The WTO's Cotton Decision: The Agreement on Agriculture Takes a Bite Out of U.S. Agriculture Policy

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Green Box Subsidies

- Production Flexibility Contracts and Direct Payments
- Payment amount based on historical acreage and yield
- To qualify, must be decoupled from prices, which Brazil did not contest
- And not "related to, or based on, the <u>type</u> or volume of production"

Prohibited Crops

- Payments reduced if planted fruits, vegetables, melons, tree nuts, wild rice
- Evidence: Virtually all recipients with cotton base acres still planted cotton
- <u>Possibility</u> of payment reduction from prohibited crops means PFC/DP "related to" a type of production, so not Green

U.S. Domestic Cotton Support

$M	1992	1999	2000	2001	2002
Market loans	866	1761	636	2609	897.8
User market'g	102.7	165.8	260	144.8	72.4
Deficiency	1017.4	0	0	0	0
PFC payments	0	616	574.9	473.5	436
DP	0	0	0	0	181
MLA	0	613	612	654	0
CCP payments	0	0	0	0	1309
Crop ins.	26.6	169.6	161.7	262.9	194.1
Total	2012.7	3404.4	2429.3	4144.2	3140.3

Serious Prejudice

- Significant price suppression
- PFC/DP and crop insurance = income support; not “discernibly price suppressive”
- Marketing loans, Step 2, MLA, CCP = price-contingent, so suppressive

Quantification of injury

- Not CVD, so need not calculate size of subsidies or level of price effect
- High US production and exports = substantial influence on prices
- Subsidies are “very large”
- World price in broad decline
- Same factors to find “significant” price suppression

Implications

- No clear guidance on serious prejudice
- Arbitral panel must quantify for retaliation purposes
- Fruit and vegetable exception likely was de minimis
- July 2004 Framework's "new" Blue Box not big enough for both DP and CCP