Ministério das Relações Exteriores
Assessoria de Imprensa do Gabinete

Palácio Itamaraty
Térreo
Brasília - DF
CEP: 70170-900 Telefones: 0(xx) 61-411-6160/2/3
Fax: 0(xx) 61-321-2429
E-mail: imprensa@mre.gov.br

Nota nº 248 - 18/06/2004
Distribuição 22 e 23

Brazil-USA Dispute on Subsidies on Upland Cotton (Translation from the original in Portuguese)

Brazil and the United States received today, 18 June 2004, in Geneva, the final report of the World Trade Organization (WTO) Panel about the U.S. subsidies on upland cotton, established on 18 March 2003 at the request of Brazil. The text of the final report will be disclosed only after being translated to the other official languages of the WTO (Spanish and French), when begins the 20 to 60-day period for the document to be adopted by the Dispute Settlement Body in case it is not submitted to the Appellate Body before.

In the cotton dispute, Brazil's main claims were:

1) the barrier provided by Article 13 of the Agreement on Agriculture – the so-called "Peace Clause" – shall not be applied to the subsidies challenged by Brazil (see item V – "Description of the Challenged Subsidies" in the background document in annex);

2) the subsidies "Production Flexibility Contract" and "Direct Payment", like the other challenged programs, distort the production and trade of cotton, just the opposite of what the United States alleged;

3) the U.S. domestic support measures – that reached US$13.1 billion between 1999 and 2003 – cause serious prejudice to Brazil by depressing the world upland cotton prices;

4) the export credit guarantees – challenged by Brazil not only for cotton, but also for all agricultural products (soybeans, corn and rice, for example) - are export subsidies inconsistent with the Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures;

5) the STEP 2 program is a prohibited subsidy in light of the Agreement on Subsidies and Countervailing Measures because it is contingent upon export or use of U.S. cotton over imported goods.

The Government of Brazil welcomes with great satisfaction the Panel's findings concerning all the issues above mentioned. We see the material and legal soundness of the Brazilian case confirmed and its legitimacy in the international forums consolidated.

Nevertheless, the effects of the Panel's decision are not limited to the Brazilian cotton sector, whose support to the Government of Brazil, by means of its permanent interest and involvement in the process, was fundamental to the achievement of the dispute. From a broader perspective, the Panel's final report strengthens the claims of the African cotton producer countries, which are among the poorest in the world. Despite the high competitiveness of their productive sectors, the U.S. subsidies have produced a genuine social and economic catastrophe in these countries. In West Africa, lower prices mean substantial losses in terms of export revenues and, even more important, considerable growth in the poverty of millions of people.

The Panel's decision also provides high quality technical arguments to those countries that defend a more fair international trade on agricultural products. Complex and original in most of its discussions, the cotton dispute presents a number of reflections that shall have relevant impact on the Doha Round talks and on the adoption of public agricultural policies, especially by those countries which subsidize more production and trade in the agricultural sector.

The Government of Brazil expects that the United States comply with the Panel's decision as soon as possible, giving an unequivocal indication of the U.S. commitment to the abolition of international trade distortions and of U.S. respect to the obligations established by the multilateral trade disciplines.

WTO. Dispute U.S. - Subsidies on Upland Cotton. Final Panel Report (WT/DS267/R).

Background Information

I – Overview

Brazil and the U.S. received today, 18 June 2004, the final report of the WTO Panel on the consistency of various U.S. subsidies for the production, marketing and export of cotton with multilateral trade disciplines (Agreement on Agriculture; Agreement on Subsidies and Countervailing Measures - "SCM Agreement"; and the General Agreement on Tariffs and Trade - "GATT").

Prior to the establishment of the WTO panel, Brazil engaged in three rounds (from October 2002 through January 2003) of consultations with the United States, but was unable to reach an agreement due to constant refusal by the United States to eliminate the inconsistencies of its upland cotton subsidies. As per the novelty of the legal issues and the complexity of the U.S. subsidy regime, the panel made three unprecedented substantial meetings with the parties in July, October and December 2003 (see also Item IV – Dispute Timetable).

The issuance of the final report concludes the panel's work. Once the report has been translated into Spanish and French, the document will be circulated to the WTO Members, triggering the deadline for the final report to be adopted by the Dispute Settlement Body or appealed by either party (20 to 60 days from circulation).

II – Brazil's Claims

The following facts highlight the importance of Brazil's challenge:

This is the first dispute in the history of the WTO challenging:

- domestic agricultural subsidies for the production of cotton – or any other agricultural commodity. Between August 1999-July 2003, U.S. producers of cotton received $13.1 billion in U.S. subsidies (most recent USDA data produced in the U.S. cotton dispute). The value of the U.S. cotton crop produced during this same 4-year period was $13.94 billion. This translates into a subsidization rate of 89.5 percent. For every dollar received by U.S. cotton farmers from market sales of cotton, the U.S. government paid them another 89.5 cents. In 2001-02, for a cotton crop that was worth $3.080 billion), the U.S. government paid U.S. producers of cotton almost $4 billion, what translates into a subsidization rate of 129.3 percent.

