

## **O IMPACTO DO CASO DS 267/45 DO ALGODÃO NO ÓRGÃO DE SOLUÇÃO DE CONTROVÉRSIAS DA OMC E A IMPORTÂNCIA DA PLANTAÇÃO DE ALGODÃO NO MUNDO**

## **THE IMPORTANCE OF COTTON CROP IN THE WORLD AND THE IMPACT OF THE UPLAND CASE DS 267/45 AT WTO DISPUTE SETTLEMENT BODY**

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### **Resumo**

O algodão é uma das principais commodities internacionais, desempenhando um papel fundamental na economia de muitos países, principalmente para aqueles menos desenvolvidos, mas até mesmo os países desenvolvidos mantêm certas regiões onde essa safra é tão importante quanto para os mais pobres, como o Delta do rio Mississippi nos Estados Unidos da América, cuja economia local depende fortemente das plantações de algodão. A pesquisa procura analisar o caso do algodão de terras altas (DS267 / 45) apresentado perante o órgão de resolução de controvérsias da Organização Mundial do Comércio, relativo à Lei de Subsídios dos Estados Unidos da América (Farm Bill of 2002). Inicialmente, a pesquisa se concentra no papel do algodão na economia dos EUA, suas áreas de produção e os aspectos sociais envolvidos, tentando vislumbrar algumas das razões que levaram este país a defender fortemente o financiamento do setor. Em segundo lugar, a pesquisa avalia a importância do algodão em vários países, reconstruindo historicamente essa cultura, além de procurar compreender a importância atual do algodão para a sustentabilidade econômica e social de países como a África Ocidental, a Índia e especialmente o Brasil. O texto analisa também a relação entre uma cultura de algodão e o trabalho escravo, assim como a violência e as condições de trabalho precário associadas a afro-americanos. Todas as pesquisas serão desenvolvidas sob as teorias que estudam o comércio do multilateralismo na arena internacional.

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**Palavras-chave:** Direito do Comércio Internacional. OMC. Algodão..

### **Abstract**

Cotton is one of the major international commodities, playing a fundamental role for many countries, mainly for the less developed countries, and even developed countries maintain certain regions where this crop is just as important as it is for the poorer ones, such as the Mississippi Delta in the United States of America, whose local economy depends strongly on cotton plantations. The research seeks to analyze the case of the upland cotton (DS267/45) presented before the Dispute Settlement Body of the World Trade Organization, related to the United States of America subsidies Act (the Farm Bill of 2002). Initially the research focuses on the role of cotton in the US economy, its production areas and the social aspects involved, trying to glimpse at some of the reasons that led this country to strongly defend the financing of the sector. Secondly, the research evaluates the importance of cotton to several countries, rebuilding historically this culture, besides seeking to understand the current importance of cotton for economic and social sustainability of countries like West Africa, India, and especially, Brazil. The text also analyzes the relationship between a cotton culture and slave labor, as well as the violence and precarious working conditions associated with African Americans. All research will be developed under the theories that study the multilateralism trade in the international arena.

**Key-words:** International Trade Law. WTO. Cotton.

## **1. INTRODUCTION**

The recent bilateral agreement signed between United States and Brazil putting an end in the case of cotton subsidies before the DSB, known as the Cotton Upland case, brought to us a debate that goes beyond the technical matters related to the application of the WTO rules.

A lot was asked about the reasons why this matter has been delayed so long to a minimum satisfaction of it. In this sense, this article is a result of a research which has been designed from a methodological bias that seeks the historical reconstruction of the cotton production focus on the global economy explanations for the resistance of the United States in maintaining agricultural production so strongly protected under subsidies.

Therefore this approach went beyond the parties involved in the trade dispute, trying thus to reconstruct the path, or the footprints that led to an international trade as aggressive when it comes to the actors, without, however, is, apparently, but only apparently the case of strategic sectors for certain economies. Moreover, cotton is a product that is now facing competition with technology that produces yarns, fabrics and other derivatives from synthetic products of high quality. And when it comes to technology think in research. And research leads to education. And education leads to development. Thus, contradictory and incongruous the relentless US resistance in maintaining the secular cotton subsidies, whether as a developed country and strongly committed to education and research, especially in the private sector, remain with an agriculture that brings burnouts economic, social, political, high costs of production, not only because of mechanization, but mainly the need to combat the numerous storms which this culture has faced throughout its existence.

The needed approach inside a historical analysis of the very formation of the United States of America, led the research for the African continent and the Asian continent.

