used previously by Ecuador against the EU in the Bananas dispute, but was never brought to fruition by the Ecuadorians. This mechanism may prove to be more effective than higher tariffs on goods in getting developed economies to comply with WTO rulings in disputes with developing countries.

At the 18 October 2005 DSB meeting the US rejected both the type and amount of retaliation that Brazil was seeking as inappropriate, and filed for arbitration in the dispute. This arbitration has now been suspended, with Brazil's agreement, on 21 November 2005 (see Annex1). This agreement is premised upon the US undertaking at the 18 October 2005 DSB meeting that it would fully implement the cotton ruling, (which includes both the domestic and export subsidy components). In the 21 November 2005 notification the proceedings are suspended until either country asks for their resumption. Each country promised to notify the other 30 days before doing so. This thus leaves a backdoor open to Brazil to take the matter up once more.

Comment

On 22 November 2005 the ministers of the G4 (EU, US, India, Brazil) + Japan met in Geneva in parallel with the agriculture discussion on the Falconer text, released on the same day. Trade practitioners were speculating as to whether the 2 meetings had any connection, as this was unclear. The link may be related to the cotton dispute.

It is noted that Brazil has now cumulatively decided to hold back on their full \$4.037 billion in retaliation on the cotton dispute, and has now suspended the both the arbitration proceedings with the US in this regard. One may have expected that this leverage device would be more important than ever at this juncture in the negotiations to keep the US 'interested and honest' in making a good agriculture deal as the Hong Kong ambitions are ratcheted down, supposedly without losing sight of the overall ambition of the Doha Round. This state of affairs probably means that Brazil has cashed in these negotiation credits as it were. It is probable that there is more to the G4 of 22 November 2005 than has been openly reported. It may be likely that Brazil and the US have struck a wider deal now, part of which involves Brazil backing off on the cotton dispute retaliation, with a quid pro quo from the US to be revealed later in the negotiations. Hints of this have been evident in early December (see postscript).

With this move, the political activity for the African contingent on the Cotton Initiative is more important now than ever before. The African contingent should also be wary of placing too much reliance on Brazil to champion the Cotton Initiative on their behalf in Hong Kong, and subsequently. It is not strange for countries to partially extricate themselves from loose alliances when negotiations intensify and their own interest begins to draw away from wider combined interests.

Postscript

The 'The Five Interested Parties' (FIPS) plus Japan, met in Geneva on 3 December 2005 in order to advance the negotiations in advance of the Hong Kong Ministerial Conference. A press conference was held post-discussions at which time the following comment was made by Brazil:

'We as Brazil are appreciative of the steps that the United States has been taking in relation to the implementation of panels and rulings of the appellate body. And of course other measures that can be taken to help the supply side in developing LDCs or other African countries are of course of great importance and we agree with that. But we also would sustain that the quickest possible implementation of the appellate body decisions probably will be the best, more rapidly to help all the cotton producers including the African ones. And we appreciate the moves that have been taken but we hope they can go fast.'

Note that the Brazilian 'stand back' action does not preclude them from reinitiating the Arbitration proceedings again should they not be satisfied with the negotiating results or the legislative progress in the US Congress.

Further Reading and Acknowledgements

<http://www.worldtradelaw.net/dsc/Search/SearchDSC.htm>

<http://www.southcentre.org/info/scquarterlytradedisputes/TradeDisputesQtrly2005q1.pdf>

<http://www.washingtontradedaily.com/id17.htm>

<http://www.ictsd.org/weekly/05-11-23/WTOinbrief.htm#1>

Annex 1

Extract from the Brazil/US letter to the WTO Arbitrator 21 November 2005

'Noting that the United States reaffirmed in the DSB meeting of October 18, 2005, its commitment to implement the recommendations and rulings of the DSB in this dispute, and in light of the preference for WTO-consistent solutions mutually acceptable to the parties to a dispute set out in DSU Article 3.7, the United States and Brazil request that the Article 22.6 arbitration proceedings be suspended until either party subsequently requests their resumption. Brazil and the United States have agreed that, if either party decides to request resumption of the arbitration proceedings that party will provide the other party with 30 days' advance notice before making such a request.'

IDEAS Centre offers policy advice services to developing and transition country governments in the areas of international trade, development and economic governance. In relation to the World Trade Organization (WTO), IDEAS Centre helps low-income countries defend their trade interests and thus use their WTO membership in a way that supports their development. This text was compiled by Hilton Zunckel.

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