



CRS Report for Congress

Brazil's WTO Case Against U.S. Agricultural Support: A Brief Overview

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Summary

On July 11, 2007, Brazil requested consultations with the United States, under World Trade Organization (WTO) dispute settlement rules, to discuss two charges against U.S. farm programs — first, that the United States has exceeded its annual commitment levels for the total aggregate measure of support (AMS) in each of the years 1999, 2000, 2001, 2002, 2004, and 2005, and second, that the U.S. export credit guarantee program operates as a WTO-illegal export subsidy. Both charges stem from a previous successful challenge by Brazil of the U.S. cotton program (DS267). Canada is currently pursuing a similar case against the United States.¹ Brazil initially had joined Canada's case as an interested "third party," but has since chosen to pursue its own case.

A 60-day consultation period ended with no mutual agreement between Brazil and the United States. Brazil is now free to request the establishment of a WTO panel to rule on its complaint, but has not as yet done so. Should Brazil successfully pursue this case, any changes in U.S. farm policy to comply with a WTO ruling would likely involve action by Congress to produce new legislation. This report will be updated as events warrant.

Introduction

Brazil — which has already won a series of WTO dispute settlement rulings against U.S. cotton programs² — introduced a new challenge against U.S. farm programs in July 2007, when it requested consultations with the United States to discuss two issues related

¹ See CRS Report RS22724, *Canada's WTO Case Against U.S. Agricultural Support: A Brief Summary*, and CRS Report RL33853, *Canada's WTO Case Against U.S. Agricultural Support*, both by Randy Schnepf.

² For more information, see CRS Report RS22187, *Brazil's WTO Case Against the U.S. Cotton Program: A Brief Overview*, and CRS Report RL32571, *Brazil's WTO Case Against the U.S. Cotton Program*.

to U.S. farm programs.³ The request is nearly identical to a similar case being pursued by Canada against U.S. farm programs.⁴ Both cases raise two concerns — that U.S. farm program outlays have exceeded their annual AMS limit in six out of seven years during the 1999-2005 period, and that the U.S. export credit program functions as an illegal export subsidy. However, Brazil's AMS challenge appears to be more comprehensive than Canada's WTO case in terms of the level of detail of program support activity that is alleged to have been incorrectly notified as exempt or excluded from the AMS spending limit.

This report provides an overview of the current status of Brazil's WTO case (DS365) against U.S. farm programs, along with a brief discussion of Brazil's two charges and the potential role of Congress in responding to these charges.

Current Status of Brazil's WTO Case DS365

On July 11, 2007, Brazil requested consultations with the United States, under WTO dispute settlement rules, to discuss two charges against U.S. farm programs. Following Brazil's request for consultations, several other WTO members — Canada, Guatemala, Costa Rica, the European Communities (EC), Mexico, Australia, Argentina, Thailand, India, and Nicaragua — officially requested to join the consultations as interested third parties.⁵ Brazil's request for consultations represents the first step in instituting a WTO dispute settlement case with the United States — the assigning of an official dispute settlement case number (DS365) — thus setting in motion the explicit rules and timetables of the WTO dispute settlement process.⁶ A 60-day consultation period ended without a mutual agreement between Brazil and the United States. As a result, Brazil may now request the establishment of a WTO panel to rule on its complaint. Flavio Marega, head of the Brazilian Foreign Ministry's dispute division, said that Brazil has not yet decided whether it would ask the WTO to establish a dispute settlement panel to review the new charges against U.S. farm programs being raised by Brazil.⁷

The context for Brazil's new challenge of U.S. farm programs is significant. First, the new challenge builds on panel rulings from Brazil's successful case (DS267) against certain aspects of the U.S. cotton program. Previous findings in the case, although not part of the final recommendations, appear to have set legal precedent and could facilitate

³ Request for Consultations by Brazil, "United States — Domestic Support and Export Credit Guarantees for Agricultural Products," WT/DS365/1, July 17, 2007.

⁴ For more information, see CRS Report RS22187, *Canada's WTO Case Against U.S. Aggregate Measure of Support: A Brief Overview*, and CRS Report RL33853, *Canada's WTO Case Against U.S. Aggregate Measure of Support*.

