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Brazil's WTO Cotton Case: Negotiation Through Litigation

> What we want is progress. . . . I am not worried about American interests. I am concerned with international trade interests, with Brazilian farmers, with African farmers, with developing-country farmers. I have support inside the government, in US newspapers, in talking with Americans. . . . For me, I win both ways. I win if I win, and if I lose, I still win because I'm helping to change. I add another brick. There's a lot of support for the [cotton] case. It's complete distortion.
>
> — Pedro de Camargo Neto,
> former Brazilian deputy minister of agriculture

The Change Maker

Pedro de Camargo Neto was excited. Years of persistent efforts to advance the interests of Brazilian farmers seemed to be coming to fruition. On June 18, 2004, a World Trade Organization (WTO) dispute panel sided in Brazil's favor on most of its claims against US cotton subsidies (for the findings, see appendix 5A). The West African nations of Benin and Chad, both heavily dependent on cotton for export revenue, joined Brazil's case as third-party signatories and also stood to benefit from the ruling. Two months later, in a case brought by Brazil, Thailand, and Australia, a second panel issued a preliminary ruling declaring EU sugar export subsidies illegal (for a timeline, see appendix 5B).

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Camargo could not help feeling a sense of accomplishment. As the deputy minister of agriculture in Brazil from 2000 to 2002, he had persuaded Brazilian government officials to launch the two dispute cases and even flew to the WTO headquarters in Geneva in September 2002 to file them himself. By leading the charge against the United States and European Union on cotton and sugar, Camargo positioned Brazil as an undisputed leader at the WTO and earned the respect and support of his peers in all corners of the globe.

Now he was once again returning home to Brazil from Geneva, where trade negotiators had worked day and night against their July 31, 2004, deadline to come up with a framework text for moving agriculture negotiations forward at the WTO. After the acrimonious collapse of the September 2003 world trade talks in Cancún, Mexico, some speculated that yet another failure could deal a fatal blow to the Doha Round of negotiations. But newspapers around the world praised the ambitious July agriculture framework: "Minor Miracle in Geneva" ran the headline of one *Financial Times* editorial (August 2, 2004).

News reports widely credited the challenges brought by Brazil with breathing new life into the WTO negotiations. Faced with the prospect of having to overhaul their farm programs even without a new trade agreement, the United States agreed to reductions in domestic support and the European Union offered to phase out export subsidies—concessions that were not seriously debated in Cancún. Camargo's reaction to the July framework was more subdued, however. Though he felt that the elimination of export subsidies was a real victory, he worried that trade negotiators were able to reach a compromise only because they had postponed the hard decisions for a later date.[1]

As he flew back to Brazil, Camargo reflected on this historic moment for the WTO. The cotton dispute represented the first time that a developing country had successfully challenged a developed country's agricultural subsidies. While he was impatient for reform, he recognized that nearly every country faced domestic constraints. Around the world, agriculture enjoyed significant historical and economic power, endowing farm lobbies with tremendous political influence. And, as Camargo knew from his years of experience in Brazil, the farm vote was frequently critical to providing stability. Governments were rightly concerned with food security, with providing a safety net for their agricultural producers, and

1. The agriculture negotiations focused on the "three pillars" of agricultural trade: market access, export subsidies, and domestic support. Countries were still far apart on market access, which the United States had designated as a top priority for reaching an agreement. The European Union, India, Japan, and South Korea in particular were reluctant to agree to tariff reductions. And some trade negotiators asserted that it remained unclear from the July framework whether the United States would actually be forced to reduce the amount of subsidies paid to domestic producers.

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with managing the environment and their natural resources. He was keenly aware that for all these reasons, the road toward liberalizing world agricultural trade was loaded with political land mines.

Camargo hoped the preliminary success of the two WTO dispute cases would help break down long-standing artificial trade barriers in agricultural goods, but he was realistic about the obstacles that remained. Both the United States and the European Union had promised to appeal the panels' decisions. In addition, even though both had agreed to reforms in principle, the language in the July framework text was still quite vague. Camargo strongly believed that the United States and the European Union were not living up to past agreements and, like many of his colleagues from developing countries, he was highly suspicious that developed countries once again would attempt to avoid real reforms by creating loopholes for themselves in the current agreement.

But appeal or not, Brazil had secured two major legal victories. Would the cotton and sugar rulings give developing countries the leverage they needed to secure substantial reforms in world agricultural trade? Was this the time and opportunity, Camargo asked himself, to make a break with the past and create something positive for the future?

Pedro de Camargo Neto's Background

Camargo could not have predicted his own role in this historic turn of events. Though he was born in 1949 into a family of cattle ranchers and sugar farmers, he chose a different route from an early age. After earning a master's degree at MIT, he pursued a Ph.D. in engineering from the University of São Paulo. He had worked as an engineer for nearly two decades when, in 1990, he decided to switch careers. He ran for president of the Brazilian Rural Society (BRS), the country's oldest and most prestigious agricultural lobby group, whose membership consisted of farmers and ranchers from São Paulo state and neighboring states—and he won.

The beginning of Camargo's tenure as president of BRS coincided with the opening of the Brazilian economy. Within a very short period, the Brazilian government lowered tariffs and eliminated import controls and price interventions. Imports grew, and Camargo lobbied the Brazilian government to levy countervailing duties on subsidized imported products, such as US wheat and cotton and EU beef and dairy products. "This whole issue of trade caught my attention," he says. "We could see that it was very unequal terms, so we started advocating for stronger positions in trade negotiations."[2] At the time, the Uruguay Round of trade negotiations was

2. Unless otherwise noted, all quotes from Pedro de Camargo Neto are from a 2004 interview with the author.

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under way at the General Agreement on Tariffs and Trade (GATT), the precursor to the WTO. Camargo attended many of the meetings, lobbying Brazilian trade negotiators to take a more aggressive stance. "When we went to Singapore in 1997," he says, "we pressed the minister to negotiate. We wanted more!"

The Uruguay Round Agreement on Agriculture (URAA) was the first multilateral agreement that applied international trade rules to the agricultural sector (see appendix 5C). The agreement required WTO members to implement a series of reforms over a 10-year period, beginning in 1995, and set 2000 as the deadline for launching a second round of negotiations to continue the policy reforms. The goal of the URAA was to move the agricultural sector toward more market-oriented policies. It called for tariff reductions and it put spending caps on the types of domestic support policies that distorted market signals.

For example, the amount of trade-distorting subsidies countries could give their agricultural producers, referred to as "amber box" support—more formally, the aggregate measure of support, or AMS—was capped and, over time, reduced.[3] Trade-distorting subsidies included payments coupled to prices, production levels, or to a specific commodity, because they stimulated overproduction and crowded out imports or led to low-priced exports. Because decoupled subsidies, such as direct payments, were not tied to prices or to production levels, their effects were much less distorting, and these "green box" payments were not subject to spending caps under the URAA.

Many viewed the agreement as a victory and hailed the new disciplines imposed on agricultural producers, but Camargo believed that the URAA did far too little to reduce the distortions in the world agricultural system that worked to the disadvantage of developing nations. "The Uruguay Round was such a frustration for developing countries," he says. "But I had this perception that it meant, from now on, no back steps. From now on, the next round will give me progress." He was particularly disappointed that Brazil had not assumed more of a leadership role in the negotiations. "It's our obligation to face the United States and Europe, because we have the size to do it," he declares. "We are the commercial leaders. We have to be the political leaders as well."

So when the Brazilian minister of agriculture asked Camargo to become his deputy minister in 2000, the year that new agricultural negotiations were launched, Camargo sensed an opportunity. On his first day on the job, he persuaded the minister to let him coordinate trade policy for the whole ministry. While his colleagues in the Foreign Relations Ministry continued to negotiate multilateral and regional trade agreements, he ulti-

3. Under the Uruguay Round agreement, the annual amount that the United States could spend on its AMS commitment was $19.1 billion.

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mately prevailed in his insistence on a different strategy: litigation. "I had this idea to do dispute cases," he explains.

> I learned from the countervailing duty cases I had lobbied for as president of BRS that with the limited resources we have, cases are how you can provoke changes. . . . Cases are a communication tool. They are the best strategy to communicate what the US farm bill does to international trade. They are an important instrument to make [the United States and the European Union] sit down at the table and really negotiate seriously. . . . They are also a way to construct the Agriculture Ministry's relationship with the Foreign Relations Ministry, because our relationship with them is difficult.

On his second day as deputy minister, Camargo called together the agricultural economists at the ministry who specialized in WTO commitments. He told them to start researching commodity markets of interest to Brazil, such as soy, sugar, and cotton,[4] and to "find out where the Americans are going wrong." Camargo was determined to bring a case against US soybean producers, an endeavor he had already spent several months working on before he left BRS to join the government. He commissioned a study on US soybean programs, which "came back with what started this whole cotton case, because it came back with the peace clause," he said.

Article 13 of the URAA, commonly known as the "peace clause," effectively prohibits WTO members from challenging other members' agricultural subsidies under the Dispute Settlement Understanding (DSU), which provides the WTO's legal framework for resolving trade disagreements. The peace clause, which was included in the URAA at the insistence of the United States and the European Union, protects countries from action as long as their aggregate subsidy levels remain under their AMS commitments. If, however, countries exceed their allowable levels, they are no longer afforded protection from dispute cases under the peace clause.

Article 13 also stipulates that no specific commodity can be subsidized at a rate higher than that in force in 1992; otherwise, the peace clause does not apply. In this often-overlooked proviso, Camargo found where the Americans went wrong: "The US was not subsidizing soybeans during the Uruguay Round, and [in 2000] they were spending $2 billion. So we had a case."

But victory would not come easily. Brazil had to mount a compelling legal case to convince a WTO dispute panel that the United States had violated its commitments under the Uruguay Round agreement.

4. Cotton was grown on 2 million acres in Brazil, a small area in comparison to the 18 million acres devoted to soybeans. But cotton and soy are good crops to rotate with each other, and Brazil intended to expand cotton production as a strategy to enhance the efficiency and competitiveness of its growing textile industry.

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Brazil Mounts a Case

From Soy to Cotton

In late 2001, Pedro de Camargo Neto hired the Chicago-based law firm Sidley Austin Brown & Woods to represent Brazil; the lead attorney was Scott Andersen, in the Geneva office. In early 2002, Andersen contacted Dan Sumner, an agricultural economist and professor at the University of California, Davis, and asked him to serve as an expert witness for Brazil. As an academic specializing in United States Department of Agriculture (USDA) support programs and econometric models, Sumner was often called on to offer expert testimony before the US International Trade Commission, a quasi-judicial federal agency that provides trade expertise to Congress and the executive branch. "We were talking about soybeans initially," Dan Sumner recalls. "They wanted to talk to someone who was very familiar with US farm programs and their operation."[5]

Sumner provided Brazil's legal team with an analysis of US farm legislation. The United States had been moving toward more market-oriented agricultural support policies for over a decade, but in 1997–98, the East Asian financial crisis knocked the bottom out of global commodity markets. The unexpected price declines put stress on agricultural producers in every country, forcing many governments to enact emergency relief programs. As the United States was reeling from depressed world demand and a severe drought in several states, Congress passed supplemental legislation that authorized additional emergency payments to farmers of $30 billion over a four-year period.

Critics charged the United States with reverting back to its old system of price supports. As a key element in what was called the "marketing loss assistance program," the emergency payments acted like a price floor, because they automatically kicked in when the world price fell below a designated target price. Renamed "countercyclical payments," the subsidies became permanent in the 2002 farm bill (for a summary of US farm policy, see appendix 5D).

The new legislation frustrated negotiators and agricultural producers abroad, and it undermined the United States' professed commitment to serious reforms in the Doha Round. "The 2002 farm bill completely undercut the credibility of the United States in WTO agricultural negotiations," says Dr. Bob Thompson, a former USDA economist under the Reagan administration and the current president of the International Food and Agricultural Trade Policy Council. "We just looked two-faced: 'do as I say, not as I do.'"[6] Joe Glauber, deputy chief economist at the USDA and

5. Dan Sumner, interview with the author, 2004.

6. Unless otherwise noted, all quotes from Bob Thompson are from a 2004 interview with the author.

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head economist in the cotton DSU case, agrees that that was a common perception: "Brazil was the one that ultimately brought the challenge, but the criticism was coming from a lot of places."[7]

The large emergency payments and marketing loan payments caused the payments in US soybean programs to vastly exceed their negligible 1992 levels; but as Camargo and his team assembled their case, domestic politics took over and market conditions changed. Officials in the Foreign Relations Ministry requested additional soybean studies, which dragged on for months. "The Foreign Relations Ministry wouldn't approve," says Camargo. "They fought me. I think they were afraid we would lose." At the same time, soybean prices started to rise, making US soybean farmers ineligible for large payments. The soybean case disappeared.

