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 type 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
- **Possibility** of payment reduction from prohibited crops means PFC/DP “related to” a type of production, so not Green
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<td>169.6</td>
<td>161.7</td>
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<td><strong>Total</strong></td>
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<td>3404.4</td>
<td>2429.3</td>
<td>4144.2</td>
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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