

The (in)effectiveness of the decisions Of the world trade organization in the analysis of the negative impacts of the New economic policy for u.s. agriculture

La (in)eficacia de las decisiones De la organización mundial del comercio en el análisis de los impactos negativos de la Nueva política económica para la agricultura estadounidense

DOI: 10.46814/lajdv3n4-011

Recebimento dos originais: 01/05/2021

Aceitação para publicação: 31/06/2021

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ABSTRACT

The present research has as its thematic approach, the (in) effectiveness of the decisions of the international commercial court from the recent economic policies for agriculture in the United States in relation to the determinations of the World Trade Organization (WTO) in the litigation on the granting of subsidies to cotton – *Upland Cotton*. It is the pretension of this research, to delimit the study of the subject in the sense of demonstrating that the United States continued to have negative impacts on the international market, even though they were defeated in the litigation against Brazil in the WTO Dispute Settlement Body. In the litigation of cotton subsidies – *Upland Cotton*, Brazil and the United States enter into controversy regarding the granting of this instrument of economic policy by the U.S. government to an industry in which Brazil has comparative advantages and competitive production, especially in international trade. The WTO ruling on the case has proved that the U.S. economic policy on the use of subsidies, in particular those granted to agriculture, constitute a protectionist practice that interferes negatively with international trade. An interdisciplinary legal analysis from the economic and political point of view is essential in the context of international trade relations that have a profound impact on U.S. trade policy practices.

Keywords: Agricultural Grants, Compensatory Rights, International Agricultural Trade, World Trade Organization.

RESUMEN

La presente investigación tiene como enfoque temático, la (in) efectividad de las decisiones del tribunal comercial internacional a partir de las recientes políticas económicas para la agricultura en los Estados Unidos en relación a las determinaciones de la Organización Mundial del Comercio (OMC) en el litigio sobre la concesión de subsidios al algodón - *Upland Cotton*. Es la pretensión de esta investigación, delimitar el estudio del tema en el sentido de demostrar que los Estados Unidos continuaron teniendo impactos negativos en el mercado internacional, a pesar de que fueron derrotados en el litigio contra Brasil en el Órgano de Solución de Diferencias de la OMC. En el litigio de los subsidios al algodón - *Upland Cotton*, Brasil y Estados Unidos entran en controversia sobre la concesión de este instrumento

de política económica por parte del gobierno estadounidense a una industria en la que Brasil tiene ventajas comparativas y una producción competitiva, especialmente en el comercio internacional. El fallo de la OMC sobre el caso ha demostrado que la política económica estadounidense sobre el uso de subsidios, en particular los concedidos a la agricultura, constituyen una práctica proteccionista que interfiere negativamente en el comercio internacional. Un análisis jurídico interdisciplinario desde el punto de vista económico y político es esencial en el contexto de las relaciones comerciales internacionales que tienen un profundo impacto en las prácticas de la política comercial estadounidense.

Palabras clave: Subvenciones agrícolas, Derechos compensatorios, Comercio agrícola internacional, Organización Mundial del Comercio.

INTRODUCTION

The research that is proposed for the development of this article is about the most recent economic policy for the agriculture of the United States in relation to the World Trade Organization (WTO) rulings in the cotton litigation – *Upland Cotton*. That put in doubt the effectiveness of the decisions of the international commercial court. The WTO ruling on the case has proved that the US economic policy on the use of subsidies, in particular those granted to agriculture, constitute a protectionist practice that interferes in a negative way in the international trade and the retaliation by means of compensatory rights is a form of control or repression of practices detrimental to trade between nations.

In the litigation of cotton subsidies - *Upland Cotton*, Brazil and the United States enter into controversy regarding the granting of this instrument of economic policy by the US government to a sector in which Brazil has comparative and competitive advantages of production at global levels. Brazil's trade policy has not yet implemented the retaliation measures provided for in the WTO decision. It occurs that the new *farm bill* of United States, a *Federal Agriculture Reform and Risk Management Act of 2014*, is linked to WTO dispute settlement in cotton.