Then an economist in Brazil's Ministry of Agriculture alerted Camargo to what was happening in the world cotton market. By most accounts, cotton is one of the most distorted commodities in the world, stemming from high levels of government subsidies (on the world cotton market, see appendix 5E). Between the 1998–99 and 2001–02 marketing years, global direct assistance to cotton producers ranged from $3.8 billion to $5.8 billion, divided among eight countries: the United States, China, Greece, Spain, Turkey, Brazil, Mexico, and Egypt.[8]

During that period, cotton prices were in precipitous decline. Between December 2000 and May 2002, the world price of cotton fell by 40 percent, shrinking the value of the global cotton market from $35 billion to $20 billion in just 18 months. The price of cotton bottomed out at 29 cents a pound, from an all-time high of 74 cents a pound in 1995. Adjusted for inflation, these were the lowest cotton prices since the Great Depression.

The reasons for this dramatic price decline were complex, but nearly everyone pointed a finger at the United States. The United States was the second-largest producer of cotton behind China, was by far the largest exporter, and spent vastly more on cotton subsidies than did any other country. The global low prices triggered US price-based support programs, causing the subsidies in US cotton programs to balloon (see table 5E.1 in appendix 5E) All told, US cotton producers received payments ranging from $1.9 billion to $3.9 billion during the 1998–2002 marketing years, far exceeding the 1992 level of $1.4 billion. "Nearly $4 billion of

7. Unless otherwise noted, all quotes from Joe Glauber are from a 2004 interview with the author.

8. According to the International Cotton Advisory Committee, US cotton producers received a record $3 billion in subsidies in 2001–02, accounting for more than 52 percent of global government assistance. That figure is somewhat misleading, however, because it did not include an additional $900 million US cotton producers received in direct payments and crop insurance. Also in 2001–02, China provided its cotton farmers with $1.2 billion (21 percent of the world total), the European Union paid producers in Greece and Spain a total of $980 million (17 percent), and India gave its producers $500 million (9 percent).

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subsidies by one country is a lot of money in an industry where the world value of cotton at the time was $20 billion," says John Baffes, a senior economist at the World Bank. "There's no way one can claim that does not have an effect on the world market."[9]

Camargo immediately saw the possibilities. Since many of the subsidy programs used to support US cotton growers applied to other commodities as well, a victory in this case could mean the United States either would have to overhaul its domestic farm programs or would face sanctions at the WTO. "Cotton was not a routine dispute," he declares. "[It was] there for broader reasons and fought with that idea." Bob Thompson concurs that the case served to clarify the commitments made by developed countries in the Uruguay Round. "The Brazilians are absolutely right," he says. "The United States and the European Union have not been playing fair under what they agreed to in the last round. The two [dispute rulings] are going to be very strong messages about the true effects of US and EU policies."

Camargo also hoped that a legal ruling would give additional momentum to the efforts of reformers within the United States and the WTO who were seeking greater reductions in subsidies in the Doha Round of trade negotiations. "I wanted the dispute to influence the round," he declares. "It is a broad case that . . . has very good, positive implications—more transparency and more clarification on what we're signing, what we've already signed, and what we will sign."

A Lucky Break

In July 2002, Brazil's cotton challenge benefited from a stroke of luck. Economists at the World Bank and the International Cotton Advisory Committee (ICAC), an international commodity organization with a membership of 42 governments, were concerned about the steep decline in cotton prices and felt that distortions in the market were not widely understood. Thus John Baffes of the World Bank and his colleagues at ICAC hosted a joint conference that July.

Pedro de Camargo was in attendance. Other participants included representatives of the US National Cotton Council, the ambassadors of Brazil and of several African countries, Oxfam's head economist, and academics. "In one room we had all the guys, and they all told their stories," says Baffes. Turkey, Brazil, Mexico, Egypt, and India had to give offsetting support totaling $600 million to keep their cotton sectors afloat. The highly indebted West African governments of Benin and Mali also were forced to divert public funds from elsewhere and give producers $40 million to prevent their domestic industries from collapsing (ICAC 2002, 2). "All the

9. Unless otherwise noted, all quotes from John Baffes are from a 2004 interview with the author.

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West Africans were talking about cotton," says Camargo. "And I thought, 'This can't happen.' Of course it made our case much stronger."

Also at the conference, ICAC economists presented the findings of their "world textile model," an econometric simulation that found US subsidies had caused significant price suppression. In the absence of US subsidies, they claimed, US production would have declined by 900,000 tons in 1999–2000, 700,000 tons in 2000–01, and 1.4 million tons in 2001–02, raising the world cotton price for those years by 6 cents, 12 cents, and 22 cents, respectively (ICAC 2002, 8). Shortly after the ICAC conference, Scott Andersen called Dan Sumner and asked him to create a modeling framework for cotton.

Brazil's Claims Against the United States

Over the next few months, Brazil's cotton case quickly took shape. Though the arguments were highly complex and technical, they can essentially be divided into two categories: legal and economic. In legal terms, Brazil claimed that during the marketing years 1999–2002, US cotton subsidies exceeded their 1992 levels, a violation of Article 13 of the Agreement on Agriculture (the peace clause). Brazil also argued that two additional support programs, the export credit guarantee program and Step 2 payments, constituted export subsidies and as such were prohibited under the URAA.[10]

On the economic side, Brazil argued that the United States' cotton subsidies caused "serious prejudice" (i.e., substantial financial harm) to Brazilian cotton producers, a violation of the Agreement on Subsidies and Countervailing Measures (Baffes 2004a). Its basis for claiming serious prejudice to its interests was twofold. First, Brazil claimed that US cotton subsidies suppressed world cotton prices. Using hundreds of pages of USDA data and building on an econometric model developed by the Food and Agricultural Policy Research Institute (FAPRI), the econometric analysis of Dan Sumner was commissioned to bolster this argument.[11] If US cotton subsidies had been eliminated, the model predicted, US cotton production

10. Under the Step 2 program, the US government gives money to US companies that mill cotton into thread and cloth for export to help them buy US-grown cotton. Under the export credit guarantee program, the US government guarantees loans to foreign buyers of US cotton at below-market interest rates.

11. Ultimately, Sumner's econometric model was thrown out of the case, because FAPRI refused to divulge the parameters of its model and the USDA could not replicate the results using the same datasets. (FAPRI's refusal to cooperate irked many US officials, since the institute itself is government funded—FAPRI, jointly run by Iowa State University and the University of Missouri at Columbia, was established by Congress in 1984.) However, many people who participated in the hearings commented that Sumner's expert testimony on how US cotton support programs are administered had more influence on the panel than did his econometric model.

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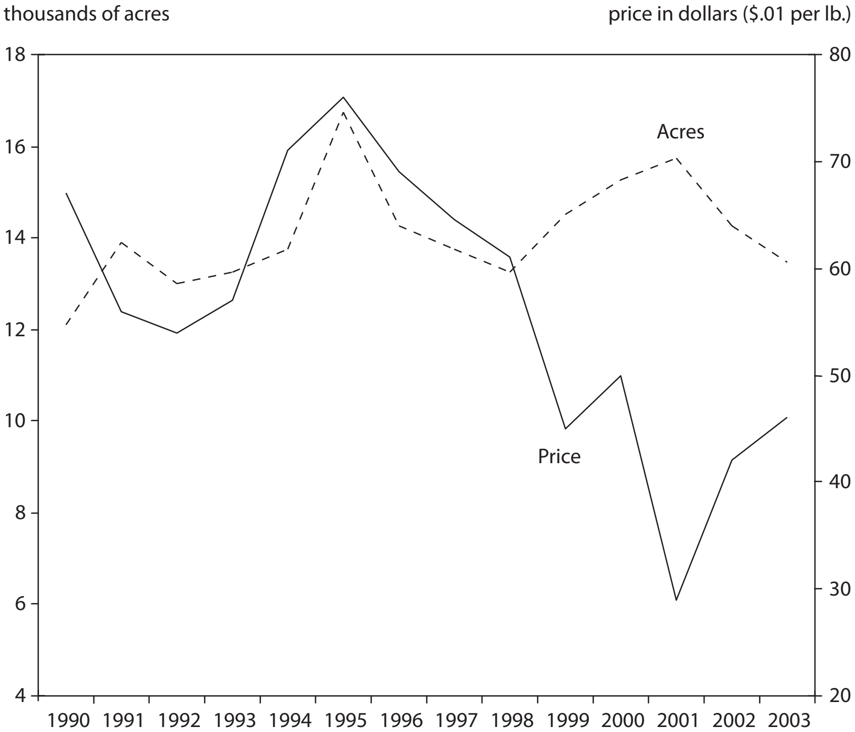
Figure 5.1 US area devoted to cotton production, 1990–2003



Source: Paul Drazek, DTB Associates, LLP, 2004.

and cotton exports would have declined by 29 and 39 percent, respectively, causing world prices to increase by 6.5 cents per pound (12 percent of the world price). Extrapolating from that data, Brazil claimed that depressed cotton prices cost its producers $478 million in lost revenues from 1999 to 2002 (Camargo Neto 2004).

Brazil's second argument revolved around the United States' rising share of world exports. Brazil claimed that US cotton subsidies enabled US producers to capture world market share, which caused a corresponding loss in market share for Brazilian producers. While most of the world responded to declining world cotton prices by scaling back production, US cotton producers actually boosted their acreage (figure 5.1), which was increasingly planted for export. Within a span of five years, from 1998 to 2002, as US exports increased from one-third to two-third of US cotton production, its share in the world export market jumped from 24 to 48 percent. The decline of the US domestic textile industry was one of the main drivers behind the expansion of US cotton exports, as more and more mills moved overseas. Nevertheless, Brazil argued, if the United States was jus-

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tified in claiming that its cotton support programs did not shelter American producers from market signals, then why in a time of declining prices were US producers planting more cotton, not less?

A Final Hurdle

Brazil's Chamber of Foreign Trade, or CAMEX (Câmara de Comércio Exterior), consisted of four of Brazil's most powerful ministers (of finance, industry and trade, agriculture, and foreign relations) and the president's chief of staff. Throughout 2002, Camargo had been briefing CAMEX about the progress he was making in preparing the cotton and sugar disputes. But he needed the ministers' formal approval to file the cases at the WTO.

Foreign relations officials were reluctant to proceed, however. "The foreign relations minister said we needed more studies," recalls Camargo. "The [diplomats] below him were not in favor. . . . It's such a pioneering case that it's natural they would get more nervous and more careful." Officials kept urging the need to take more time, citing concerns about the political implications of filing a challenge against the United States while the Doha agricultural negotiations were ongoing. "As bureaucrats, their timetables are different," Camargo observes. "I knew I was leaving government December 31, so for me it was now or never."

Camargo also wanted to see if the West Africans would join Brazil's case as co-complainants, but he could not approach them directly. As a representative of the Agriculture Ministry, he remarks, "I could not contact the African countries. That's Foreign Relations." And Foreign Relations was vehemently opposed to getting the Africans involved. "I think [they] felt that the Americans would get really irritated if Brazil started pitting Africa against the United States," he adds. Instead, he struck up a friendship with the Beninese diplomat at the WTO, Samuel Amehou, with whom he frequently crossed paths at agricultural committee meetings in Geneva, and sent him some documentation on the cotton case. While in Geneva, Camargo also met with Celine Charveriat, head of advocacy for Oxfam, to talk about trends in the world cotton market and their implications for West African smallholders. He previously had worked with Charveriat on Oxfam's fair trade campaign and was impressed with the organization's work. "I could not reach the Africans by myself, so I went through Oxfam," he says.

After three more months of internal meetings with CAMEX, Camargo once again went before the ministers: On September 19, 2002, he requested their approval to launch the cotton and sugar disputes. Most were still apprehensive, but the finance minister, Pedro Malan, urged them not to put off for the next administration what they could do themselves. "That was a crucial moment," recalls Camargo. Malan "saved it."

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Camargo flew to Geneva and filed the sugar and cotton disputes at the WTO on September 27, 2002.

The West African Cotton Sectoral Initiative

Though Brazil has an economic interest in cotton, the crop is far more important to several poor countries in West Africa, where its cultivation is widely considered a success story. Initiated by the French state-owned Compagnie Française pour le Développement des Fibres Textiles (CFDT, renamed Dagris in 2001), when the countries were still colonies, production in the region grew tenfold from less than 100,000 tons in the 1960s to nearly 1 million tons by the late 1990s.[12] By 2000, the sector employed nearly 10 million people throughout Francophone Africa. The region accounted for 5 percent of world cotton production and, with 15 percent of global exports, was the third-largest exporter (after the United States and Uzbekistan). In the 1998–99 marketing year, cotton accounted for 7.1 percent, 5.1 percent, 6.7 percent, and 4.7 percent of the respective GDPs of Benin, Burkina Faso, Mali, and Chad, and between 25 percent and 50 percent of their export earnings (Sahel and West Africa Club Secretariat/OECD 2005).