Finally, the article was divided into nearly two parts: first the historic study second the technical matters presented the case DS 267, this last one more pragmatic and descriptive, but without abandoning the analysis that is dispersed throughout the text.

## **2. PRODUCTION OF COTTON IN THE WORLD - ITS MAIN CENTERS - AN HISTORICAL VIEW**

### **2.1. History of cotton in the United States of America**

Cotton is a product that has always played a key role in basically all the world's economies since the old Europe, through Africa and arriving in the US nation-state consolidation. Regarding the cotton-United States relationship Brown explains:

Cotton played and still plays a strong role in the rural economy of the Mississippi Delta, and the crop that defined the economic and political profile of the southern United States. According to Brown, cotton has always been associated with the south wealth, "white gold", but

also the tragic moments of American history as the period of slavery and the need for this labor-work in the fields, which in addition to be enormous expansion also came up product tropical characteristics. Given this situation, cotton has become a key element in the war that nearly brought the country to the separation, the recession War (BROWN, 2011).

No less important was the cotton for the world economy in the twentieth century. Still taking focus on the United States in this century we are talking about the already mentioned region which became known as the Cotton Belt, delimiting the north american states federation. Therefore, the cotton crop is a real institution to the United States. So important that all communities involved in its production do various events around it, as exemplified by Brown:

The cotton crop in the United States is therefore a culture associated with the south of this country and slave economy. Some authors are deeply critical of this culture, saying it was alienating and perverse, that does not add knowledge and lives of the necessary government assistance for their survival, since it is a tropical vocation product and, consequently, difficult to grow in a region hardened and / or subtropical climate.

As for the slave question, violence and poor working conditions associated with the african-Americans led to artistic production in various areas, denouncing racism and discrimination, and cotton production. Noteworthy, just out of curiosity the music of George Gershwin, *Porgy and Bess*, where he describes the "ease of living" when the cotton is "high" in summer time (summer), it is a dramatic chronicle.

Another important point of the cotton crop in the United States is its relationship with Mexico. Being from Southern culture, the meeting with the borders of Mexico became inevitable, seeking the hand labor immigration to work mainly in the fields of Texas as a temporary job, shifting from state to state according to the harvest time. This relationship with the Latino immigrant was also marked by a high degree of discrimination and pain, leading also to a culture of complaints, including through art.

After the heyday of cotton production in the United States, an era of decadence hit the region leading to a mass of producers to obsolescence. In addition, the development in communication and transportation has broken the isolation of the region, bringing out the precariousness of the productive sector of the South American cotton. The crash of the New York Stock Exchange also brought the plight of poor whites southeast, the "Okies", which left the region and moved to California. It is at this point that begins t the United States government assistance through heavy subsidies seeking to keep this economic sector alive. This United States

policy for the cotton began to be regulated by the NCC (National Cotton Council) in 1938 in order to demystify the idea that the cotton crop would be associated with poverty. It also created many funds in order to recover the Mississippi Delta economy. After the 2nd World War, there was a change of the Southern cotton producer profile that had to rely on government help and constant new elements, more progressive, they have been introduced in this agriculture.

During the period 1945-1970, US production rose by a strong process of mechanization, and it migrated to the edge of the Pacific in California. In some new areas of production, including cotton was responsible for its population development. New type of cotton was planted, “Acala” and new foreign workers were introduced in this agriculture to harvest, came now from Asia and India. In the western portion of the cotton production we used the PIMA, known as extra-long staple (ELS) which produced a premium fiber used in the finest cotton derivatives. This ELS has to be imported from Egypt and other Arab countries to the United States reduced the price of premium cotton, undermining the competitiveness of the Egyptian and Arab cotton.

Other crises presented to the US cotton production, among them worth mentioning the problem of pest insects that attacked the production of cotton grown on the border with Mexico - the boll weevil. This insect ate the cotton follicles and could only be combated with a highly toxic pesticide - DDT (dichlorodiphenyltrichloroethane). Thus, to meet the region created a fund to combat insect and this brought new sources of funding for agriculture cotton.

Other forms of pests appeared and renewed fighting with pesticides occurred until the BT Cotton appeared (genetically modified cotton that produces a pesticide and prevents insect attack), created by Monsanto in 1996. This cotton has the gene of a bacillus called *Bacillus thuringiensis* (BT) and this scientific innovation has enabled an improvement in the fight against pests’ constant production. However, because it is a genetically modified, this product is facing now some ethical issues related to the human health and have become the focus of debate around this new species, no longer exclusively on the American scene, but also in the international arena, especially in other countries cotton producers that exports to the United States, such as India. All this will affect the US policy of cotton production, whose main component is the repeated aid through grants.