In order to analyze the negative effects of the most recent economic policy implemented on the US agricultural sector, it is essential to understand the granting of subsidies and what their effects on international trade. Subsidies constitute forms of state intervention in economic activities, characterized by transfers of resources to producers and consumers with the objective of guaranteeing or supplementing their incomes or reducing the costs of productions for producers.

It must be demonstrated that the United States continued to have negative impacts on the international market, reducing prices by increasing or sustaining production in the United States. The transfer of direct payments to agricultural insurance maintains the distortionary effect of previous programs: the insurance guarantees income to the producer at any price level. The new subsidy programs for agriculture are even more subsidized, practically doubling the amounts of the

expenditures, showing that the changes promoted by the *farm bill* of 2014, are modest and do not comply with WTO rulings in the decision on cotton litigation between Brazil and the United States - *Upland Cotton*.

1 SUBSIDIES IN INTERNATIONAL TRADE

The concept brought by the *Agreement on Subsidies and Countervailing Measures* (ASCM) of the WTO, constitutes the only internationally agreed legal definition¹, being a comprehensive definition that includes direct transfers of resources, tax incentives and the concession of goods and services. By defining subsidies as a form of government intervention in economic activities, characterized by transfers of resources to producers or consumers, aiming at guaranteeing or supplementing their incomes, or reducing production costs, the economic doctrine prioritizes two fundamental elements: the fact that the aid, support, contribution or incentive is always granted by a government and, that benefits of this intervention come². For Hoekman and Kostecki³, in a simpler way, “subsidies are policies that have a direct impact on the government budget and affect the production of goods”.

Governments use subsidies to promote industrial development, technological innovation, the granting of support to crucial and strategic sectors of the national economy, for the protection of the environment, for redistribution of income or even for the promotion of regional or rural development, among other reasons⁴. Dantas points out that, subsidies are just one of the possible instruments to achieve these objectives and it is up to the government to choose the most efficient instrument⁵.

However, a complete ban on subsidies is not desirable, because, in a way, it is possible to understand that, in essence, they constitute an alternative to the pursuit of the nation's social welfare.

¹ *Agreement on Subsidies and Countervailing Measures* (ASCM), art. 1º, §1º: For the purposes of this Agreement, a subsidy will be considered when: part (a): 1) there is a financial contribution by a government or public agency within the territory of a Member (hereinafter referred to as the "government"), t.i.: (I) when government practice involves direct transfer of funds (for example, grants, loans, and capital contributions), potential direct transfers of funds or bonds (for example, loan guarantees); (II) when due government revenues are forgiven or ceased to be collected (eg tax incentives such as tax rebates); (III) when the government provides goods or services other than those intended for general infrastructure or when it purchases goods; (IV) when the government makes payments to a funds system or entrusts or instructs a private body to perform one or more of the functions described in subsections (I) e (III) above, which would normally be incumbent upon the government and whose practice does not differ in any significant way from the practice usually followed by governments; or part (a): 2) there is any form of revenue or price support within the meaning of Article XVI of the GATT 1994; and part (b): this will confer an advantage. (OMC. **World Trade Report 2006: Exploring the link between subsidies, trade and the WTO**. Geneva: WTO, 2006.)

² SANDRONI, Paulo. **New Dictionary of Economics**. São Paulo: Best Seller, 2000; CHEREM, Giselda S. **World Trade Organization: economy - right - subsidy**. Curitiba: Juruá, 2003; DANTAS, Adriana. **Agricultural Grants: international regulation**. São Paulo: Saraiva, 2009.

³ HOEKMAN, B.; KOSTECKI, M. **The Political Economy of the World Trading System**. New York: Oxford University Press, 1995. Disponível em: <<http://www.questia.com/PM.qst?a=o&d=23621741>>. Acesso em: 17 jun. 2021.

⁴ OMC. **World Trade Report 2006: Exploring the link between subsidies, trade and the WTO**. Geneva: WTO, 2006.