Though the Francophone cotton sector was considered a success, it displayed considerable market inefficiencies. First, the national cotton companies had legal monopolies on all ginning and marketing activities, as well as on providing farmers with such inputs as seeds and pesticides. This lack of competition encouraged operating inefficiencies and rent-seeking behavior. Indeed, the high cotton prices of the mid-1990s made the national cotton companies so profitable that, according to a World Bank report, the Malian national cotton company "became a prime target for rent seekers and costs became heavily padded. When world prices started falling in 1998–99, [Mali's national cotton company] became virtually bankrupt" (Goreux and Macrae 2003, 10).

Second, farmers received only 30 to 40 percent of the world price during the 1990s, although by 2004 their percentage topped 50 percent owing to the increasing prominence of producers' organizations.[13] Third, the close

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12. After independence, the West African countries set up their own national cotton companies, but CFDT retained about a one-third share in the companies.

13. Each spring, representatives from producers' organizations meet with government officials and representatives from ginning companies to negotiate a buying price for that year's cotton harvest. The Cotlook A index prices and ICAC price forecasts provide the starting point, and all parties bring their cost estimates to the negotiation. The national buying price is usually announced in March or April, along with input prices, so that farmers can decide if they want to plant. Because of donor pressure and the improved negotiating capacity of producers' associations, in recent years farmers have received the largest portion of the world price. The major remaining costs include transporting the cotton from the farms to the gin, ginning and packaging, overhead, and transporting the cotton from the gin to the port.

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economic ties between Francophone Africa and the European Union effectively prohibited the African nations from cultivating genetically modified cotton (called Bt cotton), even though numerous studies concluded that developing countries stood to benefit the most from its adoption.[14]

Finally, attempts to replace public agents with private operators created a host of additional problems. In 1996 the World Bank pushed for reforms to enhance the competitiveness of the Francophone cotton sector, but both the French and the West Africans resisted the reforms. Recently, Benin, Côte d'Ivoire, and Burkina Faso have made progress toward liberalization, but their reforms have had extremely mixed results.[15]

The four West African countries of Benin, Burkina Faso, Mali, and Chad estimated that depressed cotton prices from 1998 to 2002 cost them a combined average of $250 million a year in lost revenues.[16] The sudden loss of export revenue triggered a balance of payments crisis for the impoverished nations and created widespread social unrest. Producers staged demonstrations on the streets of Benin's capital city, while in Mali, a produc-

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14. EU hostility to genetically modified foodstuffs is discussed in chapter 6. Though genetically modified seed is expensive, Bt cotton requires fewer sprayings, leading to both cost savings and health benefits. Moreover, the higher yields of Bt cotton, demonstrated by many studies, would help farmers boost their profit margins. Burkina Faso therefore began testing Bt on experimental plots in 2003, and by 2005, Ghana and Nigeria were also seriously considering legalizing genetically modified seeds. In Mali and Benin, however, producer associations and nongovernmental organizations were strongly opposed to Bt cotton, citing concerns about loss of biodiversity and dependence on multinationals for seeds; Benin passed a five-year moratorium on Bt cotton in 2002.

15. In Benin, for example, some private ginners and input distributors who enjoy "political immunity" have circumvented the formal regulatory mechanisms, creating havoc in the sector. Accusations of price fixing are widespread, pesticides of dubious quality are distributed to farmers in some zones, and input costs are actually higher than before liberalization. Similarly, some private ginners in the northern areas of Benin have collected cotton from villages outside of their allocated zones, causing losses for the state-owned gins. Reforms in Burkina Faso have fared better; in 1999 the producers' association purchased a one-third share in the national cotton company, and in 2003 the state started selling off gins to private operators in the central and eastern zones. Still, some criticize Burkina Faso's reforms as merely moving from one national monopoly to three regional monopolies. Despite strong pressure from the World Bank, Mali has tabled liberalization reforms until after the 2007 presidential election.

16. This figure is somewhat controversial. In 2002 the West African ministers of agriculture commissioned an econometric study by the IMF economist Louis Goreux, who designed a partial equilibrium model to evaluate the extent of their losses due to subsidized production in the United States. Goreux estimated that US subsidies reduced the world price by 12 percent in 2001–02, which translated into $250 million in lost export earnings. (Louis Goreux, "Prejudice Caused by Industrialized Countries' Subsidies to Cotton Sectors in West Africa and Central Africa," World Bank, 2003.) As the case attracted international attention, the World Bank, the Overseas Development Institute, and the Organization for Economic Cooperation and Development also commissioned studies, which generally supported Goreux's conclusion that subsidized production did in fact reduce world prices but by varying amounts—from 2 percent to 30 percent—translating into losses of anywhere between $26 million to $350 million for West African producers.

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ers' strike in 2000 slashed cotton production by one-third. The African governments clearly needed to take action. But what was the best course of action to take?

After Brazil filed the WTO case, there was still a window of opportunity for the West Africans to sign on as co-complainants, but they were reluctant to do so. WTO disputes take two to five years to resolve; what kind of relief could they expect in the meantime? What would be the political fallout of signing on to a case against the biggest member of the WTO? Most importantly, if they won the case, and the United States refused to implement the decision, what would be their recourse? Celine Charveriat, the head of advocacy for Oxfam, was heavily involved in consultations with the West Africans. She explains their dilemma: "A small country like Benin or Burkina Faso cannot really retaliate against the United States, because it would be relatively counterproductive for them to slap tariffs on US goods and it would be absolutely meaningless for the United States. So the [West Africans] thought the DSU instrument was not terribly adapted to what they wanted to achieve."[17]

Finally, after weeks of consultations with nongovernmental organizations (NGOs) such as Oxfam, only Benin and Chad decided to join Brazil's case—not as co-complainants but as third parties.[18] Third-party signatories could make presentations and submit testimony in a side venue, but they could not participate in the main panel hearings (though they were allowed to attend). Camargo was disappointed in their decision—but then again, he reasoned, other cotton-producing countries were no more willing to sign on as co-complainants. "I tried Argentina, I tried Australia, I tried South Africa," he says, but none of them "wanted to challenge the United States." He adds: "I saw all of the problems we had within Brazil to find the courage to file the case. Argentina, who was in a mess with the IMF, couldn't do it. Australia, the leader of the Cairns Group, couldn't do it because they were negotiating a free trade agreement with the United States. Why would Benin?"

An Unconventional Initiative

NGOs such as Oxfam and IDEAS Centre, a Swiss organization that helps developing countries on trade and development issues (its name stands for "international trade, development, economic governance, advisory services"), continued working with the West Africans on alternative ways

17. Unless otherwise noted, all quotes from Celine Charveriat are from a 2004 interview with the author.

18. Along with the Francophone nations of Benin and Chad, the third-party signatories on the Brazilian cotton case were Argentina, Australia, Canada, China, India, New Zealand, Pakistan, Paraguay, and Venezuela.

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to bring forward their demands on cotton. Shortly after the African governments made the decision not to join Brazil's case, Nicolas Imboden, executive director of IDEAS Centre, traveled throughout the Francophone capitals and lobbied agricultural ministers to form a coalition. "If Brazil wins the DSU case, [the Africans] win with them," Nicolas Imboden remembers. "I told them, 'Your case is political. You need to take it directly to the negotiations.' "[19] He ultimately persuaded only four West African nations to get on board: Benin, Burkina Faso, Chad, and Mali.[20]

"There is a wider issue that the poorest members of the WTO don't know if they will get anything positive from this round," says Celine Charveriat, "so they are going with the flow, not clear about how to extract something that is actually meaningful to them." During the consultations with Oxfam and IDEAS Centre, however, it quickly became clear to the West African coalition that given the heavy dependence of their economies on cotton, the main focus of their energies should be a concession on US cotton subsidies.

They knew they would have to be creative, and so they made an unprecedented decision: they would lobby the WTO to include a separate initiative on cotton in the Cancún text. "The only way for [the West Africans] to bring an issue [to the WTO] is to do it in an unconventional way, because they are quite powerless countries with a very low profile," notes Charveriat. In fact, only two of the four nations have permanent missions at the WTO headquarters in Geneva. "Before this all happened, Benin, Burkina, and Mali—nobody even knew the names of their ambassadors," she continues. "Nobody cared about those countries at all."

The NGOs remained heavily involved with the West African efforts. Oxfam commissioned studies about the effects of low prices on West African economies and helped villagers' cooperatives to bring their stories to journalists in Europe and the United States. Oxfam also used its media contacts to facilitate press conferences and the placement of op-eds by West African officials. "We knew that 90 percent of the battle was going to be in terms of the media, and whether we could make this a moral case and win it in the public eye," says Charveriat. "From the beginning, Oxfam's strategy [was] to bring it down from something legalistic that nobody would understand to the most important story: the impact on farmers on the ground."

The *New York Times*, *Washington Post*, *Wall Street Journal*, and other newspapers picked up the story and ran articles and op-ed pieces blasting the reach of "King Cotton" and its effects on poor African farmers. Many in the media even framed the cotton case as a litmus test of whether

19. Unless otherwise noted, all quotes from Nicolas Imboden are from a 2004 interview with the author.

20. Senegal, Togo, and Côte d'Ivoire also produced cotton, but they decided not to join the West African coalition, possibly because cotton was of less significance to their economies.

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the WTO and the international trade system could work for the poor. Meanwhile, IDEAS Centre and private donors raised funds and contributed expertise to coordinate the activities of the four Francophone countries, assist the African representatives with preparing for presentations, defray travel costs for the ministers, and create an additional post in the Benin mission at the WTO.

Four Milestones in a Landmark Case

Four major milestones marked the West Africans' campaign in the run-up to Cancún. First, on April 30, 2003, Benin, Burkina Faso, Chad, and Mali submitted a "Sectoral Initiative in Favor of Cotton" to the WTO, which demanded that developed countries phase out all domestic support and export subsidies for cotton within three years, and put in place a transitional financial mechanism to compensate cotton-exporting least-developed countries (LDCs) $250 million a year—the amount they claimed they were deprived of in lost revenues—until the subsidies were eliminated.[21]

Second, in the mini-ministerials over the summer, the West Africans secured support for their initiative from the LDC group and the African, Caribbean, and Pacific (ACP) group, critical to demonstrating the solidarity of developing countries. "It was not easy to sell our case," says one Beninese official who was present at the meetings. "For a long time, Mauritius wouldn't agree. [Mauritian sugar producers] benefit from EU subsidies, while here we are, attacking subsidies. So we had to be careful."[22]

Then, in July 2003, the president of Burkina Faso, Blaise Compaoré, became the first head of state ever to address the WTO general assembly. "That really launched the political fight to get some kind of language in the Cancún text," says Charveriat. President Compaoré spoke on behalf of the four West African countries in the coalition:

> From this platform, I am launching an appeal, in the name of several millions of women and men, who live in least developed countries and for whom cotton is the main means of subsistence. . . . I ask the WTO and its member States to prevent that these populations, who are victims of the negative impact of subsidies, be excluded from world trade. . . . The ongoing Doha Round negotiations on agriculture must imperatively address distortions in cotton trade. . . . Our countries

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21. See "Poverty Reduction: Sectoral Initiative in Favour of Cotton," Joint Proposal by Benin, Burkina Faso, Chad, and Mali, WTO document TN/AG/GEN/416, May 16, 2003. Also see Scott Miller, "WTO Trade Talks Are Deadlocked Over Concessions—Conflict Between Rich, Poor Nations Threatens Outcome of Doha Round," *The Asian Wall Street Journal*, July 15, 2003, A1.

22. In 2000, 77 ACP countries signed the Cotonou Agreement with the European Union, which gave them preferential access to the EU market. Under the terms of the agreement, Mauritian sugar producers could sell sugar in the European Union at the internal EU price, which is kept higher than the world price to subsidize European sugarbeet producers.

