

WTO Cotton Subsidy Case

On August 31, 2009, a World Trade Organization (WTO) arbitration panel issued a decision on the amount of retaliatory measures Brazil would be allowed to apply against the United States to compensate for subsidies given to American cotton and other farmers. The panel also determined how those measures can be taken (same agreement or other WTO agreements).

The amount of retaliatory measures authorized by the WTO regarding the prohibited subsidies will vary from year to year depending on the level of use of the General Sales Manager Online System (GSM) by the United States. Based on 2006 data used by WTO panelists, this amount would be \$147.4 million annually. Brazil argues that if 2009 data is used, this amount could be as high as \$650 million annually. Regarding the manner in which the retaliatory measures may be taken, the WTO determined that Brazil must apply sanctions in the goods sector, but it has not ruled out cross-retaliation (in the areas of IP and services).

In November 2009, the Brazilian Office of Foreign Trade (CAMEX) published a preliminary list of U.S. products that might be affected by the implementation of the WTO decision via an importation tax surcharge of up to 100%. The private sector was invited to comment on the 200 plus item list. A reduced revised list of goods was published in early March 2010 and a "grace period" of 30 days was given by Brazil before countermeasures would be applied based on the list. Also in March, the Brazilian government published a preliminary list of intellectual property and related rights that might also be affected by the implementation of the WTO decision. A period for comments was also given by the Brazilian government and the final list has not been published yet (as of June 1st, 2010).

Brazil alleged it was moving forward with the steps necessary to implement retaliatory measures because the United States did not comply with the WTO decision and was not engaging in a substantive dialogue aimed at finding an alternative solution to the dispute. This impasse was broken during a visit by U.S. Secretary of State Hillary Clinton to Brazil in early March, 2010. Secretary Clinton met with Brazilian Foreign Affairs Minister Celso Amorim and at a joint press conference held in Brasília they confirmed that the United States and Brazil would launch negotiations in an effort to resolve the cotton dispute between both countries and avoid trade retaliation against the United States by Brazil, as authorized by the WTO in 2009.

A few days before the application of countermeasures by Brazil against U.S. goods was set to start, the U.S. and Brazilian governments announced they had engaged in a positive initial dialogue and Brazil agreed to suspend the application of the countermeasures until April 22, 2010 based on a preliminary agreement with the United States, which Brazil was willing to accept until further changes could be made to the United States subsidy policy (i.e. changes to the Farm Bill which is scheduled to be revised in 2012) to bring it into compliance with the WTO decision. The objective of this new deadline was to allow for further talks aimed at finding a framework for the solution of the dispute between both countries.

Through the preliminary dialogue with Brazil, the United States agreed to make some technical changes to the operation of the GSM program. The United States also agreed to move forward on the publication of a proposed rule that would allow pork from Santa Catarina state in Brazil to be exported to the United States. In addition, the United States also committed to keep Brazil informed of the status of a rulemaking process on Brazilian beef access. Finally, the United States also agreed to provide Brazil with technical assistance and capacity building related to the cotton sector.

The United States implemented initial steps toward the fulfillment of the commitments mentioned above. A few changes to the U.S. GSM program were made, the proposed rule to allow imports of pork from Santa Catarina was published, and the United States signed a memorandum of understanding with Brazil establishing the framework for the technical assistance and capacity building programs it is willing to provide to the cotton industry, totaling \$147m.

Based on the steps taken by the United States mentioned above, on April 20, the Brazilian government announced that it would defer for an additional 60-day period the application of countermeasures against the United States. The deferral period ends on June 21. The current state of play will allow for extra time for the negotiation of a permanent solution to the WTO dispute.

Since April, 2010, multiple meetings have taken place among Brazilian and U.S. government officials in Washington, Brasilia and Geneva with aimed at finding a permanent solution to the cotton dispute.

Even though the United States made a few administrative changes to its GSM program the Brazilians believe the changes are not enough. It is our understanding that Brazil expects further changes to premium rates and repayment terms, which the Brazilians believe could be accomplished administratively, without changes to the Farm Bill, which would need to be approved by the U.S. Congress.

Until the dispute is settled, the risk to U.S. trade remains. The Brazil-U.S. Business Council, through a broad coalition of industries it formed in late 2009 - the Brazil Trade Action Coalition (BRAZTAC) - continues to communicate to both governments the importance of reaching a permanent solution to the dispute. Retaliation by Brazil could significantly damage bilateral relations and cost U.S. workers, farmers, and businesses opportunities far beyond those who sell the products on Brazil's retaliation lists.