- U.S. export subsidies specifically directed at agricultural products (STEP 2 and export credit guarantee).

- agricultural export credit guarantee subsidies. Brazil has challenged U.S. export credit guarantee subsidies for all agricultural products – not only those provided to cotton.

- agricultural subsidies before the end of the “peace clause” (Article 13 of the Agreement on Agriculture), which exempted domestic agricultural subsidies from challenge until 31 December 2003.

- the self-attributed “green box” nature of some U.S. subsidies (Production Flexibility Contract and Direct Payment).

- agricultural subsidies as a cause of “serious prejudice” under Articles 5 and 6 of the SCM Agreement.

In the cotton dispute, Brazil's main claims were:

(1) the barrier provided by Article 13 of the Agreement on Agriculture - the so-called "Peace Clause" - shall not be applied to the subsidies challenged by Brazil (see Item V - "Description of the Challenged Subsidies" in the background document in annex);

(2) the subsidies Production Flexibility Contract and Direct Payment distort the production and trade of cotton and thus cannot be classified as "green box" payments (exempted from reduction commitments);

(3) the U.S. domestic support measures are inconsistent with Articles 5 and 6 of the SCM Agreement. These measures cause “serious prejudice” to Brazil due to significant price suppression. Cotton prices plunged in 1999, 2001 and 2002, hitting record lows in 2002 at 29 cents/pound – far below the 20 year average price of 72 cents/pound. During 1999-2002, Brazilian cotton producers lost $478 million in export revenues due to the effect of the U.S. subsidies;

(4) the export credit guarantees provided to cotton and other agricultural products (soybeans, corn and rice, for example) are export subsidies inconsistent with the Agreement on Agriculture and the SCM Agreement;

(5) the STEP 2 program is a prohibited subsidy in light of the SCM Agreement because it is contingent upon export or use of U.S. cotton over imported goods.

In support of its legal arguments, Brazil presented calculations made by Professor Daniel Sumner (University of California at Davis). Compatible with a number of other studies by the World Bank, IMF and the U.S. Government itself, Professor Sumner found that, but for the U.S. subsidies, U.S. cotton production during 1999-2002 would have been, on average, 28.7 percent lower. This would have led U.S. exports to fall, on average, by 41.2 percent. Professor Sumner also found that, but for this U.S. subsidy-generated overproduction, world prices for cotton would have been 12.6 percent higher.

III – Panel Conclusion

Due to the confidential nature of the final panel report, Brazil is not allowed to present details on its content. However, the Brazilian Government welcomes with satisfaction the panel’s determinations as regards all the issues mentioned above.

IV - Dispute Timetable

27 September 2002 - Request for Consultations by Brazil.

October 2002 to January 2003 - 3 meetings for consultations between Brazil and the United States.

7 February 2003 - First request for the establishment of the Panel. Rejected by the United States.

18 March 2003 - Second request for the establishment of the Panel. Panel automatically established.

19 May 2003 - Appointment of the panelists (Dariusz Rosati, Poland; Daniel Moulis, Australia; and Mario Mattus, Chile) by the WTO Director-General.

22-24 July 2003 - First session of the first meeting with the Panel.

7-9 October 2003 - Second session of the first meeting with the Panel.

2-3 December 2003 - Second meeting with the Panel.

26 April 2004 - Issuance of the Panel Interim Report.

18 June 2004 - Circulation of the Panel Report to Brazil and the United States.

After translation - Circulation of the Panel Report to WTO Members.

V- Description of the Challenged Subsidies*

- Marketing Loan Program, guarantees farmers revenue of 52 cents/pound of cotton production. If prices are below that level, the U.S. government will make up for the difference. It is the most important U.S. domestic subsidy for cotton ($898 million);

- Counter-Cyclical Payments (2002 U.S. Farm Act)/ "market loss payments" (1998 to 2001 U.S. appropriations bills), are paid based on a target price for cotton of 72.4 cents/pound and provide for additional payments that make up for the difference between either the 52 cent loan rate or the market price (whichever is higher) and that 72.4 cent target price ($869.5 million);

- Direct Payment Income Support (2002 U.S. Farm Act)/ "production flexibilibty contract" (1996 U.S. Farm Act), of 6.67 cents/pound based on historic production. The effect of these subsidies to U.S. cotton farmers is to isolate them entirely from market price effects ($421.4 million);

- Subsidized Crop Insurance, policies that insure U.S. cotton farmers, with subsidized fees, against losses from adverse weather conditions, diseases and low prices. ($194.1 million);

- STEP 2, subsidies pay cotton exporters and domestic users of cotton the difference between the higher U.S. domestic price and the world market price for cotton, thereby enhancing the competitiveness of otherwise uncompetitive U.S. cotton ($415 million);

- Export Credit Guarantees. They facilitate the access to credit by non-U.S. importers that otherwise would not have access to any credit ($349 million); and

- Cottonseed Payments, subsidies paid to assist the U.S. cotton industry to cover the costs of ginning their cotton ($50 million).

* The values in brackets represent the U.S. disbursements in 2002/3, according to USDA.