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> are not asking for charity, neither are we requesting preferential treatment or additional aid. We solely demand that, in conformity with WTO basic principles, the free market rule be applied.[23]

President Compaoré's speech "changed everything overnight," recalls Nicolas Imboden. "Public opinion shifted and it became politically acceptable [for Europeans] to support the initiative." In short order, the Netherlands, Denmark, and Germany officially backed the West Africans' demands, IDEAS Centre received a $2 million grant from the Swiss Development Agency to coordinate the initiative, and the WTO Secretariat put cotton on the official Cancún agenda in response to tremendous pressure from WTO members. In consultation with the chairman of the General Council, the secretary scheduled the sectoral initiative for the first day of negotiations. In an extremely rare move, the WTO director-general, Supachai Panitchpakdi, chaired the session, imploring developed countries to take the West African proposal seriously.[24]

The Cancún Debacle

On September 10, 2003, thousands of trade negotiators, politicians, lawyers, representatives of NGOs, and activists descended on Cancún, Mexico. The Cancún ministerial marked the first formal negotiations since the Doha Round was launched in Doha, Qatar, shortly after the September 11, 2001, terrorist attacks. The mandate of the Doha Round—the so-called Doha Development Agenda—was to focus on the needs of developing countries, many of which, with large rural populations, viewed a good agriculture agreement as the key to achieving meaningful gains in the round.

Yet developing countries pointed to the 2002 US farm bill and the joint US-EU draft agriculture text issued just weeks before the ministerial as evidence that developed countries were not serious about reform. The US-EU draft text proposed large cuts in developing countries' agricultural tariffs, but it did not offer substantial reductions in their domestic support levels or export subsidies in return nor did it even mention the cotton issue. Indignant that they were being asked to open their markets and expose their farmers to what they commonly referred to as "competition from the US and EU treasuries," the developing countries created the G-20, a coalition led by Brazil, India, China, and South Africa. "Brazil's leadership in the dispute cases against the United States and the EU was fundamental to creating the G-20," says Camargo. The trade ministers from the 20 members of the impromptu alliance met for the first time in Cancún, one day before the start of negotiations. Over the next few days,

23. "President of Burkina Faso Denounces Rich Country Subsidies," Global Policy Forum, June 10, 2003, www.globalpolicy.org.

24. "Cotton—The 'Trips And Health' Of Cancun?" *Bridges Daily Update*, September 11, 2003, 1.

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the G-20 proved to be a formidable force, resisting repeated attempts from the United States and European Union to splinter the coalition and pressure its members to consent to a watered-down agricultural agreement.

Outside the Cancún conference hall, protesters manipulated puppets of George W. Bush, which threw cotton. Inside, negotiations broke down. Though the Cancún talks officially collapsed in September 2003 over the contentious "Singapore issues" dealing with competition and investment policy, many who were present say the stalemate in agriculture played a more significant role. Bob Thompson recalls the breakdown in agricultural negotiations: "There's a standoff. US farm groups say they've got to have access to developing-country markets if they're going to reduce their subsidies, and the developing countries say, you've got to go first with reducing your subsidies because they artificially depress the international prices. That's the most important tension."

Some speculate that the United States' refusal to deal meaningfully with the cotton issue contributed to the acrimony of the talks. At a minimum, US negotiators underestimated the resolve of the West Africans and the widespread sympathy they enjoyed among developed and developing countries alike. The United States demanded that cotton be treated within the context of overall negotiations, not as a stand-alone issue, a position that the West Africans categorically rejected. "I think the US went through some good-faith negotiations—maybe three or four hours a day," says Joe Glauber. "That said, were we talking past one another? Yes, I think so."

Others who were present claim that the sectoral initiative was probably too unconventional to gain any real traction, since it was not part of the normal exchange of concessions that characterize WTO negotiations. The biggest stumbling block was the need to devise a compensation mechanism. "Compensation couldn't take place the way it was envisioned or designed," John Baffes points out. "If you think about it, how are you going to compensate millions of West African farmers? Is the EU Commission or the US Congress going to write them $100 or $200 checks? It's just not going to happen."

Any progress or goodwill that had been made during the first three days of negotiations evaporated when the new framework text was distributed. Not mentioning the West African cotton proposal by name, it essentially reiterated the United States' position: (1) elimination of cotton subsidies must be part of a multilateral effort, (2) broader reforms were necessary to address the distortions in the textile and synthetics sectors, and (3) multilateral donor institutions should assist the African countries with technical and development assistance.

The precise wording of that third demand was still unresolved 30 minutes before the US delegation was expected back at the conference center. "We were in our hotel going back and forth, negotiating changes in the language," said Glauber. "The phrase we worked on was innocuous. It

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said something like 'The multilaterals should help African countries modernize their cotton industries.'" But when the published draft was circulated on September 13, it included language he had not seen—a line instructing the WTO director-general to work with donor institutions to "effectively direct existing programs and resources *toward diversification of the economies where cotton accounts for the major share of their GDP*" (emphasis added).[25] When Glauber first saw it, "I was taken aback," he remembers. "It just seemed like a slap in the face after what had been four days of good-faith negotiations." The West Africans—and all of their supporters—were outraged at the United States' intransigence. Oxfam quickly labeled the United States' refusal to change its policies as "shockingly indifferent to poverty in Africa" (Oxfam 2004, 2).

In the wake of Cancún, progress on the cotton issue was considered a sine qua non to restarting Doha negotiations. "Everybody realized that if you want to make real progress in the Doha Round, you have to deal with this case," says Baffes. "Even the West African countries realized, since they cannot go ahead with compensation in the way they designed or thought, they've got to do something else."

To that end, the WTO and the World Bank co-hosted a conference in Benin in March 2004, to determine how the bilateral and multilateral lending institutions could best provide technical and financial assistance to the West African cotton sector. "Post-Cancún, there has been a greater realization of the importance of the cotton sector to the growth and poverty reduction efforts of these African countries," WTO Director-General Supachai said in his keynote address at the conference. "This is an African priority that deserves our support."[26]

Ripple Effects: The WTO Dispute Panel Ruling

On April 26, 2004, the WTO dispute panel issued a confidential preliminary ruling declaring the majority of US cotton programs inconsistent with

25. The full paragraph reads, "We recognise the importance of cotton for the development of a number of developing countries and understand the need for urgent action to address trade distortions in these markets. Accordingly, we instruct the Chairman of the Trade Negotiations Committee to consult with the Chairpersons of the Negotiating Groups on Agriculture, Non-Agricultural Market Access and Rules to address the impact of the distortions that exist in the trade of cotton, man-made fibers, textiles and clothing to ensure comprehensive consideration of the entirety of the sector. The Director-General is instructed to consult with the relevant international organizations including the Bretton Woods Institutions, the Food and Agriculture Organization and the International Trade Centre to effectively direct existing programmes and resources toward diversification of the economies where cotton accounts for the major share of their GDP" (quoted in Oxfam 2004, 7).

26. Supachai Panitchpakdi, opening remarks delivered at the WTO Africa regional workshop on cotton, March 23, 2004, www.wto.org.

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the commitments the United States had agreed to during the Uruguay Round. Although only the parties involved in the dispute saw the actual report, the reaction in the press and in Congress was swift. At a press conference the following day, White House Press Secretary Scott McClellan said, "We will be defending US agricultural interests in every forum we need to, and have no intention of unilaterally taking steps to disarm."[27] United States Trade Representative (USTR) Robert Zoellick testified before the House Agriculture Committee two days later: "You can be 100 percent sure we will appeal this ruling. . . . This is a marathon, not a sprint."[28] In sharp contrast, supporters of agricultural reform, academics, NGOs, and editorial pages around the world celebrated the decision—as did Brazilian officials. "This is a precedent; this is a war that must continue!" proclaimed Roberto Azevedo, lead counsel for Brazil and a top official in Brazil's Foreign Ministry.[29] In the words of Pedro de Camargo, "We developing countries have shown that we're prepared to do this and expose them. The panel has given us a position that's ours. It's not that we're getting it free—we paid already in the Uruguay Round. We're here to collect."

The panel issued its final ruling on June 18, 2004 (see appendix 5A); it was nearly identical to the preliminary ruling. Most significantly, the panel ruled in Brazil's favor that (1) US cotton programs were not afforded protection under the peace clause, because subsidies between 1999 and 2002 exceeded 1992 levels; (2) price-based support programs such as marketing loan payments and marketing loss assistance payments did suppress prices; (3) direct payments did not qualify as green box, because of the prohibition on fruits and vegetables; and (4) the export credit program and Step 2 program contained prohibited export subsidies.

Implications of the Panel Ruling

US Farm Programs

One of the rulings with the most far-reaching impact on US agriculture was the finding that direct payments did not qualify as green box, because of the prohibition on planting fruits and vegetables. "That is an extremely political issue, because if the appellate body confirms that, it means the whole farm bill is wrong," says Pedro de Camargo. Joe Glauber concurs: "The significance of this is substantial." If the United States had been re-

27. Scott McClellan, White House press secretary, "Scott McClellan Holds White House Regular News Briefing, White House Regular News Briefing," April 27, 2004.

28. Robert Zoellick, Hearing of the House Agriculture Committee, Review of Agricultural Trade Negotiations, April 28, 2004.

29. Azevedo, quoted in Elizabeth Becker, "Global Trade Body Rules Against U.S. on Cotton Subsidies," *The New York Times,* April 27, 2004, section 1, 1.

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quired to classify the $6 billion in annual direct payments as amber box instead of green box, it would have been over its aggregate measurement of support (AMS) commitments for 1999, 2000, 2001, and 2002.

"This may be the first WTO-driven decision that Congress has to make about a farm program, and it won't be an easy one," says Glauber. "Congress is indignant over the idea that something we've been reporting as green . . . has now been determined by the WTO to not be green." Though many believed the prohibition on fruits and vegetables would be easy to fix, it "isn't just there by chance," he notes: "There was heavy lobbying in the 1996 farm bill by the fruit and vegetable lobby to have that in there—they didn't want producers who receive payments to quit growing those crops and follow market signals and say, 'I'm planting plum trees row to row.' . . . As far as [fruit and vegetable producers] are concerned, this [provision] is the one little thing they got out of the 2002 farm bill. So I don't think it would be easy to overturn."

A second significant aspect of the panel's ruling concerned the distinction between price-based and non-price-based forms of support. The United States had argued that its price-based programs (e.g., the marketing loan program and the countercyclical program) did not distort production, for two reasons: (1) annual outlays depended not on production levels but on what world prices were doing, because they kicked in only when world prices fell below the minimum price; and (2) the countercyclical payments were based on historical production levels, not on how many acres farmers were planting that year. Therefore, the United States claimed, the programs' effects on decisions about production were minimal. As Joe Glauber explains,

> In terms of distorting effects, you have to look at these programs on a continuum. . . . Countercyclical is somewhere [in the middle]. . . . The difference with the countercyclical program is . . . you don't have to produce a crop to receive the payments. They still allow producers to make marketing decisions and planting decisions based on market prices and not on the payment. Producers will get the payment, regardless of whether or not they plant cotton, regardless of whether they harvest 500 pounds of cotton per acre or 600 pounds per acre. From that standpoint, they're far less distorting.

But the panel disagreed, ruling that price-based support programs shielded US farmers from market signals because the countercyclical base rate and the marketing loan rate were set well above market prices at the time. In other words, the programs essentially acted as a price floor, ensuring that farmers would receive a good price for their cotton regardless of what the world market was doing—a measure of security that, the panel reasoned, clearly affected their decisions to plant cotton.

Revamping or abolishing these price-support programs, as the panel recommended, affected US commodities far beyond cotton alone. The countercyclical and marketing loan programs were designed to encour-

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age farmers to respond to market signals in years of high prices, while at the same time incorporating a mechanism to offset rapid price declines over which farmers had no control. The United States was suddenly faced with the challenge of bringing its programs into compliance with WTO rules while still ensuring that farmers had a safety net in years of bad prices.

Yet US officials said they could hardly agree to, in McClellan's phrase, unilaterally disarm. All nations had rules and regulations that distorted market signals in the agricultural sector. The United States wanted its agricultural sector to maintain a market orientation, but US officials objected to liberalizing US commodity programs while other countries were permitted to keep their distortions. From the standpoint of the United States, the question was how all countries could deal with this problem simultaneously in a way that would resolve the issue to everyone's satisfaction.

The Doha Round

Even though experts disagreed about the precise impact that the legal rulings against cotton and sugar would have on the outcome of the Doha Round, it had clearly shifted the negotiation dynamics dramatically. For one thing, Brazil gained the leadership position that Pedro de Camargo had sought. It emerged in Cancún as a leader in the G-20 coalition of developing countries, and was one of only five entities (along with the United States, the European Union, India, and China) to be involved in behind-the-scenes consultations during the July 2004 negotiations in Geneva.

More importantly, Europe did an about-face in the weeks leading up to the July 2004 talks. The European Union offered to eliminate $3 billion in export subsidies if the United States, in turn, would eliminate the export subsidy element in its export credit and food aid programs. Many analysts speculated that the impending ruling against EU sugar export subsidies forced European trade negotiators to see the writing on the wall.