## 2.2. The issue of subsidies on US cotton production scenario

The Great Depression brought a very big loss for the producers of cotton in the United States. At that time one of the ways to help the industry was the creation of temporary assistance in 1933, but ended up perpetuating until the last Farm Bill 2007. Brown explains that the purpose of that federal aid was simple: "better enable producers to survive the economic pressures in agriculture and keep the land. In fact, notes Brown, under the same pretext to keep the beloved farm family in the field, other farm subsidy programs migrated to other crops such as wheat, corn, sugar and rice. These programs therefore guaranteed a minimum price and competitiveness of US agricultural products. And as for cotton subsidies remained since then, causing distortions in international trade. Highlights Brown that in 1947 a member of the House of Representatives from Minnesota said something that shows very well the importance of agricultural subsidies for American culture *"I have always considered the farmers of this country as the backbone of American democracy."* And the author reinforces it quoting Aristotle: *"the best material for democracy is an agricultural population; there is no difficulty in forming a democracy in which the mass of the population lives from agriculture or care for livestock . "* (BROWN, 2011, kindle version).

Grants were made to guarantee farmers a minimum price based on parity, a confusing term on a balance between the prices of agriculture and industry. When payments parities began in 1934, the "policy makers" identified the period 1910-1914 as the period in which the relationship was like. Since the agricultural prices had kept pace with non-agricultural prices after the First World War, support payments based on parity represented an attempt to find the balance. However, Brown asks what comes to parity, considering such a difficult concept to be established? Brown quoting Paarlberg defined it analyzing the crop of wheat when occurred a quantity of wheat needed to buy overalls for the period 1910-1914 and that it is happening today, with the same amount of wheat would buy the same quantity of overalls. However in the opinion of Brown, that was impossible, despite the concept of parity remains valid and incorporated in agricultural federal programs until their withdrawal in the farm bill of 1970 because it was the parity that kept agricultural prices in the open market always below other foreign producers; the subsidy justified by parity brought balance.

However, even before the other exporters and foreign producers of cotton to bother with subsidies, these have caused internal problems because cotton growers now produce much less, so as not to generate investments in machinery and they could continue to survive costs of such government aid. Losses for general agriculture in the United States was great because other crops did not produce enough revenue to offset the loss of cotton lace. In addition, other complaints occurred in the same direction, i.e., complaints about the reduction of heavily subsidized agricultural production. After all, the grant was designed to be a supplemental income when the price of cotton was below par and the end has led to a distortion, because the producers, instead of keeping the same production standard, began to produce less, failing to make the crop year. Therefore, despite government programs intend to remove excess supply and provide subsidies as compensation for the loss of cultivated area, advances in technology, the use of irrigation, and efficiency in the mechanized large-scale cultivation, led to earnings per area cultivated.

The internal opposition in the United States subsidies became very strong. However it managed to resist until, in 1970, the US Congress limited the payments and set a maximum of \$ 55,000 dollars in all fields covered by the program. The amount of payment received by each farmer would depend on his plantation history by acreage. In 1973 Congress passed the Agriculture and Consumer Act, a law that became known as the Farm Bill. She went through periodic revisions according to changes in the world market, climate change, pest damage, accumulation of surpluses or rise and fall of foreign competition. The new measure introduced the use of "target prices" (price target) and "deficiency payments" (payments deficiency) to restore payments to support prices. The "target price" entered production costs and allowed the producer to earn a reasonable return on their investment. In fact, according to Brown, the new methodology reintroduced idea of parity.

The fact is that the rules for agricultural subsidies in the United States, became a kind of crutch for the various producers of various products, but a rejection and great opposition began to want to end these subsidies internally, especially in relation to cotton, whose benefits for industry maintenance had become doubtful. It seemed to be a commercial protectionism without justification, and harm the US image in relation to its trading partners, who have to judge the cotton subsidies as indifference as to the welfare of other cotton producing countries in its immense most least developed countries or developing countries.

With the advent of the discussions in Cancun, in 2003, the WTO, this issue was the focus of debate, beyond the claims that the US cotton prices were artificially high due to the subsidies, and that ended up encouraging manufacturing synthetic fibers. Finally, the conclusion to be reached is that subsidies remained so only to protect small producers in the southern United States cotton, where mechanization has not reached good production levels.