⁵ DANTAS, Adriana. **Agricultural Grants: international regulation**. São Paulo: Saraiva, 2009.

And policies with this interest, particularly in the case of developing countries, are Government tasks. However, the use of subsidies, especially those granted to agriculture, constitute protectionist practices that interfere in a negative way, it mean, distorting, in international trade. And retaliation through countervailing duties⁶ is the form of control or repression of the practice of subsidies by the developed economies found by the WTO.

2 THE COUNTERVAILING DUTIES IN THE WORLD TRADE ORGANIZATION

The current global scenario of trade between nations seeks trade liberalization and the broad interaction between economies, which will only be possible if there is: cooperation between countries, implementation of international and, free access to markets. In this way, there will always be conflicts of national interests, subject to internationally recognized trade rules, which leads to the need for a harmonization mechanism, either through mediation and conciliation, or decision-making based on the regulation of international trade⁷. In the context of the market among nations, the WTO is designed to fulfill this role, and for the implementation of such objectives, will be of fundamental importance the *Dispute Resolution System (DRS)*⁸ of the WTO, as the entity responsible for the forwarding of the negotiation, by the attempt to reconcile and examine complaints arising from international trade relations between WTO member countries⁹.

To have a balance in international trade, it is necessary that the rules in the WTO be shared by all and, to those who feel prejudiced, have the possibility to resort to a revision of the regulation or actions of a particular nation who benefits from the rules or lack of recognition or application of these in their actions¹⁰. The DRS¹¹ is a result of this conception, in which a trade dispute between nations is

⁶ Anti-subsidy measures, consisting of surcharges applied to products of a given origin, which are exported with subsidization in the exporting country and causing injury to the importing country, have the effect of neutralizing the subsidies.

⁷ LAFER, Celso. **The WTO and the International Trade Regulation: a Brazilian vision.** Porto Alegre: Livraria do Advogado, 1998.

⁸ In the structure of the SSC is a decision making body, called the Dispute Settlement Body - OSC and two technical bodies, the Panel and the Appellate Body. The former are expert committees responsible for drafting an opinion on the subject matter of the dispute. In this opinion, experts testify whether or not the respondent Member State has failed to comply with international obligations, which the complainant nation has identified as having been violated. In the second, a collegiate body is formed, responsible for preparing opinions on the legal issues related to the subject of the dispute. Such opinions are intended to review Panel decisions where one or both parties have recourse to such a decision.

⁹ OMC. **Understanding the World Trade Organization.** Geneva: WTO, 2007.

¹⁰ BECHARA, Carlos. H. T; REDESCHI, Ronaldo. **The Dispute Settlement in Mercosur and the WTO: the Brazil vs. Argentina litigation in Mercosur, the Embraer case in the WTO – Brazil x Canada.** São Paulo: Aduaneiras, 2001.

¹¹ The WTO SSC has five phases, the first prior to the structuring of the SSC, the second takes place in the Panel, the third to the *Appellate Body*, and the fourth and fifth are implementing the decision and are linked to the CSO. The stages are: I) consultations: where the complaining Member country formally requests the complaining Member State to clarify the issue at issue in the dispute. The parties begin a discussion on the subject under dispute. The aim is to bring about an agreement with the objective of restoring the previous trade balance. II) panel: if they do not reach an agreement, the complaining country at this stage requests the issuance of a report containing the opinion of the CSO on the subject matter of the dispute. III) Appeal: Either party may appeal the decision of the panel, and the Appellate Body shall report with its decision on the

settled on the basis of the rules established by the WTO, and for the purpose of improving and liberalizing international trade. It represents the instrument used by WTO member countries when they believe that other nations are violating or not considering the rules governing world trade. Thus, they look for the DRS, in the figure of claimants, the countries that feel harmed, seeking the suspension of practices considered harmful. In cases where the injury does not cease even with the WTO decision to suspend injurious actions, the complaining country requests authorization for the adoption of commercial retaliations that will fall on the defendant nation¹².

