



Update on the “Upland Cotton” dispute in the WTO between Brazil and the U.S.
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In 2002 Brazil requested an arbitral panel under the World Trade Organization (WTO) dispute resolution procedure against the United States, questioning the amount of subsidies granted to U.S. “upland cotton” producers. In 2005 Brazil won the dispute and was authorized to implement cross-retaliation of up to US\$830 million. In 2007 legislation was proposed in Brazil to implement cross-retaliation against intellectual property rights, limiting or suspending IP rights or any payment for these rights (presently Law 12.270/2010). In 2009 the USA agreed to pay Brazil US\$147,3 million per year, in instalments of US\$12,275 million per month and Brazil did not implement the cross-retaliations.

In September of 2013, the USA suspended the monthly payments pending the approval of a new Farm Bill, which has now been enacted. The new Farm Bill creates what the Brazilian Government believes are new subsidies on cotton that continue to violate several agreements between the two countries. As a result, Brazil is threatening to request the opening of another arbitration panel before the WTO, per the WTO dispute resolution procedure and, and to immediately implement cross-retaliations against IP rights.

The Brazilian Foreign Chamber of Commerce (Camex) has announced that it will request the establishment of an arbitral panel before the WTO to determine whether the new Farm Bill would continue to provide illegal subsidies to U.S. cotton producers.

The concept of “cross-retaliation” was defined after the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) implementation with the aim to enforce the protection of different rights. Cross-retaliation under TRIPS is conditioned upon two factors. First, cross-retaliation is a remedy that can be implemented only when other trade options against protectionism are and remain inadequate. Second, the circumstances must be shown to be sufficiently serious to justify cross-retaliation.

According to the new legislation approved by the U.S. Congress, the previous subsidies program has been replaced with an agricultural insurance program known as the Stacked Income Protection Plan (Stax). Instead of direct payments, the insurance covers 70% to 90% of the loss incurred by U.S. cotton producers. The U.S. Government may also provide subsidies for participating in the Stax. The Brazilian Government’s preliminary analysis of the new U.S. Farm Bill indicates that it will also result in barriers to international commerce in cotton.

The Brazilian Minister of International Relations, Luiz Alberto Figueiredo, stated that while the Government will be seeking a final solution, Brazil will also continue the negotiations with the United States in order to avoid enforcing its position through cross-retaliation.

The president of the Brazilian Association of the Cotton Producers (Abrapa), however, wants Brazil to retaliate immediately. According to him, the U.S. incentive program still damages the Brazilian cotton producers and violates the WTO agreement.

Brazil believes the U.S. now owes at least US\$ 60 million to the Brazilian producers. The U.S. has apparently not given any indication as to how or when this debt will be honored.

The noncompliance of the U.S. with the 2009 agreement gives Brazil the right to cross-retaliate in matters such as intellectual property rights, in addition to raising import duties. If the implementation of cross-retaliation becomes real, Brazil will be the first country in the world to retaliate against the U.S.

Both countries, however, continue to negotiate a possible solution. This might include a revision of the Brazilian export products covered by the American GSP, which allows for lower import duties, or new payments to the Brazilian cotton producers.

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