Even within the United States new opposition to the cotton subsidies appear the environmentalists who have criticized the water that was subsidized for the plantation of the product (also subsidized), to the detriment of the water that was provided in urban areas at higher prices.

On the other hand, proponents of the cotton subsidy claimed that the production of this product positively impacted the US economy, and before then so great conflict was created in 2002, The Farm Security and Rural Investment Act in order to develop studies on agricultural subsidies and the impacts of payment limitations.

Moreover, the changings in the perspective of the rural man that left these areas to urban ones meant that young people went to cities and leave their parents. However, in reality, it seems that the maintenance of agricultural subsidies, especially cotton, it is a necessity to keep alive the sector, otherwise the costs to end it would be higher because of its size ("too big to fail").

### **2.3. Cotton production in the world**

It is also relevant to understand the importance of cotton in other parts of the world. In the central-western portion of Africa cotton is one of the main products of many countries' economy. It was introduced in the late nineteenth century and early twentieth century, mainly through the German colonization in Africa, more specifically in Benin, Burkina Faso, Mali and Chad They built their economies, mainly agrarian, through the production of cotton.

In fact, the cotton crop in this part of Africa was the result of a *"personal investment of 3 American brothers who left the United States to introduce this culture in the region colonized by the Germans."* as explains Beckert (2005).

Cotton therefore was part of the European colonial case in Africa to supply Europe, but also the context of products traded during the era of the Atlantic's hegemony of trade.

Even in the history of cotton in Africa, botanical literature is that raised some hypothesis on this agriculture and point to the eighteenth century. So how Kriger said, *"the antiquity of*



*cotton cultivation and textile production in West Africa would not be apparent for some traveling through a current situation, as long as varieties of cotton plants in the New World are now so ubiquitous."* (2005, p.87)

Africa, therefore, in this case, already cultivated a considerable cotton variety in periods prior to the colonial era. However, Kriger explained that although botanists point to the existence of cotton in Africa, cotton types suitable for agricultural production have acquired this condition through its domestication in other parts of the world as the species *G. arboreum herbaceum* and *G* that were domesticated in Arabia / Balochistan (region today which is between Iran and Pakistan). Moreover, according to Kriger, botanists of the eighteenth century suggested that the domestication of more recent species were probably found in Gujarat and Sind in northwestern India and Pakistan.

In recent scientific reviews about the origins of domesticated cotton, findings point to even older ages, something around 3000 BC. In addition, archaeologists found the first cotton fiber in the Nubia region (now southeastern Egypt along the Nile river). Finally, some other scholars point out the cotton presence in Africa as a result of the trade that happened with India via the Red River and the Nile River.

It is true, however, that the new era of African cotton happened with the trade in the Atlantic in the period between 1350 and 1800, when European traders began to explore the Guinea Coast and sought the places where cotton was produced, used and were available to the purchase. A Venetian merchant, known as Luigi Cadamosto, on his travels in 1455 and 1456, observed a clear differentiation of the cotton market, which was sold in different ways: raw fiber, spun yarns by hand, and also woven by hand. He also noted a hierarchy in the clothing of the people living near the Senegal River:

(...) ordinary people wore goatskins as members of the elite wore cotton clothing. Cotton was grown locally, and was woven into narrow strips which would then be sewn into clothing and baggy trousers parts. In the Gambia River, Cadamosto was especially impressed by the amount of cotton that was grown and processed there, and he described the local tissues as well made cotton textiles. They were also white and smooth, or striped patterns with red and blue wires. (KRIGER, COLLEEN, 2005)

Pacheco Pereira, a portuguese military, on his travels, stopped in the West Africa, around 1490, said that people from the region of Rio Grande ("Big River") and Sierra Leone were

wearing cotton clothes, and unbleached cotton was being grown and exported from the Cape Verde (“Green Cape”) islands. He also described a shopping center and further down the coast of the Forcados River, near the Kingdom of Benin. Slaves and cotton clothing could be purchased there as well as animal skins, palm oil and color shells unusual.

In the European seventeenth century the cotton clothes from Benin were classified according to their widths, and the tissues three widths served as an accounting term - dreibants - used by the Dutch to calculate their purchases.

The tissue came from inside the country (hinterlands) to the ports of Arbo and Lagos in the eighteenth century where they were stacked and classified for picking ready to be sold on the Gold Coast, estuary of Gabon, Angola, São Tomé Island and farther yet to the West Indies and Brazil.