Generally, disputes arise when a nation adopts a particular trade policy or practice that is found to violate WTO-regulated international trade agreements. As is the case with the practice of domestic subsidies to production¹³ and export subsidies¹⁴. Emphasize the existence of an impaired nation, which is a claimant, and a nation that would be the beneficiary of such policies or practices, appearing as defendant. But any other countries that consider themselves interested in the commercial dispute may request their participation in the condition of third parties interested in the dispute, provided that the effects of the case on its economy are proven¹⁵.

3 WTO-OSC/DS267 – UPLAND COTTON: THE ECONOMIC POLICY OF SUBSIDIZING THE PRODUCTION AND EXPORT OF COTTON IN THE UNITED STATES

It is reiterated, in the teachings of Nunes Filho and Barreto¹⁶, that the importance of the dispute settlement mechanism for the entire multilateral system of trade is derived from the way international trade rules are negotiated. In the GATT tradition, held in the WTO, decisions are taken by consensus, it means, when no party expresses itself against the decision. The aim of the system is to resolve disputes with an agreement between the parties. In the majority of cases against measures that violate

matter that is the subject of the appeal. IV) implementation: if the claim is recognized, the respondent country must implement the CSO recommendation, changing its trade practices or policies detrimental to trade among nations. V) retaliation: if the respondent country does not adopt within a reasonable time the measures set out in the CSO decision, the complaining country may request authorization for the suspension of commercial concessions, ie in practice it may impose commercial retaliation measures.

¹² BECHARA, Carlos. H. T; REDESCHI, Ronaldo. **The Dispute Settlement in Mercosur and the WTO: the Brazil vs. Argentina litigation in Mercosur, the Embraer case in the WTO – Brazil x Canada.** São Paulo: Aduaneiras, 2001.

¹³ Subsidies granted without any condition relating to export performance, ie measures benefiting sectors or products, whether exporters or importers (JACKSON, J. **The World Trading System: law and policy of international economic relations.** Cambridge: The MIT Press, 1997.).

¹⁴ For DESTA, M. G. **The law of International Trade in Agricultural Products: from GATT 1947 to the WTO agreement on agriculture.** London: Kluwer Law International, 2002, these subsidies have as main objective to affect and to distort the normal conditions of the commerce, since, the promotion of the exports and its consequent increase summarize its main effects.

¹⁵ OMC. **Understanding the World Trade Organization.** Geneva: WTO, 2007.

¹⁶ NUNES FILHO, Aldo Almeida; BARRETO, João Francisco de Azevedo. **The precedent effect of the rulings of the WTO Dispute Settlement Body.** in MENEZES, Wagner (Coord.). **International law expanding: volume 10 - Proceedings of the XV Brazilian Congress of International Law.** 30 ago. a 02 set., v.10, Florianópolis, SC. Belo Horizonte: Arraes Editores, 2017.

the rules of the agreements, the decision is that the respondent modifies the measure in question so as to make it consistent with established rules. They are not declared winners or losers. Although the system has become more legal, compared to GATT, the system cannot be compared to a court, since the role of political negotiation in reaching a solution is still present.

It is in this context that the demand for cotton, initiated in September 2002 with the request for consultations by Brazil, involved the questioning of subsidies granted by the United States to the production and export of cotton. Among the specific subsidies that could be produced or exported, two categories of subsidies were questioned, the first on subsidies prohibited and the second on subsidies that could be challenged.

In the analysis of the trade dispute between Brazil and the United States in the WTO, the *WTO-OSC/DS267: Upland Cotton*¹⁷ it has been proven that all cotton subsidy programs cause serious losses to Brazil and have caused a significant suppression of the prices of the commodity in the international market, in breach of international agreements on agriculture and the practice of subsidies. As a result, the United States should remove the adverse effects of these subsidies, or eliminate the subsidies, by September 2005.

