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WTO DEALS ANOTHER BLOW TO US FARM SUBSIDIES

On March 3rd, the day after thousands of Ontario farmers protested at Queen's Park for \$300 million in emergency government aid because of suppressed crop prices, the WTO Appellate Body decision condemning US cotton subsidies was released. The timing of these two events is ironic because many argue that US subsidies are a direct cause of the suppressed crop prices that sparked the protest.

WHAT THE REPORT SAYS

The WTO Appellate Body's Report upholds the decision of the WTO Panel supporting Brazil's claim that billions of dollars in subsidies to American cotton farmers are illegal. Brazil's case is the first to challenge US subsidies that were supposedly protected by the "peace clause". This clause, included in the 1995 *Agreement on Agriculture*, allowed countries to subsidize their farmers if the subsidy was capped at 1992 levels. The WTO Panel ruled that US cotton subsidies violated US commitments under the WTO. The US appealed the Panel's decision.

The Appellate Body reviewed and agreed with substantially all of the Panel's findings, the most important of which include:

- The cotton subsidies granted from 1999 to 2002 exceed the 1992 subsidy level and are not protected by the peace clause;
- Step 2 payments to domestic users, marketing loan program payments, production flexibility contract payments, market loss assistance payments, direct payments, counter-cyclical payments, crop insurance payments, and cottonseed payments are subsidies which support a specific commodity (although the decision modified the Panel's interpretation of "support to a specific commodity");
- Marketing loan program payments, Step 2 payments, market loss assistance payments, and counter-cyclical payments (the so-called "price-contingent subsidies") cause serious prejudice by significantly suppressing prices which contravenes the *Agreement on Subsidies and Countervailing Measures*; and
- The Panel need not precisely quantify the benefit conferred on cotton farmers by price-contingent subsidies.

WHAT'S NEXT

The US will have a reasonable period of time to bring its subsidies into conformity with the decision, after which it may face retaliation by Brazil. Unfortunately, this part of the process is lengthy¹ and it is likely that the US will attempt to extend the process as long as possible.

To comply with the ruling, the US must cut more than \$3 billion per year in subsidies. It must also dismantle its export credit program for cotton and other included export commodities. Given the powerful lobby that US farmers have in Washington, the Appellate Body decision will test the US commitment to the liberalized world trading system it has helped to build and from which it benefits.

¹ See discussion on trade remedies in Neil Campbell and Chris Bennett, "The Contribution of WTO Appellate Review to a Rule-Based World Trading System", *Canadian International Lawyer* (June 2002), on-line at http://www.mcmillanbinch.com/Upload/Publication/The%20Contribution%20of%20WTO%20Appellate%20Review_Campbell_0600.pdf.

OPPORTUNITIES FOR THE CANADIAN GOVERNMENT

The cotton decision will pave the way for challenges to subsidies on other subsidized US products, such as grains, soybeans and oilseeds. The Canadian Government now has a remarkable opportunity to follow Brazil's lead and challenge such subsidies under the *2002 US Farm Bill* to gain either a reduction in subsidies or the right to retaliate.

While launching a complaint against the US may place additional strain on the Canada-US trading relationship, the US has not hesitated to challenge alleged Canadian subsidies in areas such as softwood lumber. Although many Canadian agricultural sectors are competitive, they cannot compete with their American counterparts when the US Government guarantees farmers a certain level of income regardless of market price.

Canada's pursuit of such a complaint will give additional clout to the interests of developing nations in eliminating agricultural subsidies of developed countries in order to compete fairly in export markets and ensure a safe, sustainable and profitable food supply domestically and globally. Most importantly, the decision to litigate may give Canada some leverage vis-à-vis the Americans and so help alleviate the log jam on agricultural subsidies in the current Doha Round of WTO trade talks. Furthermore, such a complaint would be consistent with Prime Minister Martin's commitment for Canada to continue playing a leadership role in advancing the interests of liberalizing world trade rules so that all nations benefit.

The Canadian Government is already deciding whether, when and how to retaliate under the authority given to it by the WTO's *Byrd Amendment* decision. Recently, outgoing US Ambassador to Canada, Paul Celucci, said that Ottawa and other world capitals may have to slap sanctions on the US to persuade the American Congress to repeal its controversial trade law. The same can be said for US farm subsidies. The more countries that line up to challenge the trade distorting subsidies under the *2002 US Farm Bill* the more pressure will be exerted on the US Government to get rid of these subsidies.

In our view, the most effective way to help Canadian farmers is to ensure that they occupy a level playing field with American farmers. The WTO Appellate Body decision is a step in the right direction. The Canadian Government can do its part in attacking these subsidies by launching its own complaint, ensuring that protests like the one that occurred at Queen's Park on March 2nd are no longer necessary.

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