Other regions of Africa also traded cotton textiles and its derivatives as Allada (Benin City), the Kingdom of Oyo Yoruba (Nigeria), along the Ivory Coast and Costa Malagheta. The fact is that cotton, its variations and its derivatives, has become an important commodity to England, Holland, Portugal, France and Euro-African merchants throughout the eighteenth century. However, an English researcher, Marion Johnson, quoted by Kriger (2005), speculated that perhaps all these cotton fabrics manufactured in and commercialized in West Africa were not produced there, as this was an area that did not have an industrial production. She argues that some of these products were from India, largely imported from there by Senegambia, another major producing area of textiles. Moreover, cotton most appreciated by Europeans was that from India and therefore looked very much like that produced in the Guinea Coast, where ended up mixing and complementing African local production.

The further development of cotton production in India occurred in the English colonial time. But what is known is that the Asia and Middle East region, as already mentioned, are traditionally recognized as producers of cotton and its derivatives. Some authors even say that it was in this region, long before its introduction in Africa, that appeared the first cotton fibers, dividing this historical heritage with Egypt and Iran. According Santharam and Sundaram (1997), speculation about the earliest use of cotton fibers in the Indian subcontinent lies on the discovery of cotton materials in excavations at Mohenjodaro in the Indus Valley made during the 1920s (Gulati and Turner, 1929). Archaeological evidence has shown that cotton samples recovered from Mohenjodaro they have been made around 3000 BC. In these excavations, well-preserved tissues of cotton were discovered silver vessels. The tissue fragment was carefully examined in

technological Cotton Research Laboratory (Cotton Technological Research Laboratory) in Bombay (now Central Institute for Research on Cotton Technology - Central Institute for Research on Cotton Technology in Mumbai).

Mann, in 1860, published an article, which was part of a set of other studies on the origins of cotton, which makes an attempt at historical determination:

The origin or the extent of the beginning of the export trade of export of India and later China, very little is known. We have reasons to believe that five centuries before our era, cotton was exported from India; in the reign of Amasis the years 529-525 BC, cotton was known in Egypt, where there is no proof, then some grew. Herodotus, writing 445 BC, talking about the customs of Indi says, (lib. Iii, 100 cap.) *"Wild trees support fleeces for its fruit exceeding the sheep in the beauty and excellence, and the native dress of their cloths made wool."* India's production seems to have reached Persia, where, according to Strabo (lib. Xv), who died in Susiana, a province of Persia, the head of the Persian Gulf, grew and was manufactured in fabric. In the Christian era the growth and production were carried out in Egypt, and Pliny (Hist. Nat. Lib. Xix, c. 1) mentions in 70 BC, the cotton plant was grown in Upper Egypt to Saudi. Arrian, who wrote in the second century (Arrian Indi, c. 10, p. 582), said cotton cloths were among the items received from India by the Romans of their thymus, although this date imports must have been discontinuous character as no mention is made of any kind, by any of the writers of the period, or the Roman Law Publicanis et vectigalibus, detailing all the different types of imported goods; in fact, until Justinian .The Digest of Laws, in which, in a list of imported goods, is enumerated (529 BC) Indian cotton products, we found notes taken of them by any writer, while other goods are repeatedly mentioned. The of the Seas Navigation Law written in the second century, cotton fabrics are the first clearly mentioned as article of commerce, and particularly made mention of the import and export of various Indian cities, and its trade with the Arab-Greek. Arab traders brought Indian cottons to Aduli, a port on the Red Sea. The ports set apart from the Red Sea with a trade Patali (in Indies) and Arinka Barygaza (Barochon modern Nerbudda) and receiving them, among other things, cotton products. Barochon, say, exported in large quantities, cheetahs, muslins and other goods, both smooth or designed with flowers, made in the provinces where they were the port and inside the remote provinces of India. Masalia, (modern Masulipatam), was then, as it always has been since, famous for the manufacture of cotton goods parts. The Bengali Muslims were then, as today, more than all others, and received

the Greek tho Gangitiki name, to be done at the borders of the Ganges. Surat was famous for its "cheetahs" colorful and pieces of things, but the muslins of Barocho Avero lower desdes of Bengal and Madras, as were the "Cheetahs" stampings Guzorat over those of Costa Coromandel.

Currently, according to research conducted by Embrapa (Brazilian Agency for the development of agriculture), India is the world's largest cotton producer in acreage, but the harvest per hectare is low due to various adverse factors affecting production.

