

# US – UPLAND COTTON<sup>1</sup>

(DS267)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	Brazil	AA Arts. 3.3, 8. 9.1(a) and 10	Establishment of Panel	18 March 2003
			Circulation of Panel Report	8 September 2004
Respondent	United States	ASCM Arts. 3, 5(c) and 6.3(c)	Circulation of AB Report	3 March 2005
			Adoption	21 March 2005

## 1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: US agricultural "domestic support" measures, export credit guarantees and other measures alleged to be export and domestic content subsidies.
- Product at issue: Upland cotton and other products covered by export credit guarantees.

## 2. SUMMARY OF KEY PANEL/AB FINDINGS<sup>2</sup>

- AA Art. 13 (peace clause): The Appellate Body upheld the Panel's finding that the "Peace Clause" in the AA did not apply to a number of US measures, including domestic support measures for upland cotton.
- ASCM Art. 6.3(c) (serious prejudice): The Appellate Body upheld the Panel's finding that the effect of subsidy programme at issue – i.e. marketing loan programme payments, Step 2 (*user marketing*) payments, market loss assistance payments, and counter-cyclical payments – is significant price suppression within the meaning of Art. 6.3(c), causing serious prejudice to Brazil's interests within the meaning of Art. 5(c).

The Panel found that other US domestic support programmes (i.e. production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because Brazil failed to prove a necessary causal link between these programmes and significant price suppression.

- ASCM Art. 3.1(a) and (b), AA, Art. 9.1(a) (Step 2 Payments – import substitution subsidies and export subsidies): The Appellate Body upheld the Panel's finding that Step 2 payments to *domestic* users of US upland cotton were subsidies contingent on the use of domestic over imported goods that are prohibited under Art. 3.1(b) and 3.2 of the ASCM. The Appellate Body also upheld the Panel's findings that Step 2 payments to *exporters* of US upland cotton constitute subsidies contingent upon export performance within the meaning of Art. 9.1(a) of the AA and, consequently, the United States had acted inconsistently with AA Arts. 3.3 and 8. In addition, the Appellate Body found that the Step 2 payments to exporters were prohibited export subsidies that were inconsistent with Art. 3.1(a) and 3.2. of the ASCM.
- AA Art. 10.1 and ASCM Art. 3.1(a) and 3.2 (Export credit guarantees – export subsidies): The Appellate Body upheld the Panel's finding that US export credit guarantee programmes at issue were "export subsidies" within the terms of the ASCM, and thus, circumvented the US export subsidy commitments in violation of Art. 10.1 of the AA and violated Art. 3.1(a) and 3.2 of the ASCM. The Appellate Body, in a majority opinion, also upheld the Panel's finding that AA Art. 10.2 does not exempt export credit guarantees from the export subsidy disciplines in Art. 10.1. One member of the Appellate Body, however, in a separate opinion, expressed the contrary view that Art. 10.2 exempts export credit guarantees from the disciplines of Art. 10.1 until international disciplines are agreed upon.
- Recommendation (ASCM Arts. 4.7 and 7.8): The Panel recommended that (i) as for prohibited subsidies (export credit guarantees and step 2 payments), the United States withdraw them without delay (i.e. in this case, within six months of the date of adoption of the Panel/AB Report or 1 July 2005 (whichever was earlier))<sup>3</sup>; and (ii) as for subsidies found to cause serious prejudice, the United States should take appropriate steps to remove their adverse effects or withdraw the subsidy.

<sup>1</sup> *United States – Subsidies on Upland Cotton*

<sup>2</sup> Other issues addressed: DSU Arts. 11, 12.7, 17.5; terms of reference (expired measures, consultations); burden of proof; judicial economy; Appellate Body's scope of review (fact vs. law); sufficiency of notice of appeal (Working Procedures for Appellate Review, Rule 20(2)); statement of available evidence (ASCM Art. 4.2); GATT Art. XVI; Item (j) of the illustrative list of the ASCM.

<sup>3</sup> On 3 February 2006, the United States Congress approved a bill that repeals the Step 2 subsidy programme for upland cotton. The bill was signed into law on 8 February 2006, and took effect on 1 August 2006.