Explains Bruno¹⁸ that the deadlines for the United States to comply with the decisions of the DRS, Brazil requested, in two separate applications submitted in July and October 2005, authorization to retaliate for a total amount of about US \$ 4 billion per year. However, with the indication that progress could be made in the implementation of the decision by the United States, Brazil agreed to suspend the arbitration procedures initiated to define the amounts of retaliation. Until now, U.S. implementation measures, as far as actionable subsidies are concerned, are limited to the elimination of the program *Step2*, as of August 2006. The main internal support programs – *Marketing Loan e Counter-Cyclical Payments* remain granting subsidies to the sector¹⁹.

4 SUBSIDIES AND TARIFFS IN THE THEORY OF INTERNATIONAL ECONOMIC THINKING

The Economic theory teaches that subsidies can distort trade by providing an artificial competitive advantage to producers and exporters or to sectors that compete with imports. An economic

¹⁷ OMC /DS267. **Upland Cotton**. Geneva: WTO, 2010. Disponível em: <http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm>. Acesso em: 17 jun. 2021.

¹⁸ BRUNO, Flávio Marcelo Rodrigues **Agricultural subsidies in international trade: theory, regulation and practice**. São Leopoldo, 2010. 142 p. Dissertation (Master in Economics) - Graduate Program in Economics – PPGE: Vale do Rio dos Sinos University, São Leopoldo, 2010.

¹⁹ BRUNO, Flávio Marcelo Rodrigues **Agricultural subsidies in international trade: theory, regulation and practice**. São Leopoldo, 2010. 142 p. Dissertation (Master in Economics) - Graduate Program in Economics – PPGE: Vale do Rio dos Sinos University, São Leopoldo, 2010.

analysis serves to determine the appropriateness of interventions from the point of view of social welfare and to assess the advantages of providing other forms of intervention. This is due to the idea that governments grant subsidies that have little relation to the sense of efficiency and, in these cases, an analysis of welfare that can demonstrate the theory, would be of little use. A study of the treatment of subsidies along with the economic theories of international trade may be interesting in showing the costs that governments will take if they take certain actions in pursuit of political objectives and may demonstrate other less costly ways to achieve such goals. On some occasions governments are unaware of the technical aspects of determining what should be subsidized or not, their amount and for how long. Therefore, their decisions are not always the right ones²⁰.

An economic analysis of a universal model of international trade will help to understand the convenience or inconvenience of subsidies, as well as the loss of social welfare due to this practice. When governments use subsidies with little or no relation to efficiency, then economic analysis based on social welfare will give a different result. The following proposes a study of the literature using the valuation of the costs of adoption of these practices, the commercial effects, the governmental greed and the loss of national well-being. A key element in the impact on well-being is related to the size of the economy. In small economies, the granting of subsidies generates a smaller welfare loss compared to a large economy, which causes a deterioration of the country's terms of trade due to the drop in its export price²¹.

The models of economic simulation brought by the literature indicate that subsidies in a particular sector would lead to a loss of national welfare, due to the strong distorting effects of trade. Such models can be used to see how the granting of subsidies affects market participants, both producers and consumers. Side effects are also produced on world markets. The aid provided by the developed countries tends to decrease the prices of subsidized products on the world market.

5 THE INTERNATIONAL REGULATION FOR THE GRANTING OF SUBSIDIES: AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (ASCM)

The thematic approach is embodied in the perspective argument of the pluralities of the legal orders, as Ramos teaches²²

²⁰ OMC. **World Trade Report 2006: Exploring the link between subsidies, trade and the WTO**. Geneva: WTO, 2006.

²¹ HUBBARD, Glenn e O'BRIEN, Anthony Patrick. **Introduction to economy**. Translation: Christine de Brito Andrei, Cristina Bazán e Rodrigo Sardenberg. 2 ed. atual. Porto Alegre: Bookman, 2010.