India is the country that has the largest area planted with world cotton, with an average of over 7.5 million hectares per year, with millions of small farmers in the area, mostly less than 5,0ha. Another uniqueness of Indian cotton is that almost half of the area and planted with hybrids pollinated by hand, average of 60 people / day / ha, which represents the largest component of the cost of production. Productivity is low, averaging 286kg fiber / ha due to a number of factors, especially the weather, with frequent droughts and more than 70% of the area and without irrigation, and the strong presence of insect-pests, which reduce by 35% the productivity of crops, especially apples caterpillar.

Similarly, the National Society of Agriculture, published in electronic newsletter of August 25, 2014, an article that compares the cotton production in India and China which concluded that:

India may topple China as the world's largest producer of cotton next year. Farmers will plant the largest area of history, which will increase production to near record levels, according to the Cotton Association of India. A crop is estimated at 39.63 million bales of 170 kg each, or 6.74 million tons in the season starting 01 October, the association said in its first forecast for 2014-2015. That's more than the 6.04 million tonnes estimated for India by the ICAC and 6.22 million tons of Chinese production, said Dhiren Sheth, president of the Association, based in Mumbai. The cotton futures have fallen 24% this year, the United States expanded its production and Chinese reserves rose to a record. With rising supplies from India, prices may still suffer more pressure. The culture in India can also overcome the initial estimates after a revival in monsoon rains improved conditions during harvest, Sheth said. Chinese production could fall 24% in 2015, while the government ends direct purchases from farmers, Cncotton.com agreement. "The Chinese production is less view, since they are prioritizing food crops," Sheth said by telephone, from Mumbai. The Indian crop will be 'substantially higher' than estimates if the weather remains favorable, he said, referring to the estimate of 39.63 million bales. The area will rise to a record, Sheth said. Cotton planting was delayed to June by a 43% shortfall in

monsoon rains, which account for over 70% of annual precipitation. The lack decreased to 18% yesterday, accelerating planting, according to the Meteorological Office India.

One can see that the cotton trade and its derivatives is an issue that goes far beyond the United States and its historical formation. Cotton became the base product of virtually every continent economy, but more attention deserves its importance for survival of countries that started this culture traditionally established by its geographic profiles. Thus, the case of cotton in the WTO, is a case which must be interpreted and studied in the light of this vision to not allow certain regions remain subdued because of certain unfair trade practices. And the systemic effects produced by DS 267/45 is inevitable, as well as compliance with the ruling by the WTO is of paramount importance for international trade cotton as eliminate some of the distortions that US subsidy produces in international trade cotton.

### **3. THE CASE DS267 / 45 UNITED STATES - SUBSIDIES ON COTTON HERBÁCIO (UPLAND COTTON)**

#### **3.1. Case Description**

The case of cotton was a dispute initiated by Brazil before the Dispute Settlement Body of the WTO in 2002, when they were requested consultations about the more than \$ 4 billion aid only in 2001 in subsidies in various formats for the production of upland cotton for domestic use and for export and US \$ 12.9 billion in August / 1999 to July / 2003. These subsidies have led to increased production of upland cotton which consequently led to distortions in world exports, as international cotton prices in the world remained well below their production costs during the period 1999 to 2002. The US Farm Act 2002 known as the Farm Bill of 2002 created a continuing threat of suppression and depression of prices, favoring exports of US cotton. Cotton subsidies in the period under discussion were extraordinarily higher for cotton compared to other agricultural products, and the OECD conducted a survey which found an increase of 197% above the average from 1980 grants to 1998. The fact is that, as already pointed out, the cotton production in the United States was becoming increasingly expensive and dependent on subsidies for survival of the Mississippi Delta, cotton southern United States and therefore the Farm Act of

2002 produced serious damage to the international market. The suppression of prices generated and even depression of prices in the future, caused a considerable increase in profits for the US cotton producer. In this case, following the rules of the DSU (Dispute Settlement Understanding - Dispute Settlement Understanding) several other countries participated in the process, only on condition of third parties not to lose their future rights to discuss the same issue as an effective part. Thus, the third parties to the proceedings were Argentina, Canada, China, Chinese Taipei, the European Communities, India, Pakistan and Venezuela. Not observed the participation of West African countries, Benin, Burkina Faso, Chadi, Mali (so-called Cotton Four) and Senegal, because these have entered into a separate agreement with the United States explains Ridley and Devadoss:

Alongside the Brazilian efforts, in 2005 the United States and the governments of Benin, Burkina Faso, Chadi, Mali and Senegal, established the Improvement Program of West African cotton to provide technical assistance and support for the West African producers. This agreement between the United States and the cotton producers in West Africa served partially to modify the claims of the respective African countries, and help to create a precedent for future interactions between the United States and Brazil. (RIDLEY, DEVADOSS, 2012)

The case was initiated at the WTO with an important preliminary discussion on the Agriculture Agreement. This agreement, when they negotiated in the Uruguay Round, predicted the temporary protection of subsidized agriculture in developed countries and therefore considering the date on which the case was brought to the Dispute Settlement Body, it was claimed by the United States that its Farm Bill 2002 would still be under the protection of the clause which became known as "Peace clause".