Explaining the risky move to reporters, European Trade Commissioner Pascal Lamy admitted that the dispute cases provided some impetus. "Of course I think they helped," he said. "Obviously, the US had to give ground on cotton, and we have to give ground on sugar."[30] Camargo was quick to praise the European Union in an interview with the *New York Times*. "I would not have believed it, but in agriculture it is now Europe that is for free trade, not the US," he said.[31]

30. Lamy, quoted in Elizabeth Becker, "Interim Trade Triumph Short on Hard Details," *The New York Times*, August 2, 2004, C1.

31. Camargo, quoted in Elizabeth Becker, "Trade Talks in Geneva Offer More Hope This Time," *The New York Times*, July 26, 2004, C1.

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The European Union's concession put the United States on the defensive. Because support from farm states was considered crucial for President Bush's reelection campaign, USTR Zoellick came under intense pressure to create an agreement that US farm groups would endorse. The United States pushed hard for gains in market access and successfully lobbied to change its countercyclical program from amber to blue, despite the cotton panel's ruling that countercyclical payments had trade-distorting effects. In the end, the United States agreed to certain constraints on its export credit programs and a 20 percent reduction in allowable amber box support in exchange for substantial increases in market access. While many NGOs and think tanks initially praised the concessions on domestic support, analysts became more critical in the following weeks: Because the reductions were of subsidy ceilings, not actual subsidy levels, there would be no real short- to medium-term effect on products subsidized at less than the maximum allowable level (see appendix 5F).

Zoellick denied that the dispute cases had any effect on the outcome of the negotiations. Indeed, cotton was not maintained as a stand-alone issue, as the West Africans had wanted. Nevertheless, the July 2004 framework text created a cotton subcommittee to examine the issue and specified that subsidies and other barriers in the cotton trade would be addressed "ambitiously, expeditiously, and specifically" within the context of overall agricultural negotiations.

WTO Director-General Supachai Panitchpakdi hailed the framework agreement as a "historic achievement" and an important step toward a successful conclusion of the Doha Round in 2006. Brazil's foreign minister, Celso Amorim, declared that the framework was "a good deal for trade liberalization and for social justice."[32] Along with Amorim, who became a star of the negotiations, European Trade Commissioner Pascal Lamy and USTR Robert Zoellick were applauded for forging a consensus.

In 2006, the US farm bill would be up for renewal once again, and Congress would have to decide how to incorporate the new WTO rules into domestic farm legislation. Some Washington insiders speculated that agricultural reform would be given an additional push by the budget reconciliation process. Because of record budget deficits, US lawmakers were looking to cut government spending across the board, including farm programs. But many controversial issues remained for trade negotiators to tackle at the next ministerial, scheduled for December 2005 in Hong Kong, such as the levels of tariff cuts, the treatment of special products, and specific timetables for subsidy reductions. Some experts feared that the other regulatory policies being negotiated in the round, such as rules on food safety and sanitation, were too burdensome for some developing countries and could replace the more conventional barriers to trade.

32. Amorim, quoted in Elizabeth Becker, "Trade Group to Cut Farm Subsidies for Rich Nations," *The New York Times*, August 1, 2004, section 1, 8.

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Other experts feared that the United States was skirting real reductions in domestic support levels, making it more likely that trade negotiators would encounter the same standoff over market access in Hong Kong. "The US has already announced [insufficient gains in market access] as the excuse not to lower their internal support subsidies," says Pedro de Camargo, who has accused the United States of "box-shifting"—changing the countercyclical program from amber to blue—to offset the 20 percent reduction in amber box support offered in the July framework text. Camargo is concerned that the United States' reluctance to decouple and trim its support programs diminished the chances for an ambitious Doha agreement:

> The US is still rejecting the idea that they have to stop dumping on the world, and that will be necessary to solve at some point in time. The panels are helping a lot, but the US and EU reactions were very different. We got a big step forward in one pillar with the EU, but the step forward the US had to do—I don't see it. . . . The US exports a lot of products, and they all have high internal support. That's what we are trying to halt. It may not solve the domestic distortions, but we have to get the subsidy component out of the international market at least. And the US is still far from that. I'm not sure we're going to be able to [resolve this] in Hong Kong.

Brazil Wins the Appeal, but Negotiations Stall

On March 3, 2005, the DSU Appellate Body upheld all of the cotton panel's main rulings from the previous summer. In order to avoid retaliation from Brazil, the United States would have to modify its price-based support programs, although the panel offered no specific guidelines or deadlines regarding the modifications. "We can either implement the ruling quickly, or drag it out," says one USTR official. "Some members of Congress say, 'Go ahead, it doesn't cost anything.' But many more do not want to implement [the ruling], albeit for different reasons. Some say even if we do comply, the panel could come back and say we didn't do enough. Others fear it will encourage countries to file cases against other commodities if it looks easy to get what they want."

In the wake of the ruling, many USTR and USDA officials spoke of feeling as if they were stuck "between a rock and a hard place." On the one hand, Brazil and other developing countries were closely watching how the United States would implement the WTO ruling; coming into compliance would increase the United States' credibility and help the agricultural negotiations move forward. On the other hand, if the United States did comply, many members of Congress, especially those from southern states who were being pressured by commodity groups, promised to vote against the Central American Free Trade Agreement (CAFTA) and the ex-

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tension of the president's trade promotion authority (TPA), two priorities for the USTR.[33]

Given these political constraints, many US officials concede that the United States is likely to do as little as possible in the short term, but acknowledge that the ruling would spur major shifts in farm policy in the upcoming farm bill. "Congress will do the minimum they can get away with, and then wait for Brazil to complain," predicts one longtime Hill staffer. "Then the panel will come back with specific guidelines, and we will do more modifications. It's an iterative process. But by then we're into the 2006 farm bill. I think we'll shift out of price-related programs, but the money won't disappear."[34] Joe Glauber concurs. "I think we will see a farm bill we haven't seen to date," he says. "It will be shaped by WTO rules on domestic support."

A much more immediate problem concerned the WTO panel ruling on prohibited export subsidies. The Appellate Body gave the United States a July 1 deadline to eliminate the export subsidy element in the Step 2 and export credit guarantee programs but because such changes required congressional action, Joe Glauber was certain the United States would miss the target date. "The message from Congress was clear: don't come to us with something to implement before [the CAFTA and TPA votes in] July," says Glauber. He continues, "[Congressmen] have asked me, 'Do we have to do anything? Why not just drag our feet?' My answer is that if we appear obstinate, [Brazil] won't be flexible. They will look to retaliate in a sensitive sector, and that will get people's attention."

By June, with no movement on the Step 2 program, the Brazilian Congress evaluated proposed legislation to ease copyright rules; its effect would essentially be to suspend the intellectual property rights of American products entering Brazil. In an interview with the *Los Angeles Times*, Pedro de Camargo admitted that the strategy was an effort to get US sectors vulnerable to copyright infringement—namely, Hollywood, Silicon Valley, and the pharmaceutical industry—"to act as a counterweight to the powerful cotton lobby."[35]

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33. TPA was extended in Congress after no member of the House or Senate succeeded in moving forward a resolution of disapproval before the deadline of July 1, 2005; CAFTA was a more hard-fought battle. After months of behind-the-scenes lobbying by Bush administration officials, it passed the Senate, 54–45, in early July, and passed the House on July 28 by an even smaller, two-vote margin, after voting was held open unusually long to allow last-minute arm-twisting.

34. The staffer offers a historical comparison: the dispute case the European Union brought against the US foreign sales corporation (FSC) legislation. "FSC is a good parallel. It took us two years to do something. The EU said it wasn't enough, so it went back to the WTO. Only now, four years later, is there new legislation."

35. Camargo, quoted in Jerry Hirsch, "White House Seeks Repeal of a Cotton Subsidy Program; Administration Aims to Avert Brazilian Retaliation That Could Hurt Other Industries," *Los Angeles Times*, July 6, 2005, C1.

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On July 5 Brazil requested the right to impose sanctions on $2.9 billion worth of US imports under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement "as a retaliatory measure against the US delay at withdrawing prohibited subsidies." Brazil's deputy trade minister, Paulo Mesquita, stressed that Brazil had no intention of retaliating right away, adding, "We still hope the US will comply in a manner so we don't have to carry these out." That same day, the USDA announced it was sending proposed statutory changes to the Step 2 program to Congress for approval. "By implementing these proposed changes, we are being fully responsive to the WTO decision," said US Agriculture Secretary Mike Johanns. "This step is essential for the US to continue to be a leader in the WTO Doha negotiations."[36] At a special DSU session 10 days later, Brazil and the United States asked that the matter be referred to an arbitration panel, which suspended its work in accordance with the settlement agreement to give the United States time to comply.[37]

By the summer of 2005 the words "deadlocked" and "faltering" were once again being applied to the agricultural negotiations. In late July trade delegations met for a mini-ministerial in Dalian, China, where delegates reported that "no breakthrough had occurred." Days later, they met again in Geneva to continue talks. Despite intense negotiations and the last-minute presence of trade ministers, WTO members could not forge an agreement. A main sticking point remained the formula for tariff reduction. High-tariff countries such as the European Union and the G-10 of net food-importing countries disagreed with the "five tariff band formula" proposed by the G-20 at Dalian, while agricultural exporters such as the United States and Cairns Group members rejected the European Union's approach of a linear formula.

Tim Groser, the chair of the agricultural negotiations, admitted that the talks were "stalled," but tried to remain upbeat. "A set of clear political decisions—none of them easy, but at least we can now more readily identify the essential decisions—can restart this negotiation and still pave the way for a successful Ministerial meeting in December," he said. WTO Director-General Supachai offered a more pessimistic assessment, fearing that the delays caused by disagreement over tariff reductions left negotiators with little time to agree on the full modalities before the Hong Kong ministerial in December. Supachai also lamented the "reluctance on the part of key players to engage in real negotiations," pointing out that the stalemate in agriculture had postponed a resolution to the West

36. All quotations from "US Announces Changes to Illegal Cotton Subsidies; Brazil Reserves the Right to Retaliate," *Bridges Weekly Digest*, July 6, 2005, 3.

37. If Brazil deems that US efforts to bring its programs into compliance with the panel ruling are insufficient, it is entitled at any time to establish a new WTO arbitration panel and impose retaliatory measures.

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African Sectoral Initiative and even slowed down progress in other areas of the round.[38]

"The links between agriculture and other negotiating areas appear to be posing a serious barrier to the talks," a publication of the International Centre for Trade and Sustainable Development noted. "Several developing country delegations insist that they must see some of their demands met in the agriculture negotiations before they can make concessions on NAMA [nonagricultural market access]."[39] Indeed, the chair of NAMA negotiations postponed a week of talks scheduled for late July because progress appeared unlikely in the absence of movement in the agricultural negotiations. Negotiations in trade in services were likewise on hold. "An agreement on agriculture would unlock the talks on NAMA," confirmed one trade delegate.[40]

Where to Go from Here?

Trade analysts and NGOs have cited the WTO cotton case as a wake-up call demonstrating the need to create a fair, mutually beneficial agricultural trading system that accommodates the needs of all countries. But how that trading system would evolve remains to be seen. In short, while Brazil had won the battle in the cotton case, the war is far from over. As of late 2005, the United States had hesitantly begun to deal with some of the effects of the WTO's cotton ruling, but its full impact was not yet clear. West African nations were striving to make their cotton sector more competitive, but the job was far from done. The WTO's agriculture negotiations were at a standstill. Political leaders in Brazil and other countries were continuing to ponder what they could do to build on the cotton case in order to achieve their goals.

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38. Quotations from "Following July Stalemate, Intense Negotiations Expected in Lead-up to Hong Kong Ministerial," *Bridges Weekly Digest*, August 3, 2005, 6.

39. "Members Try to Convert Dalian Outcome into Negotiations Breakthrough," *Bridges Weekly Digest,* July 20, 2005, 2.

40. Quoted in "Members Try to Convert Dalian Outcome into Negotiations Breakthrough," 2.

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Case Analysis

The Brazil cotton case raises questions about the nature of support for farmers in a market economy; the adequacy of the international trade rules for agriculture; the ability of developing countries to use the system to advance their interests, through both trade negotiations and the dispute settlement system; the impact of the trading rules on domestic farm support programs; and the role of the trading system in promoting economic development.

Do farmers deserve special support from the government in a market economy? If so, how should such support be provided? In practice, almost every country supports its farmers and gives such aid through a variety of measures, including production subsidies, import protection, export subsidies, and price supports. Payment is often tied to the production of specific crops, although sometimes it is provided to those who withdraw land from production and improve the environment. Many of these measures are justified in the name of saving the family farmer, but support is often given without income limits or through price measures that actually benefit corporate producers most.

Which approach is most desirable? From a domestic perspective, these measures raise difficult issues of equity (among family farmers, consumers, taxpayers, etc.) and efficiency. From the standpoint of the trading system as well, they are not all created equal. Their impacts on the rest of the world may vary widely. For example, food stamps and other consumption subsidies actually raise world prices, as do payments contingent on setting aside production land. By contrast, import tariffs and production subsidies reduce world prices while raising prices at home.