²² RAMOS, André de Carvalho. **The plurality of legal orders and the new centrality of international law**. in MENEZES, Wagner (Coord.). *Brazilian Society of International Law Newspaper*. v. 1 - Agosto/Dezembro, 2013. Belo Horizonte: Arraes Editores, 2013.

the plurality of legal orders consists in the coexistence of norms and decisions of different matrices with ambition of regency of the same social space, generating a series of consequences related to the convergence or divergence of meanings between the rules and decisions of different origins. The plural legal orders, then, are those that converge and compete in the legal regency of the same space

It is necessary to consider that, as Viegas²³ teaches, with the intensification of international financial flows, in addition to productive globalization, the dependence of each country on the rest of the world has increased, whether in terms of its development plans or in terms of to the management of national economies. Both developed and developing countries gain and lose from globalization.

The regulation of subsidies in the context of international trade demonstrates the growing concern with the effects of its concession on trade between nations, following the WTO's tendency to impose limits on the regulation adopted by the countries in international trade. Such rules are justified by the repeated distortive practices that disrupt international trade, hence the role of the regime created to curb the granting of subsidies, since it creates conditions for effecting the common interest in free and fair international trade²⁴. Significant concern is the growing use of this form of subsidy which has negative effects on trade and impacts on the commercial interests of participating nations on the world market, as opposed to the objectives of international trade. Such subsidies have the primary function of export promotion, and this is the distorting character that hinders their justification of use²⁵.

The ASCM developed criteria for shaping the effects of trade subsidies on the provisions on serious injury that allow multilateral recourse, created a category of non-actionable subsidies either through multilateral or unilateral countervailing duties; and improved the rules and procedures governing the conduct of investigations to enforce these rights²⁶. It should also be noted that the ASCM is composed of rights and obligations which apply in full to all WTO Members. Bruno²⁷ explains that the ASCM disciplines the use of 'specific'²⁸, which are characterized as damaging to international trade. In this way, the rules on the categories of subsidies: prohibited, actionable or actionable and non-actionable or unappealable; are complementary to the understanding of specific subsidies. The

²³ VIEGAS, Thales de Oliveira Costa . Social Aspects of Socioeconomic Development: A Bibliographic Review. **Latin American Journal of Development**, v. 1, n. 1, p. 49-60, 1 Jul. 2020.

²⁴ CHEREM, Giselda S. **World Trade Organization: economy - right - subsidy**. Curitiba: Juruá, 2003.

²⁵ BRUNO, Flávio Marcelo Rodrigues. **Agricultural subsidies in international trade: theory, regulation and practice**. São Leopoldo, 2010. 142 p. Dissertation (Master in Economics) - Graduate Program in Economics – PPGE: Vale do Rio dos Sinos University, São Leopoldo, 2010.

²⁶ COLLINS-WILLIAMS, T.; SALEMBIER, G. International Disciplines on Subsidies: the GATT, the WTO and the Future Agenda. **Journal of World Trade**, v. 30, n. 1, 1996, p. 5-17.

²⁷ BRUNO, Flávio Marcelo Rodrigues. **Agricultural subsidies in international trade: theory, regulation and practice**. São Leopoldo, 2010. 142 p. Dissertation (Master in Economics) - Graduate Program in Economics – PPGE: Vale do Rio dos Sinos University, São Leopoldo, 2010.

²⁸ Agreement on Subsidies and Countervailing Measures (ASCM), art. 2º: (1).

subsidies that are characterized as specific end up distorting international trade. So, the more specific and direct the subsidy, the more its practice will be distorting the market²⁹.

The most appropriate way of understanding how countervailing duties are exercised in international trade to combat the adverse effects of subsidies in international trade is by examining a specific case of commercial retaliation through countervailing measures to the granting of subsidies. That's the reason for analyze the WTO decision on the WTO cotton commercial dispute involving two important economies, Brazil and the United States – *WTO-OSC/DS267: Upland Cotton*. Thus, considering that cotton farming is heavily subsidized by the US government, the next section of this chapter presents the international regulation of agricultural subsidies.