### *3.1.1. Peace clause of Article 13 of the Agriculture Agreement*

The "peace clause" presented in the Agriculture Agreement sets out, in brief summary, the WTO members cannot discuss issues that are supported by this article. Accordingly, in preliminary, the Panel asked the parties if the cotton subsidies defined by the 2002 Farm Bill would be protected by the "peace clause". This clause makes certain agricultural materials as not likely to be discussed under the Subsidies and Countervailing Measures Agreement. The proposal at the time of the Uruguay Round, was to keep certain limits as acceptable for agricultural subsidies in developed countries, but at the same time, establish elimination targets and reduction of these subsidies by the year 2003. However, because Brazil failed to demonstrate the case of

cotton became so outrageously high that pushed the boundaries of the peace clause and therefore the United States would not be supported by it to ensure the legality of massive subsidies to cotton programs. Therefore, these subsidies have become forbidden within the WTO, more precisely of the Subsidies and Countervailing Measures Agreement.

### **3.2. The decision of the Dispute Settlement Body**

Surpassed the discussion around the "peace clause", the panel was established, and September 8, 2004, the circulated panel report to all members of the WTO, with the following decision:

Credit guarantees for exports of agricultural products are subject to the regulation of export subsidy under the WTO and three of the US programs of this nature are within the prohibited subsidies, and not having the protection of the Peace Clause are in breach of these regulations. In addition, the United States also provides many other benefits prohibited cotton. Finally, he decided the panel that domestic support programs of the United States relating to cotton are not covered by the "peace clause", and some of these programs result in serious prejudice to the interests of Brazil in the form of price suppression in the international market.

Given this decision, the United States appealed to the Appellate Body on the grounds that the panel did not correctly apply the law and not interpreted the laws in force in the WTO treaties. The motivation of the US Appellate Body raised certain issues of law and in its final report, circulated on 3 March 2005, the following observations were made: 1) as the applicability of the "peace clause" in the dispute, understood the Board that there was nothing to modify the panel in this regard report, since the flexibility of contract production were related to the type of production established after the maintenance base period of this clause and just outside the green box (green box) of authorized subsidies, as the entire paragraph of content 6 (b) of Schedule 2 to the Agriculture Agreement and not the legal provision of the clause (Article 13 (a) (ii) of the actions under Article XVI of the GATT 1994 and the part III of the Subsidies and Countervailing measures Agreement. in connection with implementation of the peace clause understood OA that the financial support given to upland cotton in the period from 1999 to 2002, was excessive and beyond that on the establishment of the 1992 clause. Therefore, also out of the exceptional rule. As for the allegations of serious harm to the North American cotton industry, understand the OA that marketing loan programs program payments, user marketing (step 2) payments, market loss

assistance payments, and contain-cyclical payments are significantly suppression price within the meaning of Article 6.3 (c) of the Subsidies and Countervailing measures Agreement and this confirms the panel's understanding. In very brief summary, the Appellate Body's report confirmed virtually all the panel report of understanding and so determined that the United States withdraw these cotton support programs to understand them within the list of prohibited subsidies (red box) and not under the protection of the "peace clause" of the agriculture agreement. This is because it has been clearly shown that the numbers that motivated the creation of this clause have been considerably modified during the period claimed by Brazil, generating thus great damage to the export sector of Brazilian cotton.

### **3.3 Implementation and monitoring**

At the stage of implementation of modification measures and elimination of programs the United States failed to comply with them and therefore did not respond to the DSU calls for compliance, that is, not acquiescence by the United States to comply with what was established by the Dispute Settlement Body. This then led Brazil to request the panel to determine retaliate against the United States. This request was approved in 2009 by the authorization to apply cross-retaliation of 101 goods and services imported from the United States whose value would amount to something like \$ 830 million. This was not a good result for Brazil, because besides not mean a mechanism of "enforcement" strong enough for the withdrawal of the subsidy programs also desabasteceu the internal market of certain US products. Experienced cross-retaliation by the Ministry of Development, Industry and Trade, it was found that there was no point in keeping the retaliation that was unilaterally withdrawn by Brazil. There remained one last alternative of retaliation that would be intellectual property, a measure that was never used, but that he might turn out to be the most suitable alternative.