International Rules

Although many agricultural products are traded internationally, for much of the postwar period, agricultural trade was not fully covered in the rules of the trading system. This omission reflects the political power of farmers in many countries. As a result, the barriers in both developed and developing countries remain much higher than those for manufactured goods. This discrepancy is of particular concern for developing countries, many of which are farm commodity producers.

In the Uruguay Round of multilateral trade negotiations launched in 1986, agricultural programs were subject to extensive negotiation for the first time in the history of the GATT. The result was the URAA, which distinguished among measures according to the degree to which they distorted international trade. Export subsidies and border barriers clearly induce such distortions, and efforts were made to reduce export subsidies and to enhance market access by lowering tariffs and ensuring that mini-

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mum levels of imports be permitted through tariff-rate quotas (TRQs). In addition, domestic subsidies that distort trade because they are contingent on producing particular commodities had to be reduced by 20 percent over benchmark levels. There was more lenient treatment for less trade-distorting measures that helped farmers but were given in a general manner. Such measures included "green box" subsidies such as support for research and development, training, food aid, and disaster relief, as well as "blue box" programs such as direct payments that required farmers to limit production.

However, another part of the Uruguay Round agreement, the Agreement on Subsidies and Countervailing Measures (SCM), actually prohibited export subsidies of all types. It also indicated that actionable subsidies (e.g., government benefits to a specific enterprise or industry), even if not prohibited, could be subject to challenge if they caused "serious prejudice" to the interests of another WTO member (Article 5(c)). Potential conflicts between these agreements could therefore be anticipated. These conflicts were postponed by a "peace clause" (URAA Article 13, "Due Restraint") that forestalled any challenges to certain domestic support measures and export subsidies until 2004.[41]

While the agreement was a historic first step, large trade-distorting supports remained in place. For developing countries, particularly those like Brazil that are major exporters of farm products, these were a source of concern. Because many developing countries are net agricultural exporters and the Doha Round has been expressly focused on the needs of developing countries—indeed, it has become known as the Doha Development Agenda—agriculture was given a pivotal role in the round. At the ministerial meeting held at Cancún in 2003, a powerful coalition of developing countries united to oppose US and EU agricultural proposals, demonstrating considerable negotiating muscle; by the following year, it had forced the European Union to abandon its resistance to ending export subsidies by a certain date.

US Farm Policies

Trade rules have become increasingly important in domestic debates over farm policy. The United States provides farmers with considerable financial support. In particular, farmers are often guaranteed minimum prices for their yield through measures such as loan support programs. Whereas trade protection raises the price paid by domestic consumers, these loan support programs have the virtue of allowing consumers to pay world prices—but they also have the effect of lowering world prices.

41. For Brazil to challenge US agricultural subsidies under the SCM agreement, it had to (1) demonstrate that export subsidies paid to cotton producers did not conform with the URAA; and (2) to show that US domestic support to cotton producers exceeded 1992 levels.

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In 1996 the United States tried to move away from closely tying the receipt of such subsidies to the production of particular crops by implementing the so-called Freedom to Farm Act, which provided subsidies to US farmers based on their past production. In the late 1990s, when falling commodity prices depressed farm incomes, the US government boosted these payments with additional emergency payments. In principle, neither of these programs was tied to current production and therefore both were considered by the United States to be green box. Many of these efforts were continued in the 2002 farm bill as "countercyclical payments." Cotton farmers in the United States benefited from marketing loan programs, direct payments, countercyclical payments, crop insurance, export credit insurance, and a Step 2 program that boosted exports and the use of domestic cotton by textile producers.[42]

WTO Rules

The WTO is a complex agreement, and members are often left in doubt as to its precise interpretation. Uncertainty sometimes occurs because the wording is ambiguous or because the agreement appears to say different things in different places. Case rulings help establish what it actually means. The peace clause to some extent postponed the need to reconcile the apparent inconsistencies between the URAA and SCM agreement, but it did not resolve them. Some members believed that as long as a country met its obligations under the URAA it did not have to conform to the SCM provisions for agricultural products, but—as the rulings in this case indicate—they were not correct. Both agreements apply.

Violations

The cotton case allows us to explore why countries violate the WTO rules and how the dispute system operates to allow others to challenge them. It shows the United States finding itself in violation of WTO rules that it had played a major role in crafting. Compliance with the WTO is not always easy, even for a developed countries. The United States believed it was in compliance with its commitments under the Uruguay Round agreement, and that therefore it would be safe from legal challenge. However, by adopting a policy of guaranteeing cotton farmers a minimum price (and payments triggered by revenue declines), it opened itself to the possibil-

42. By paying exporters an amount equal to the difference between the US and world market price for cotton, Step 2 guarantees that US cotton can be sold in foreign markets at a profit. It also provides a payment to textile producers who use US instead of foreign cotton in their production.

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ity of exceeding the limits for subsidies when cotton prices fell.[43] In addition, because cotton farmers had been prohibited from growing vegetables in order to qualify for payments, those payments could not qualify as green box—a point overlooked by US policymakers.

Developing Countries

Does the system provide developing countries with opportunities to advance their interests? The WTO has come under considerable fire for allegedly promoting the interests of developed countries and corporations at the expense of developing countries. Many made the specific argument that the Uruguay Round agreement was unfair because it required developing countries to accept the TRIPS agreement. In addition, some have seen the developing countries as at an inherent disadvantage in the dispute settlement process, pointing out that they are less able to respond to violations with trade retaliation and claiming that they lack the capacity to bring cases.

This case study suggests that some of these concerns may have been misplaced, or at least that the situation has improved. Not only was Brazil remarkably successful in winning this case (as well as another against the European Union, on its sugar subsidies), but a group of least-developed countries used the Cancún meeting and the Doha negotiations to win a special "sectoral initiative" for cotton. We see that it is possible for a developing country to bring a case against the United States, win it, and force a shift in US policy. But we also see that it took great effort and considerable technical and political capacity. Brazil was able to mobilize support in a way that other developing countries might not. The efforts of the Brazilian government were supplemented by international experts and legal representation, and the case was funded by the private sector. By contrast, this approach seemed less attractive to the less-developed West African countries, which arguably had an even greater interest in cotton subsidies. They chose an alternative route to advance their cause and were also able to obtain some measure of success.

As in the other cases in this volume, we see here the central role that vision and organization play in the design and implementation of influence strategies. Pedro de Camargo Neto was able to parlay his position in the

43. The four most significant findings of the panel were that (1) Step 2 payments to users and exporters of US-grown cotton constitute prohibited subsidies; (2) export credit guarantees to exporters of cotton and other commodities constitute prohibited subsidies; (3) the peace clause is not a bar to Brazil's challenge of US domestic support to upland cotton producers; and (4) US domestic support measures caused significant price suppression in the world cotton market during the years in question and therefore caused "serious prejudice" to the interests of Brazil.

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Brazilian government into a leading role for himself and his country in the Doha Round. He understood the potential for "bargaining in the shadow of the law," and he recognized that bringing a case in the WTO was a way of both influencing the agenda and leveling the playing field. He also was skilled at building coalitions, first to overcome opposition within the Brazilian government to launching the case and then to influence public and governmental opinion more broadly. At the same time, he saw that the weaker parties in the trading systems, who could not afford to directly confront the dominant players, could nonetheless play important, complementary roles in the larger campaign of influencing public opinion.

Key Questions

The case raises at least four important questions for us to reflect on. First, what precisely has Brazil achieved by winning the case? Has it simply gained a bargaining chip that it can use to obtain some concessions from the United States in the Doha Round or other negotiations? Second, what are the implications for US agricultural policies? Will the rulings really compel a fundamental change, or will the United States be able to meet its WTO obligations by making a few small modifications to its practices? If the rulings do require a major change, is this what the United States really understood and bargained for when it negotiated and signed the agreements in the first place? Third, what are the implications for agricultural producers in developing countries? What will be the impact of reductions in developed-country farm protection on poverty and economic development elsewhere? Fourth and finally, does this case provide a blueprint for how weaker players in the system can use the WTO dispute settlement mechanism to advance their interests?

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Appendix 5A
WTO Dispute Panel Findings: US Subsidies for Upland Cotton

The dispute panel ruled that US subsidy levels during the marketing years 1998–2002 exceeded the 1992 level. Therefore US cotton programs were not protected under the peace clause.

The panel found that all price-based US cotton programs caused "serious prejudice to the interests of Brazil" insofar as they suppressed prices, stating that "a causal link exists between price-contingent subsidies and significant price suppression . . . and this link is not attenuated by other factors raised by the United States."[44] The price-based support programs at issue include the marketing loss assistance payments (countercyclical payments in the 2002 farm bill), the marketing loan program, and the Step 2 program.

The panel found that US support programs not tied to price did not contribute to price suppression. Those payments included direct payments (called "production flexibility contract payments") and crop insurance payments. However, the panel ruled that because of the prohibition on planting fruits and vegetables, the direct payments did not qualify as green box support, but should have been counted as amber box instead.[45]

The panel rejected Brazil's market share argument. That is, the panel ruled Brazil had failed to show that US subsidies led to an increase in US world market share.

The panel found that the Step 2 program and the export credit guarantee (GSM) program did contain an export subsidy element. Export subsidies were prohibited for all commodities except those specific products for which countries had requested special allowances—called an "export subsidy base"—in the Uruguay Round. Since the United States did not have an export subsidy base for cotton, the panel ruled that the United States should remove the export subsidy element contained in the GSM and Step 2 programs within six months.[46]

44. "United States Subsidies on Upland Cotton," WTO Appellate Report, Document WT/DS267/AB/R, adopted on March 21, 2005, 291.

45. Under the program, farmers who grew fruits and vegetables on cotton base acreage were penalized (their payments were lowered). Therefore, the panel argued, the direct payments were not fully decoupled from production levels, so they did not meet the criteria of green box support. This same prohibition on fruits and vegetables existed for all program commodities that qualified for direct payments.

46. The United States had export subsidy allowances for wheat, barley, vegetable oils, butter, cheese, beef, pork, poultry, and eggs. GSM programs used for all other commodities with a zero-subsidy base, such as corn, were given the same six-month time frame for complying with this ruling.

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Appendix 5B
Timeline of Key Events in Brazil's WTO Disputes

Date	Event
September 27, 2002	Brazil files two dispute cases—against US cotton subsidies and EU sugar export subsidies—under the Dispute Settlement Understanding (DSU), the legal arm of the WTO.
September 27, 2002	Oxfam publishes *Cultivating Poverty: The Impact of US Cotton Subsidies on Africa,* which focuses media attention on agricultural trade and development policies.
April 30, 2003	The Francophone nations of Benin, Burkina Faso, Chad, and Mali file the Sectoral Initiative on Cotton at the WTO.
July 22, 2003	The first WTO panel session of *Brazil v. the United States on Upland Cotton Subsidies* is held. The United States requests that the case be thrown out, claiming that US cotton programs are protected under the peace clause. The panel rejects that request and allows the case to proceed.
September 10–13, 2003	The West Africans' cotton initiative receives wide spread support in Cancún. The WTO director-general even chairs the negotiating session, but parties are unable to come to agreement. The Cancún ministerial adjourns prematurely after negotiators come to an impasse.
April 22, 2004	The European Union announces reforms of its support policies for Mediterranean products—hops, olive oil, and cotton—which include fully decoupling 65 percent of payments given to cotton growers.
April 26, 2004	The WTO dispute panel issues its confidential preliminary ruling, siding with Brazil on most of its claims.
April 28, 2004	The House Agricultural Committee of the US Congress holds hearings at which Secretary of Agriculture Ann Veneman and USTR Robert Zoellick assure lawmakers that US support programs are consistent with WTO regulations. USTR Zoellick vows to appeal the WTO ruling.

