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PolicyPennings by Dr. Daryll E. Ray

The latest on Brazil vs. US cotton

The World Trade Organization (WTO) cotton case that was filed by Brazil against the US cotton program in 2002 reached a new milestone on August 31, 2009 when the arbitration panel ruled on the amount of the retaliatory countermeasures Brazil could impose on US exports to Brazil. Not surprisingly, the US and Brazil disagree on the amount of retaliatory measures allowed by the arbitration panel as they have at every step of the way between 2002 and today.

According to the US Congressional Research Service, the findings on which the retaliatory measures are set include (1) U.S. domestic cotton subsidies exceeded WTO commitments of the 1992 benchmark year, thereby losing the protection afforded by the "Peace Clause," which had previously shielded them from substantive challenges; (2) the two major types of direct payments made under U.S. farm programs-Production Flexibility Contract payments of the 1996 Farm Act and the Direct Payments of the 2002 Farm Act-do not qualify for WTO exemptions from reduction commitments as fully decoupled income support and should therefore count against the "Peace Clause" limits; (3) Step 2 program payments are prohibited subsidies; (4) U.S. export credit guarantees are effectively export subsidies, making them subject to previously notified export subsidy commitments; and (5) U.S. domestic support measures that are "contingent on market prices" have resulted in excess cotton production and exports that, in turn, caused low international prices and resulted in "serious prejudice" to Brazil.

In 2005, changes were made to the US cotton program, but Brazil rejected them as inadequate and continued their case against the US cotton program. With a few more twists and turns, we arrive at the arbitration panel rulings.

In part 1, the panel set the annual level of appropriate countermeasures with respect to GSM-102 (export credit programs) at US$147.4 million for 2006. These countermeasures would have to be applied against trade in goods unless the calculations in subsequent years exceeded US$409.7 million, the level of Brazil's imports of consumer goods from the US that could be subject to countermeasures (updated for the same year.).

In response, the National Cotton Council argues that the arbitration panel "failed to recognize the significant changes that have been made to the GSM-102 program since 2005. As a result, we urge the U.S. government to request a new Compliance Panel to update this ruling to reflect the changes in the program made by Congress and the USDA since 2005."

The National Cotton Council goes on to note that "the extent of the program changes is demonstrated in the President's budget for fiscal year 2010. According to the U.S. Office of Management and Budget, in 2010 the GSM program will generate a positive return to the federal government of $54 million…. [This is] clearly not a subsidy."

In part 2, the panel set the annual levels of appropriate countermeasures with respect to marketing loan and countercyclical payments at US$147.3 million. Again, it must be taken against trade in goods and cannot be taken against intellectual property rights and services unless the annual calculations exceed US$409.7 million.

In a footnote to the panel's report, they write, "it is understood that this amount is calculated taking into the account the entirety of the level of countermeasures that Brazil is entitled to at that point in time." Thus, the US$409.7 million includes the total of both decisions. The total of part 1 and part 2 allowable countermeasures is US$294.7 million.

If the past is any predictor of the future, there will be additional twists and turns before this issue sees any final resolution. In the meantime, this ruling may impact the role of the US in any resumption of Doha round trade talks.

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