### **3.4. The newly signed agreement this October 2014 with the United States**

Salmonsén, analyzing the case of Brazil in the WTO against the new Farm Bill 2012 teaches that:

When faced with a negative determination of WTO dispute settlement, a country has some options: (1) eliminate the subsidy; (2) reduce the subsidy to eliminate its effects; (3) review



the program to reduce the effect; (4) pay, mutually acceptable, compensatory value counterbalancing the adverse effects of the subsidy; or (5) suffers trade retaliation.

And this is what the current agreement aims to eliminate. The United States from 2012 intended therefore suit, albeit at a less satisfactory levels, its law of cotton subsidies, so that the result of the DS 267 not provoke major negative consequences for foreign trade US cotton .

Brazil, in turn, to minimize the damage already suffered by the Brazilian cotton industry, chose to try an agreement that brought some effective compensation and the final result of arbitration that determined a monetary value in exchange for the retaliation of US \$ 830 million dollars, was bilaterally exchanged for the new agreement signed earlier this month of \$ 300 million to be paid to the Brazilian Cotton Institute (IBA). It should be stressed once again, despite being far below the value determined by the DSB, it is still very important for the WTO because retaliation is not the purpose of the dispute, but the agreement, the application of the rule as highlighted the current director general Roberto Azevedo in an interview with Valor Econômico: "retaliation has no winners." I dare say that the enforcement measures in the WTO dispute settlement system is the ultima ratio. From Brazil's point of view, if the agreement is not realizasse might have the country that embitter another case "of earned but not taken" as happened with Canada case - Small and medium-sized aircraft in which even the arbitrated payment was paid for this country.

In short, Valor Econômico said so:

The agreement, which set a single payment of \$ 300 million to Brazil, "theoretically puts an end to a dispute that had dragged on since 2002 in the WTO, when the Brazilian government challenged the American cotton subsidies. A first agreement, in 2009, determined that the United States pay \$ 830 million to the Brazilian Cotton Institute (IBA), established to manage the resources. Late last year, the payments that were monthly were delayed due to the adoption of the new Farm Bill by the US Congress.

On the other hand, he explained the Minister of Agriculture, Neri Geller, the agreement is to close the case and soon the Brazilian government may not trigger more OSC regarding cotton subsidies, but as for other crops but, if necessary, while the agreement is into force. "We'll be four years without questioning the US in cotton, but we can question other cultures."

According to the Financial Times the agreement puts an end to the dispute of cotton in the WTO DSB and brings hope for the least developed and developing countries that have their

economies based on agriculture and, until then, did not achieve any progress on the withdrawal of these subsidies because of the continuous failures of negotiations of the Doha Round, even if the agreement has occurred bilaterally.

The British newspaper also called the dispute "flagship" and cites the position of ABRAPA (Brazilian Association of Cotton Producers), "the memorandum signed between the two countries ensures the basic principles of competition in the international market."

## **FINAL CONSIDERATIONS**

Propose a scientific paper to study the case of cotton in the multilateral trading system presupposed analyze the context, not only economic and legal, that the trade issue is included. Presupposed check anyway because countries are struggling so much for this agriculture is high wear, already facing technological overcome before the emergence of new forms of production of fabrics such as synthetic fibers, but at the same time ensures the support of a multitude people in the world all indiscriminately. On the one hand it was possible to verify the insistence, I would say almost fierce, the United States to keep the cotton subsidies, the other was open issues involving countries whose economic potential is historically and geographically demonstrated for the production of this primary product It can still be grown cheaper and rudimentary forms.

The impact that was intended to check with this study is yet to appear. However, it is certain that bilateral final agreement provided a legal character of openness in agricultural discussions in the WTO, for breaks up with waiting for the approval of the multilateral agreement on agriculture and allows other such disputes will be discussed by the Dispute Settlement body.

Indeed, the US compliance acceptance in cotton breaks with the argument of the "peace clause", brings the application arguments Subsidies Agreement and Countervailing Measures (in effect) to the center of the debate and therefore allows that new disputes can happen until they reach the final breakdown of the use of prohibited subsidies. In turn, the bilateral agreement does not produce systemic effects for other cotton producing countries, but allows demand (perhaps mass?)

Before the United States to eliminate the Farm Bills and allow a better balance in international trade cotton.

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