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Date	Event
June 18, 2004	The WTO dispute panel issues its final ruling, siding with Brazil in finding that several US support programs—including marketing loan payments, countercyclical payments, Step 2 payments, export credits, and even direct payments—contributed to "serious prejudice" by depressing world cotton prices and recommends that the United States eliminate or modify the offending programs.
July 24–31, 2004	Trade negotiators from the 147 WTO member countries meet in Geneva to agree on a framework text for moving the Doha negotiations forward. After private negotiating sessions with the "Big Five"—the United States, European Union, Brazil, China, and India—all 147 members agree to substantial reforms in agricultural trade, including increases in market access, reductions in domestic support, and the elimination of export subsides at an undetermined date. However, most significant details are left for negotiators to resolve at the Hong Kong ministerial in December 2005.
August 4, 2004	A second WTO dispute panel issues a preliminary ruling against EU sugar export subsidies in a case brought by Brazil, Thailand, and Australia.
November 19, 2004	In accordance with the July framework, the WTO establishes a cotton subcommittee to monitor progress on the "trade track" of the West African Sectoral Initiative. In the "development track," meanwhile, donor conferences are held in Bamako, Mali, and Cotonou, Benin, to evaluate the needs of the West African cotton sector and devise technical assistance packages.
March 3, 2005	The DSU Appellate Body issues its ruling on the cotton case, upholding the panel's main findings from the previous summer. By July 1, 2005, the United States has to eliminate the export subsidy element in the Step 2 and export credit guarantee (GSM) programs. No deadlines are attached to modifications required of price-based programs.
July 5, 2005	The USDA sends legislative proposals to Congress seeking modifications of the Step 2 program

(timeline continues next page)

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Timeline of Key Events *(continued)*

Date	Event
	after Brazil threatens to retaliate by refusing to recognize intellectual property rights of US products entering Brazil.
July 18, 2005	At a meeting of the WTO Subcommittee on Cotton, the West Africans announce they are "disappointed WTO members have not responded in writing" to their April proposal, which requested (1) duty-free market access for cotton and cotton by-products produced by African countries; (2) an elimination of all domestic support measures that "distort cotton trade" by September 21, 2005; and (3) an elimination of cotton export subsidies by July 1, 2005. Despite the promise of an "early harvest," most negotiators admit that any concessions to the West Africans on cotton subsidies remain highly unlikely before the December 2005 ministerial.
July 21–26, 2005	After a mini-ministerial in Dalian, China, where delegates report that "no breakthrough had occurred," trade delegations meet again in Geneva to discuss agricultural tariff and subsidy reductions and schedules. Despite intense negotiations, WTO members cannot forge an agreement. A main sticking point remains the tiered formula for market access.
July 28, 2005	After months of behind-the-scenes lobbying by USTR Robert Portman (Robert Zoellick's successor), the Central American Free Trade Agreement (CAFTA) narrowly passes in the House, 217–215. The Senate approved CAFTA weeks earlier. Citing the passage of CAFTA and the July 1, 2005, extension of President Bush's trade promotion authority for two years, USTR Portman comments that America's political leadership on trade allowed him to "come to Geneva with a little more momentum . . . to be able to knock down barriers to trade globally though the Doha Round."[47]

47. Transcript of press briefing by USTR Robert Portman, Geneva, Switzerland, July 29, 2005, available at the USTR Web site at www.ustr.gov (accessed January 6, 2006).

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Appendix 5C
The Uruguay Round Agreement on Agriculture

The objective of the Uruguay Round Agreement on Agriculture (URAA) was to reform agricultural trade, encouraging more market-oriented policies for exporting and importing countries alike. After eight years of negotiations, it took effect in 1995. Developed countries had to make scheduled cuts in their subsidies and tariffs over a six-year period, while developing countries had smaller tariff reduction requirements and a 10-year time frame to implement them. Least-developed countries (LDCs) were exempt from undertaking any reforms.

The provisions in the URAA called for reforms in each of the "three pillars" of agricultural trade.

Market Access. Developed countries had to cut their tariffs by an average of 36 percent, with a minimum cut of 15 percent for any product; developing countries had to make an average cut of 24 percent, with a minimum cut of 10 percent.

Export Subsidies. Export subsidies are widely considered to be the most trade-distorting type of support because they encourage producers to export their products onto world markets at less than the cost of production, a practice also known as "dumping." The URAA prohibits export subsidies except for specific subsidies listed within members' commitments, and even then the agreement requires the countries using export subsidies to cut both the amount of money spent on them and the number of exports to which they apply.

Domestic Support. The URAA essentially said that not all subsidies are the same: Some distort trade, while others do not. Accordingly, the agreement distinguished between distorting and nondistorting types of support policies by assigning them to color-coded boxes:

- ***Green box:*** Green box subsidies have a negligible, or at most minimal, effect on trade. These types of subsidies are not subject to reduction commitments; in fact, countries can increase their green box spending without restraint, provided that the payments meet the green box requirements.[48] Green box subsidies include government transfers for research and environmental conservation, as well as direct income payments to farmers who do not influence production decisions (i.e., the amount of acreage planted or the type of crop grown).

48. The three criteria for a subsidy to be considered green box are (1) the subsidy must not distort trade, or must at most have a very minimal distorting effect; (2) it must be government-funded; and (3) it cannot involve a price-support mechanism.

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- *Blue box:* Under the URAA, blue box programs are not subject to reduction commitments, on the grounds that they are not tied to current production. They include rural development programs, direct payments that require farmers to limit production, and decoupled payments given to farmers based on their historical, not current, production levels.
- *Amber box:* All domestic support programs that do not meet the criteria of one of the two categories above are considered amber box. These include price supports, coupled payments, product-specific programs, and input subsidies. Amber box subsidies are considered highly trade-distorting because they have a direct effect on production levels, and they therefore are subject to reduction commitments under the URAA.[49] Using 1986–88 as a reference period, WTO members calculated their annual spending on these types of programs, a figure that is referred to as the "total aggregate measure of support" (or AMS). Each country's AMS became the maximum allowable level it could spend on amber box programs annually; and developed countries agreed to reduce their total AMS spending by 20 percent over six years, starting in 1995. Developing countries agreed to make a 13 percent cut over 10 years.

The Peace Clause

Though countries agreed to lower tariffs and subsidy levels over a number of years, concern still remained over how the URAA would relate to other Uruguay Round agreements, such as the Agreement on Subsidies and Countervailing Measures (SCM). The SCM agreement essentially laid out the terms and conditions under which countries have recourse to impose penalties on other WTO members whose policies are inconsistent with their WTO commitments. For example, a subsidy given to producers in one country that causes "serious prejudice" (i.e., substantial financial harm) to a domestic industry in another country is actionable under the SCM agreement.[50] Both parties present their arguments before a three-person panel in the Dispute Settlement Understanding (DSU), the court system of the WTO. If after a series of panel hearings the subsidizing na-

49. Twenty-eight WTO members (counting the European Union as one member) had nonexempt, or amber box, domestic support programs that were subject to reduction commitments.

50. According to the SCM agreement, serious prejudice exists if the subsidies of a WTO member displace or impede imports by the subsidizing country; displace or impede the exports of another country in a third-country market; result in price undercutting, price depression, or price suppression; or lead to a loss of world market share for a competitor country (DTB Associates 2004, 2).

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tion has been found to cause serious prejudice, it must remove the offending subsidy or face retaliation from the country that brought the case.

The question of which agreement took precedent—the URAA or the SCM agreement—was no small matter. Even though the URAA allowed WTO members to maintain a certain level of trade-distorting agricultural support (their AMS), they might still be open to legal challenges from other countries if serious prejudice could be proved. Some WTO members, most notably the United States and European Union, wanted extra protection against challenges of their agricultural subsidies, so they pushed to include a clause in the URAA encouraging countries to "exercise due restraint." Article 13, commonly referred to as the peace clause, effectively prohibited WTO members from bringing countervailing duty cases against other members' agricultural subsidies. Specifically, Article 13 stated that

(i) green box subsidies could not be subject to cases under the ASCM agreement, and

(ii) blue box and amber box subsidies were exempt from countervailing duty cases, as long as a country's overall AMS commitments did not exceed its 1992 levels and the amount of support given to a specific commodity did not exceed the level set in the 1992 marketing year.

The nine-year peace clause took effect in 1994 with an expiration date of December 31, 2003. Developed countries had hoped to renew the peace clause at the Cancún ministerial in September 2003, but the talks collapsed and the clause was allowed to expire at the end of the year.

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Appendix 5D
US Farm Policy

The precursor to modern-day cotton programs came out of New Deal legislation, the Agricultural Adjustment Act of 1933, which set up a system of minimum prices and government stocks. The main form of government assistance was the marketing loan program, which established "loan rates," or minimum prices that farmers could enjoy, for different commodities. The objective was to allow market conditions to take over in good years, while providing a safety net for farmers when there was a sudden downturn in price.

At the time of harvest, farmers received loans that were equal to the loan rate multiplied by their actual production; these were called "nonrecourse loans" because the government had to accept the production in lieu of repayment. The loan rates of any given commodity were set to cover the costs of production, with the intention of giving farmers the choice between transferring their harvests back to the government to pay off their loans or selling their crops on the open market—whichever had the higher return. However, after World War II, many of the loan rates were set so much higher than the cost of production that the government, not the consumer, essentially became the market.

In the 1960s, Congress lowered the loan rates to "disaster levels," so that the market once again determined the crop value. The United States became more competitive in global agricultural markets as a result. Since that time, US farm bills have tried to preserve a market orientation rather than relying on government interventions, while still maintaining a safety net for farmers in stressful times of drought or low prices. With inflation running high in the late 1970s, loan rates were set at very high levels. In the 1980s, an appreciating dollar and a slump in world GDP led to a collapse in world markets, leaving loan rates at very high levels relative to market prices. Large loan forfeitures resulted in enormous government stockpiles, stimulating Congress to legislate reforms in the 1985 farm bill, which lowered loan rates considerably and ultimately set the stage for the 1996 farm bill.

Freedom to Farm: The 1996 Farm Bill

The House and Senate Agricultural Committees draft farm legislation, commonly called "farm bills," every five to six years; they must subsequently be authorized by Congress and approved by the president. When farm legislation came up for renewal in 1996, US legislators for the first time faced an international constraint on their domestic farm policy: WTO commitments to which the United States had agreed in the Uruguay Round. Price-based support programs such as loan deficiency payments,

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introduced in the 1985 farm bill, were considered amber box subsidies because they were tied to the production of a specific commodity.

Moreover, program outlays were impossible to determine in advance because the marketing loan payments to farmers depended on what world prices were doing. As a result, government spending often varied dramatically from year to year. Yet such volatility could lead to spending that was incompatible with the United States' WTO commitments. When the URAA was implemented in 1995, the United States' total AMS, or permissible amber box support, stood fixed at $19.1 billion a year.

But the mid-1990s were a period of record-high commodity prices. Because US farmers were doing well on the world markets, US government outlays under the marketing loan program and other price-based subsidies were minimal. "The loan rates at the time—not just for cotton, but for all the commodities—were way below market prices," comments Joe Glauber, deputy chief economist at the USDA. "In 1995 to 1996 . . . [the United States] was reporting [AMS] outlays of $7 billion to $8 billion. We were well within our limits, and everyone felt that we were looking pretty good."

Congress used the opportunity to pass the 1996 Freedom to Farm Act, which introduced a system of "decoupled" direct payments. The marketing loan program remained more or less intact, but that did not raise much concern at a time when world prices were much higher than loan rates. In general, the 1996 farm bill was applauded as a step in the right direction. Direct payments were designed to qualify as green box support, since the payments were based on historical production levels (i.e., "base acreage"), not actual production on the farm. Because farmers received direct payments regardless of whether they planted cotton, planted something else, or left their land fallow, legislators argued, they met the green box criteria of not distorting production. There was one exception, however. Farmers' direct payments would be reduced if they planted fruits and vegetables on their base acreage.

Congress Passes Supplemental Legislation

In 1997–98, the bottom fell out of commodity markets, mainly because of the East Asian financial crisis. The dollar rose, leading to a loss of US competitiveness that dampened demand for US goods across the globe.

As farmers reeled from depressed world demand and faced a severe drought in several US states, Congress passed supplemental legislation in 1998 that authorized additional "emergency" payments of $30 billion over a four-year period. Congress was criticized by supporters of the 1996 farm bill for reverting back to the old system of price supports. "At the same time the US was in Geneva saying how decoupled our programs

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were," remarks Joe Glauber, "Congress was passing supplemental legislation to compensate producers for low prices."

Cotton prices were still relatively high when Congress passed the supplemental legislation.[51] Nevertheless, because the emergency payments were designated for all US farmers, not just those hardest hit by drought or low prices, US cotton farmers received the extra payments as well. The emergency payments, called the "marketing loss assistance payments," were "done in an imprecise manner," says Glauber. "In 1998, corn and wheat guys were hurting, they got double payments. Cotton and rice guys were doing pretty well, but they also got double payments. It really didn't match the need."

In 2000, Congress passed the Agricultural Risk Protection Act (ARPA), which provided an additional $8 billion in subsidies to US farmers via crop insurance, a program for which cotton growers were eligible. Months later, when the world price of cotton fell below the loan rate of 52 cents, the marketing loan payments kicked in. All told, government support to US cotton growers totaled $1.9 billion in 1998–99, $3.5 billion in 1999–2000, $2.1 billion in 2000–01, and $3.9 billion in 2001–02.[52] In contrast, the amount of assistance that US cotton growers received in 1992, the baseline marketing year for the purposes of the peace clause, was $1.4 billion (see table 5D.1).