⁵ Official WTO documents are Canada, WT/DS365/2 (July 24, 2007); Guatemala, WT/DS365/3 (July 25, 2007); Costa Rica, WT/DS365/4 (July 26, 2007); the EC, WT/DS365/5 (July 27, 2007); Mexico, WT/DS365/6 (July 27, 2007); Australia, WT/DS365/7 (July 30, 2007); Argentina, WT/DS365/8 (July 31, 2007); Thailand, WT/DS365/9 (July 31, 2007); India, WT/DS365/10 (July 31, 2007); and Nicaragua, WT/DS365/11 (Aug. 1, 2007).

⁶ For more information, see CRS Report RS20088, *Dispute Settlement in the World Trade Organization: An Overview*, by Jeanne Grimmett.

⁷ "Brazil Unsatisfied After Subsidy Talks With U.S.," Associated Press, August 22, 2007.

Brazil's new claims. Second, the Doha Round of WTO trade negotiations continues to make very little apparent progress after having resumed in September 2007, possibly providing further incentive to seek legal recourse under WTO's dispute settlement process rather than via negotiation.⁸ Third, the U.S. Congress is presently revisiting omnibus farm legislation (which expires this year). Brazil has a general interest in influencing the 2007 U.S. farm bill debate in favor of lower amber-box-type support. While the recently passed House version of new farm legislation (H.R. 2419) includes a provision that would bring the export credit program into compliance with WTO rules, it does not address Brazil's concerns of excessive U.S. AMS outlays. Fourth, on June 7, 2007, Canada requested the establishment of a WTO dispute settlement panel to consider similar charges against U.S. farm programs (WTO case DS357). Brazil initially joined the case as an "interested third party"; however, Brazil has since chosen to pursue its own separate but similar case. News sources speculate that Brazil has done this in order to have a "greater voice" in the WTO dispute settlement process.⁹ Furthermore, Brazil's case appears to be wider-ranging and more involved in terms of the type and number of support programs cited as being in violation of WTO rules.

Brazil's Charges Against U.S. Farm Programs

In its official request for consultations, Brazil raised two charges against U.S. farm programs. (These are the same two charges that Canada raises in its WTO case DS357 against U.S. farm programs.) Each of these is discussed below.

First Allegation: U.S. Total Domestic Support Exceeds Its WTO Limit.

In accordance with WTO commitments, all WTO members have agreed to submit annual notifications of their farm program outlays to the WTO, and these outlays are subject to specific limits. The total spending limit for U.S. non-exempt AMS programs (i.e., programs that are trade- and market-distorting) was \$19.9 billion in 1999 and \$19.1 billion in all subsequent years.¹⁰ To date, the United States has notified details of its farm program outlays through 2001.¹¹ According to U.S. notification data, U.S. domestic support outlays have remained well within U.S. WTO spending commitments through 2001. However, Brazil argues that several U.S. program payments were either omitted from the notification data, or incorrectly notified either as green box or as non-product-specific AMS (where they would more easily qualify for exclusion from amber box limits under the non-product-specific *de minimis* exemption).

U.S. government farm support payments that Brazil alleges have been incorrectly notified as green-box type programs and thus excluded from the U.S. AMS limit include:

⁸ Doha Round talks were indefinitely suspended on July 24, 2007, but have since restarted. For more information, see CRS Report RL33144, *WTO Doha Round: The Agricultural Negotiations*, by Charles Hanrahan and Randy Schnepf.

⁹ "Brazil Changes Course by Filing Separate Case Rather than Joining Canada," Jim Wiesemeyer, AgWeb.com, July 12, 2007.

¹⁰ For more information on Uruguay Round commitments, see CRS Report RL32916, *Agriculture in the WTO: Policy Commitments Made Under the Agreement on Agriculture*.

¹¹ In comparison, the European Union and Brazil both have notified data of their farm support outlays through the 2003/04 marketing year, while Japan has notified through FY2004.

- Production Flexibility Contract (PFC) and Direct Payment (DP) programs whose payments were notified as green box under “decoupled income” payments;
- Non-insured Crop Disaster Assistance program (NAP) payments, Crop Disaster assistance, Emergency Feed, Livestock Indemnity, and Tree Assistance programs that were notified as green box under “payments for relief from natural disasters;” and
- crop market loss assistance payments that Brazil alleges were incorrectly notified as non-product-specific AMS, and would be more correctly notified as product-specific AMS outlays.