6 THE INTERNATIONAL REGULATION FOR THE GRANTING OF AGRICULTURAL SUBSIDIES: AGREEMENT ON AGRICULTURE (AOA)

The agricultural sector has always been the subject of little discussion in the early days of international trade because of differential treatment of nations such as the United States, Japan, Germany and Switzerland, from the establishment of the GATT to the advent of the WTO. Because of economic power and high tariffs and substantial transfers of fiscal resources, the developed countries have become major producers and have gone from importers to large exporters of agricultural products, market subsidies and industry protection distortions in trade and is detrimental to developing countries³⁰.

Policies to grant subsidies created under the logic of essentially economic arguments and those most closely linked to subsidies in international trade, especially the agricultural sector, are confused between intrinsic economic policies and governmental activities and pretexts that seek to justify protectionist practices by certain economies. Elucidates Caiado³¹ that subsidies distort prices, reallocate resources, change the quantity of goods and services produced and consumed in an economy that has harmful effects on the environment. Another common effect is the artificial depreciation of international prices, which greatly undermines the interests of foreign competitors. This distortion justifies the regulation of the practice of subsidies by the WTO, both with the treatment referred to in the ASCM and the Agreement on Agriculture (AoA).

²⁹ BALDWIN, R. Imposing Multilateral discipline on administered protection. In: KRUEGER, Anne. O. (Ed.). **The WTO as an international organization**. Chicago: Chicago University, 1998.

³⁰ DANTAS, Adriana. **Agricultural Grants: international regulation**. São Paulo: Saraiva, 2009.

³¹ CAIADO, José Guilherme Moreno. Considerations on the Development of the International Rules on Subsidies in GATT and the WTO. In MENEZES, Wagner (Coord.). **International Law Studies - Volume XIX - Proceedings of the 8th Brazilian Congress of International Law - 2010**. Curitiba: Ed. Juruá, 2010.

The emergence of the AsA is the result of six years of negotiations and serious confrontations, aims to correct and prevent distortions in the world agricultural market by establishing a process of liberalization of world agricultural trade by adopting a set of rules that discipline three specific areas – access to markets, domestic support measures and export subsidies. The AoA has a complex structure, providing rights and obligations that are provided for in its text and also in the Schedules of Concessions submitted by each WTO Member, in which the specific commitments to reduce subsidies are indicated.

Considering the US subsidy policies for agriculture and the growing developments in trade disputes within the WTO, it can be argued that the agricultural sector is a subject of current relevance in the negotiations on international trade. Reason why, in the last chapter of this paper will be presented the North American strategic policies for the granting of subsidies to agriculture, especially the negative impacts of the new policy recently implemented in the United States for the cultivation of cotton, especially as it characterizes itself as a non-compliance with the WTO ruling on cotton litigation between Brazil and the United States – WTO-OSC/DS267: *Upland Cotton*.

7 THE U.S. ECONOMIC POLICY OF GRANTING SUBSIDIES TO AGRICULTURE, ITS NEGATIVE IMPACTS ON INTERNATIONAL TRADE, AND NONCOMPLIANCE WITH THE DECISION ON COTTON LITIGATION BETWEEN BRAZIL AND THE UNITED STATES

The agricultural activity in the United States is intense and the sector is treated as strategic for US economic policy. Explains Bruno³² that the characteristics of the agricultural production of the country changed radically in the 1930s, from the increase of interventionism of the U.S. government. There was a clear development with negative airs, that is, it is possible to glimpse the conception of Moreira and Ruwer³³, who indicate the

It is worth highlighting again the difference between growth and development, since the former does not lead to equality, much less to social justice, since it only considers the accumulation of wealth. The second is also concerned with the generation of wealth, but with a qualitative aspect, since it has the objective of distributing it with a view to improving the lives of the population, considering the quality and balance of the planet.

³² BRUNO, Flávio Marcelo Rodrigues. **Agricultural subsidies in international trade: theory, regulation and practice**. São Leopoldo, 2010. 142 p. Dissertation (Master in Economics) - Graduate Program in Economics – PPGE: Vale do Rio dos Sinos University, São Leopoldo, 2010.