The 2002 Farm Bill

In sharp contrast to the previous three farm bills, the 2002 farm bill was passed in a time of government budget surplus. By all accounts, it was a strong reversal of the 15-year trend away from decoupling producer support to production levels. Significantly, the "emergency" marketing loss assistance payments, now termed "countercyclical payments," were made permanent. Like direct payments, countercyclical payments were based on historical, not actual, levels of production. Like marketing loan payments, they kicked in only in years of low prices, when the world price fell below the minimum price. In 2002, for example, a year of low cotton prices, countercyclical payments immediately became the largest component of government assistance to cotton growers: 36 cents of every dollar spent, for a total of $1.3 billion.

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51. Cotton was one of the last commodity markets to be affected by the Asian financial crisis. Whereas other commodity markets bottomed out in 1998–99, cotton prices were relatively stable until 2000. Although the cotton crop in Texas was in fact affected by the drought, producers received disaster payments on top of the marketing loss assistance payments.

52. These totals include direct payments, marketing loan payments, Step 2 payments, crop insurance payments, and payments under the export credit guarantee program (Baffes 2004b, 13).

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Table 5D.1 US government support to cotton producers

	1992–93[a]	1998–99	1999–2000	2000–01	2001–02	2002–03
US cotton production (thousands of tons)	3,531	3,251	3,823	3,742	4,420	3,746
A Index (US dollars per kilogram)	1.28	1.30	1.16	1.26	0.92	1.23
Total assistance (millions of US dollars)	1,443	1,947	3,432	2,149	3,937	3,075
Assistance (per kilogram)	0.41	0.60	0.90	0.57	0.89	0.82
Assistance (percent of A Index)	32	46	77	46	97	67
Breakdown of assistance (millions of US dollars)						
Coupled payments	1,303	535	1,613	563	2,507	248
Production flexibility contracts/direct payments	n.a.	637	614	575	474	914
Marketing loss assistance payments/ countercyclical payments[b]	n.a.	316	613	613	524	1,264
Crop insurance	n.a.	151	170	162	236	194
Step 2 payments	140	308	422	236	196	455
Total	1,443	1,947	3,432	2,149	3,937	3,075

n.a. = not available

a. The 1992–93 marketing year served as the threshold level that countries could not exceed to remain protected under the peace clause. Because the composition of support was different in 1992–93, all programs were considered coupled support.

b. The emergency marketing loss assistance payments, which Congress authorized in supplemental legislation in 1998, became permanent in the 2002 farm bill under the new name "countercyclical payments."

Note: "Years" refer to marketing years. The A Index is the August–July average.

Sources: US Department of Agriculture; International Cotton Advisory Committee; Baffes (2004b).

The projected outlays for the 2002 farm bill were $180 billion over a 10-year period, representing an 80 percent increase in spending from the 1996 farm bill. "All of a sudden we have a very big program again," observes Glauber. "Now we've increased the loan rate in an environment where prices are expected to be low . . . the direct payment rate was increased for most commodities, and on top of that we had these countercyclical payments."

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Appendix 5E
The World Cotton Market

Volatility and price declines are not new to the cotton market. Since 1990, however, both trends have become more pronounced, as a result of such factors as longer-term trends affecting supply and demand, currency fluctuations, and government policies, particularly in the United States and China.

Cotton Supply

From 1960 to 2001, global cotton production doubled from 10 million to 20 million tons. Major cotton producers include the United States and China (together comprising 40 percent of world production), as well as India (12 percent), Pakistan (8 percent), Uzbekistan (5 percent), Francophone Africa (5 percent), Brazil, Australia, Turkey, and two members of the European Union, Greece and Spain. One-third of cotton is traded internationally, with the United States by far the world's largest exporter. Behind the United States, major cotton exporters are Uzbekistan, Francophone Africa, and Australia.

In the past 40 years, cotton production has undergone dramatic technological changes. Improved seed varieties, fertilizers, pesticides, and mechanical farming have lowered costs and doubled world cotton yields. The development of a genetically modified cotton plant designed to protect itself from insects has also transformed the sector. Monsanto first introduced its genetically engineered strain, called Bollgard (Bt) cotton, in 1996; it has since been adopted in nine countries and is now grown on 13 million hectares worldwide, or 40 percent of the total acreage devoted to cotton.

Indeed, the expansion of Bt cotton—along with extremely favorable weather conditions in all major cotton-producing countries—led to record harvests in 2001–02. Countries that grow Bt cotton include the United States (where Bt accounts for 70 percent of total cotton acreage), Australia (40 percent), and China (20 percent), as well as India, Indonesia, Mexico, Argentina, Colombia, and South Africa (Cabanilla, Abdoulaye, and Sanders 2003). Although the European Union cites health and environmental reasons for not switching to Bt cotton, its adoption has significant implications for farm income, especially for developing countries.[53]

Cotton Demand

Global consumption patterns for cotton fiber are determined by several factors, the most significant of which is the size and health of the textile

53. Bt results in higher profit margins for farmers by both raising yields (because insect damage is reduced) and reducing input costs (because fewer insecticide sprayings are needed).

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industries in cotton-importing nations. China is the largest textile producer in the world; during the 1990s, it consumed on average more than one-quarter of global cotton output. Along with those in China, the textile industries of the United States, Turkey, and India together account for three-quarters of cotton consumption.

A long-standing constraint on cotton demand is the increasing competitiveness of chemical fibers. Consumption of synthetic fibers such as polyester grew by 4.7 percent annually from 1960 to 2000 as technological innovations enabled them to be produced more cost-effectively. In contrast, cotton consumption increased only 1.8 percent annually over the same period, roughly in parallel with population growth (Baffes 2004b, 5). The United States is the only country in the world where cotton consumption has been increasing for the last 10 to 15 years; in most countries, per capita demand for cotton textiles has been declining.

Though much of the 1990s saw steady, if slow, increases in world cotton demand, cotton experienced a sharp price decline after the East Asian financial crisis in 1997. Inflation rose, demand shrank, and many mills sat idle in the textile-producing East Asian nations of Indonesia, Thailand, Taiwan, and South Korea. (By 2002, once their economies had rebounded, those four countries together absorbed 22 percent of global cotton output.)

In the ensuing global recession, the dollar appreciated against the currencies of major cotton producing countries by nearly 20 percent (Skelly and MacDonald 2003, 2). This currency fluctuation is significant because cotton, like most commodities, is traded in dollars, making cotton prices sensitive to the dollar exchange rate. The appreciation of the dollar thus exerted downward pressure on world cotton prices, as the A index (the average of the cheapest five quotations from a selection of the main upland cottons traded internationally) moved downward to keep the world cotton price in line with its value in foreign currencies.

Government Policies

The most significant distortions in the world cotton market stem from the large subsidies that countries funnel to their domestic producers (see tables 5E.1 and 5E.2). In the 2001–02 crop year, almost three-quarters of global production was government subsidized. Though US subsidies constitute the bulk of government assistance (see appendix 5D), some experts contend that policy shifts in the Chinese cotton sector during the 1990s had a greater effect on world cotton prices.

During the mid-1990s, China subsidized its cotton producers by setting the internal price above world prices, while at the same time allowing some mills to import cotton. These policies had perverse effects: China's demand for foreign cotton kept world prices high even as the government accumulated a large surplus stock. But China implemented numerous

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Table 5E.1 Worldwide government assistance to the cotton sector, 1997–98 to 2000–2001

	1997–98			1998–99			1999–2000			2000–2001		
Country	**Production** (thousands of tons)	**Average assistance per pound produced** (US cents)	**Assistance to production** (millions of US dollars)	**Production** (thousands of tons)	**Average assistance per pound produced** (US cents)	**Assistance to production** (millions of US dollars)	**Production** (thousands of tons)	**Average assistance per pound produced** (US cents)	**Assistance to production** (millions of US dollars)	**Production** (thousands of tons)	**Average assistance per pound produced** (US cents)	**Assistance to production** (millions of US dollars)
United States	4,092	7	597	3,030	22	1,480	3,694	25	2,056	3,742	12	1,020
Mainland China	4,602	20	2,013	4,501	27	2,648	3,829	18	1,534	4,420	20	1,900
Greece	340	88	659	357	84	660	435	62	596	421	58	537
Spain	116	83	211	104	89	204	132	68	199	94	86	179
Turkey				871	11	220	791	16	287	880	5	106
Brazil	412	3	29	521	5	52	700	3	44	939	2	44
Egypt	342	38	290				233	4	20	210	5	23
Mexico	209	3	13	219	3	15	135	9	28	72	9	14
All countries	10,113	17	3,812	9,603	25	5,279	9,949	22	4,764	10,778	16	3,822

Source: ICAC (2002, 9).

Table 5E.2 Worldwide government assistance to the cotton sector, 2001–02 and 2002–03

Country	2001–02			2002–03 (preliminary)		
	Production (thousands of tons)	**Average assistance per pound produced** (US cents)	**Assistance to production** (millions of US dollars)	**Production** (thousands of tons)	**Average assistance per pound produced** (US cents)	**Assistance to production** (millions of US dollars)
United States	4,420	31	3,001	3,747	24	1,996
Mainland China	5,320	10	1,196	4,920	7	750
Greece	435	77	735	370	88	718
Spain	107	104	245	100	108	239
Turkey	922	3	59	900	3	57
Egypt	317	3	23	291	5	33
Côte d'Ivoire	173	2	8	150	4	14
Mexico	92	9	18	41	8	7
India	2,686	8	500	n.a.	n.a.	n.a.
Benin	172	5	20	n.a.	n.a.	n.a.
Mali	240	3	14	n.a.	n.a.	n.a.
Brazil	766	1	10	n.a.	n.a.	n.a.
Colombia	26	16	9	n.a.	n.a.	n.a.
Argentina	65	5	7	n.a.	n.a.	n.a.
All countries	15,741	17	5,844	10,519	16	3,814

n.a. = not available

Source: International Cotton Advisory Committee, 2003.

reforms in the late 1990s as it prepared for accession into the WTO. In 1997–98, imports fell by half; in 1999, it floated the internal price, which required the government to dispose of 3.5 million bales of excess stocks (Skelly and MacDonald 2003, 3). Thus, in the span of four years, China changed from being the world's cotton largest importer to a net exporter and remained relatively self-sufficient until 2002–03. China continues to subsidize domestic producers, though its lack of transparency prevents analysts from knowing the exact figures (most estimates range between $1 billion and $2 billion annually).

In addition to domestic support, some cotton-exporting countries maintain a policy of taxing cotton imports in the form of tariffs or tariff-rate quotas (TRQs). Argentina, Brazil, Egypt, India, Uzbekistan, and Zimbabwe impose tariffs on cotton imports ranging from 5 to 15 percent. The United States imposes a tariff of 4.4 cents/kilogram within quota and 31.4 cents/kilogram outside quota (with a TRQ of 73,207 tons). China has a tariff of 3 percent within quota and 90 percent outside quota (with a TRQ of 856,250 tons).

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Appendix 5F
The Impact of a 20 Percent Reduction in Overall Trade-Distorting Support: The United States, the European Union, and Japan

Table 5F.1 Impact of a 20 percent "down payment" reduction in trade-distorting support

Country	Actual spending, 2000	Permitted spending under July 2004 framework	After 20 percent "down payment"
United States (billions of dollars)			
Amber box	16.8	19.1	No cut required
Blue box	0	9.5	No cut required
De minimis	7.8	19.0	No cut required
Total trade distorting	24.6	47.6	38.1
Green box	49.7		No cap
European Union (billions of euros)			
Amber box	43.6	67.2	No cut required
Blue box	22.2	12.1	12.1
De minimis	0.7	24.2	No cut required
Total trade distorting	66.5	103.5	82.8
Green box	21.8		No cap
Japan (trillions of yen)			
Amber box	0.70	4.0	No cut required
Blue box	0.09	0.5	No cut required
De minimis	0.03	1.0	No cut required
Total trade distorting	1.0	5.5	4.4
Green box	2.6		No cap

Note: Numbers are based on each country's WTO notifications in 2000, the last year for which data are available for all three countries. Amounts are in local currencies.

Source: International Food and Agricultural Trade Policy Council, 2004.

Table 5F.1 illustrates the impact on the United States, the European Union, and Japan of a 20 percent "down payment" reduction in trade-distorting support (taking 2000 as the base year for the cuts). Japan would not have been required to make any cuts in amber, blue, or de minimis support to meet the overall reduction commitment. The European Union would have had to reduce blue box spending from 22.2 billion euros to 12.1 billion euros but would have had plenty of room in its amber box, or the green box, to which blue box subsidies would be shifted.

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