In addition, Brazil argues that the as-yet-to-be-notified Counter-Cyclical Program (CCP) payments, established under the 2002 farm act, should similarly be counted against the U.S. AMS spending limit of \$19.1 billion. In contrast, the United States, as part of its Doha policy reform proposal, recommends that CCP payments be eligible for the blue box, where they would be subject to a different limit than the AMS.¹²

Unlike Canada’s case, Brazil also argues that several additional U.S. farm support programs were simply not notified (i.e., they were omitted from inclusion in the U.S. AMS total). These include:

- federal farm loan programs, both direct and guaranteed loans;
- programs exempting on-farm use of gasoline and diesel fuel from payment of various excise and sales taxes;
- programs exempting U.S. farmers from taxes based on overall farm income — e.g., deductions from taxable income from farming; farm marketing and purchasing cooperatives; and export transactions of agricultural commodities; and
- subsidies related to the operation and maintenance of irrigation works by the U.S. Department of the Interior.

News reports suggest that Brazil also is considering the inclusion of ethanol production subsidies that indirectly increase corn demand and production.¹³

Brazil claims that, when all of the disputed payments and other subsidies are included in the aggregate measure of support (AMS), the United States exceeded its total spending limits in six of the seven years during the 1999-2005 period: 1999, 2000, 2001, 2002, 2004, and 2005. This claim hinges largely on a previous ruling from the U.S.-Brazil cotton case (DS267) in which the panel found that U.S. payments made under the Production Flexibility Contract (PFC) and Direct Payment (DP) programs did not qualify for the WTO’s green box category of domestic spending because of their prohibition on

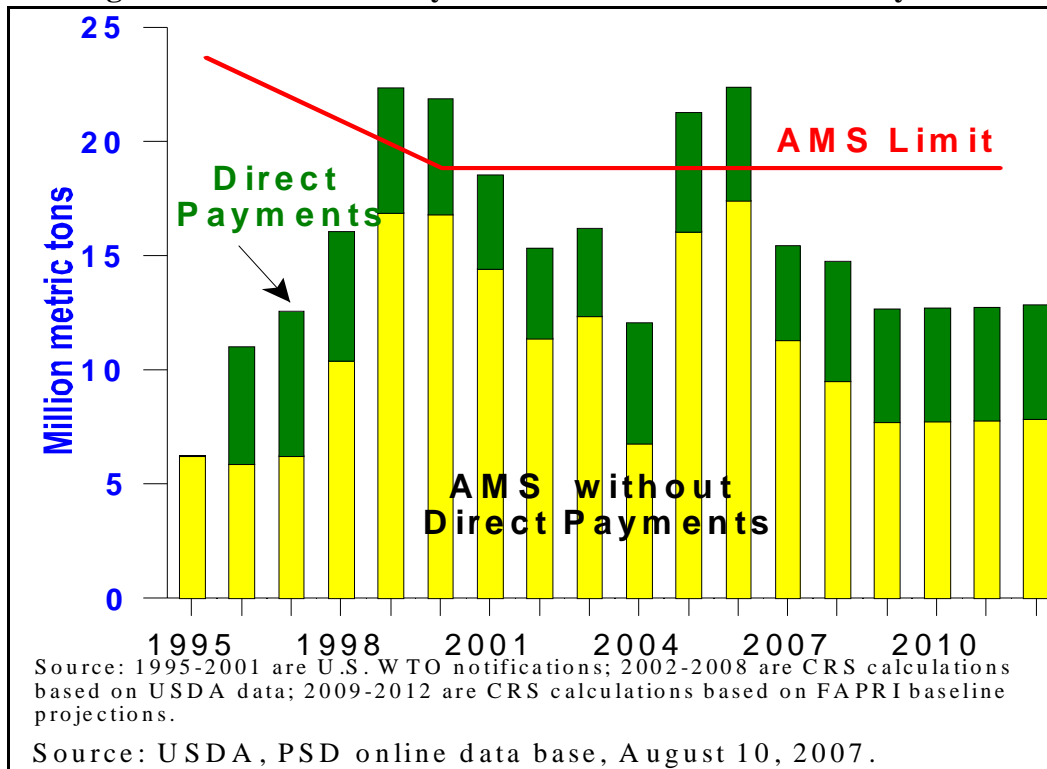
¹² Blue box payments are defined as “production-limiting” types of payments. For more information see CRS Report RL33144, *WTO Doha Round: The Agricultural Negotiations*, by Charles Hanrahan and Randy Schnepf.