³³ MOREIRA, Inês da Silva; RUWER, Léia Maria Erlich. World of work, social work and sustainable development. **Latin American Journal of Development**, v. 2, n. 5, p. 206-227, 30 Oct. 2020.. p.224

The beginning of the changes occurred when among the several programs that integrated the *New Deal*³⁴, subsidy programs have been created for the production of *commodities*.

The US Farm Bill, as well as other legislative proposals, has become increasingly complicated and politically sensitive. In relation to the regulation of the North American agricultural sector, the *Agricultural Act of 1949* and the *Agricultural Adjustment Act of 1938* constitute the regulation of *permanent law's* which determine the volume of commodity price support and producer income support. There are constant changes, called *farm bills*, always temporary, which expire between four and six years, which are edited by the US Congress, which suspend what regulates the diplomas of 1938 and 1949, and serve only for specific programs³⁵.

The *American Tax payer Relief Act of 2012* replaced the previous legislation until the recent *Federal Agriculture Reform and Risk Management Act of 2013* which ended up with subsidies condemned by the WTO, but created others that could be as harmful as or more harmful to international trade. The United States increased government aid, accounting for 80 percent of the cost of insurance for cotton crops and 65 percent for soybeans and other grains. The share of income guaranteed by insurance also grew. Before, if everything went wrong in a crop of soy or corn, the farmer would receive 70% of the expected income. With the advent of the new *farm bill*, will receive 86%, rain, sunshine or even if world prices plummet. The guaranteed income of cotton will be even higher: it rose from 70% to 90%. These programs eliminate excess risks and stimulate supply even without increasing demand. With artificially high production, natural low-price cycles last longer, which harms producers in countries that do not have the same strategic policies for the sector.

8 CONCLUSIONS

In the analysis of cotton litigation between Brazil and the United States - *Upland Cotton* it has been proven that the US cotton subsidy policy causes serious damage to Brazil, in violation of international agreements on agriculture and subsidies. As a result, the United States should remove the adverse effects of these subsidies. The WTO authorized the Brazilian government to exercise its countervailing duties in the light of the United States' practice of subsidizing cotton farming by applying retaliatory trade measures between nations. Brazil has announced that it will exercise its

³⁴ Series of programs implemented in the United States between 1933 and 1937, under the government of Franklin Roosevelt. Their aim was to recover and reform the American economy, and to assist those affected by the Great Depression.

³⁵ BRUNO, Flávio Marcelo Rodrigues. **Agricultural subsidies in international trade: theory, regulation and practice.** São Leopoldo, 2010. 142 p. Dissertation (Master in Economics) - Graduate Program in Economics – PPGE: Vale do Rio dos Sinos University, São Leopoldo, 2010.

countervailing duties based on increased import tariffs for a number of US products. The list includes more than a hundred products imported from the United States.

However, the interesting thing is that the list includes products from other agricultural commodities that have no connection with the cotton sector such as: pears, cherries, plums, and also non-agricultural sectors such as medicines with the analgesic paracetamol; hygiene and beauty products such as creams, lip products, cologne and slides; and other industrialized ones such as bar code readers, headphones, sunglasses, and vehicles up to 1,000 cubic centimeters. But undoubtedly the most relevant factor in this case is the WTO's decision to grant Brazil the right to apply compensatory measures through cross-retaliation that interferes with other sectors of the economy other than agriculture.

Cross-retaliation is legitimate, but not an economically appropriate medium. Since it tends to generate a cycle, on the one hand Brazil imposes high tariffs on the sector and on the other, the United States grants high rates of production and export subsidy, in a cycle that only provokes an even greater imbalance in the world market. Thus, the exercise of countervailing duties on subsidies does not tend to balance the world market, on the contrary, it appears to generate an even greater imbalance. What does it mean to understand that the new US policy on the agricultural sector does not comply with the WTO rulings in the cotton litigation - *Upland Cotton*, and in the near future, will bring more demands to the dispute settlement body of the international commercial court, including in other economic sectors of the world market, calling into question the effectiveness of WTO rulings.

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