¹³ “Brazil Wants Probe of U.S. Farm Aid,” by Bradley Klapper, *Washington Post*, Sept. 12, 2007.

planting fruits, vegetables, and wild rice on covered program acreage.¹⁴ However, the panel did not make the extension that PFC and DP payments should therefore be counted as amber box programs and be subject to the AMS spending limit, but instead was mute on this point. In its WTO notifications, the United States has notified its PFC payments as fully decoupled and green box compliant.¹⁵ This is an important distinction because the green box is not subject to any limit.

Brazil argues that, because of the previous ruling that PFC and DP payments do not conform with WTO green-box rules, they should be included with U.S. amber box payments. CRS estimates using USDA data suggest that the inclusion of the PFC and DP payments would put U.S. spending in violation in four of the past eight years indicated (**Figure 1**).¹⁶ If the additional subsidies are included, the number of violations could be larger; however, Brazil has not yet provided the specific details on its year-by-year determinations so direct comparisons are not possible.

Figure 1. U.S. AMS Outlays — With and Without Direct Payments



¹⁴ For more information on these restrictions see USDA, Farm Service Agency, Fact Sheet, *Direct and Counter-Cyclical Payment Program Wild Rice, Fruit, and Vegetable Provisions*, February 2003, at [<http://www.fsa.usda.gov/pas/publications/facts/html/fav03.htm>].

¹⁵ Decoupled means it has no influence on producer's decision-making process; green box compliant means it adheres to the terms and conditions of Annex 2 of the Agreement on Agriculture.

¹⁶ These are rough estimates that ignore the timing of payments. USDA's FSA reports outlay data on a fiscal-year basis, while WTO AMS calculations are generally on a marketing-year basis.

Second Allegation: U.S. Export Credit Guarantees Act as Illegal Export Subsidies. Brazil argues that the U.S. export credit guarantee program operates as a WTO-illegal export subsidy. In the U.S.-Brazil cotton case, a WTO panel found that U.S. export credit guarantees effectively function as export subsidies because the financial benefits returned by these programs failed to cover their long-run operating costs.¹⁷ Furthermore, the panel found that this applies not just to cotton, but to all commodities that benefit from U.S. commodity support programs and receive export credit guarantees. As a result, export credit guarantees for any recipient commodity are subject to previously scheduled WTO spending limits.

Potential Implications and Role of Congress

Many market analysts and the news media suggest that the two recent cases brought by Brazil and Canada are harbingers of future challenges to U.S. commodity programs. If either country were to successfully pursue its case, it could affect most U.S. program commodities, since the charges against the U.S. export credit guarantee program and AMS limit extend to all major program crops. Should any eventual changes in U.S. farm policy be needed to comply with a WTO ruling, Congress likely would be called upon to address this issue (including adjustment, if not full removal, of the planting restriction on base acres receiving direct payments).

Congress is presently revisiting omnibus farm legislation (which expires this year) and could potentially address some of the issues raised by Brazil's WTO challenge. For example, the House-passed version of new farm legislation (H.R. 2419) includes a provision that would bring the export credit program into compliance with WTO rules, but does not address the planting restriction on program base acres. The Senate Agriculture Committee has yet to mark up farm legislation, thus leaving open the possibility that some type of additional reform could be included concerning the base-acre planting restrictions linked to direct payments.

Given the importance of agricultural trade in the U.S. agricultural economy, Congress will likely be monitoring developments in the WTO AMS dispute. The House and Senate Agriculture Committees regularly hold hearings on agricultural trade negotiations. If the ongoing Doha Round of WTO trade negotiations were to successfully conclude with a text for further multilateral trade reform, it is likely that the 110th Congress would hold hearings and consult with the Administration concerning the possible renewal of fast-track, or Trade Promotion Authority (TPA), legislation, which expired on July 1, 2007.¹⁸ Such hearings and consultations would be a major vehicle for Members to express their views on the U.S.-Brazil AMS trade dispute, on the negotiating issues that it raises, and on the potential implications for U.S. farm policy.

¹⁷ For more detail, see CRS Report RL32571, *Background on the U.S.-Brazil WTO Cotton Subsidy Dispute*, by Randy Schnepf.

¹⁸ For more information, see CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J. F. Hornbeck and William H. Cooper.