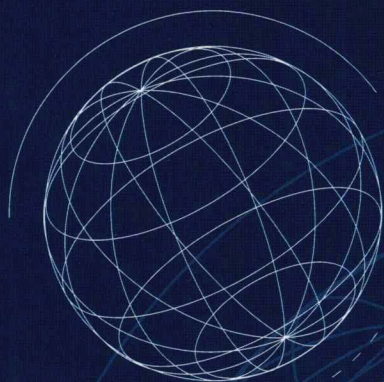




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The *Dispute Settlement Reports* of the World Trade Organization (the "WTO") include panel and Appellate Body reports, as well as arbitration awards, in disputes concerning the rights and obligations of WTO Members under the provisions of the *Marrakesh Agreement Establishing the World Trade Organization*. The *Dispute Settlement Reports* are available in English. Volumes comprising one or more complete cases contain a cumulative list of published disputes. The cumulative list for cases that cover more than one volume is to be found in the first volume for that case.

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UNITED STATES – SUBSIDIES ON UPLAND COTTON

Recourse by Brazil to Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

Report of the Appellate Body WT/DS267/AB/RW

*Adopted by the Dispute Settlement Body
on 20 June 2008*

United States, *Appellant/Appellee*
Brazil, *Other Appellant/Appellee*
Argentina, *Third Participant*
Australia, *Third Participant*
Canada, *Third Participant*
Chad, *Third Participant*
China, *Third Participant*
European Communities, *Third Participant*
India, *Third Participant*
Japan, *Third Participant*
New Zealand, *Third Participant*
Thailand, *Third Participant*

Present:
Baptista, Presiding Member
Hillman, Member
Unterhalter, Member

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<i>Canada – Aircraft (Article 21.5 – Brazil)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU</i> , WT/DS70/AB/RW, adopted 4 August 2000, DSR 2000:IX, 4299
<i>Canada – Dairy (Article 21.5 – New Zealand and US)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Recourse to Article 21.5 of the DSU by New Zealand and the United States</i> , WT/DS103/AB/RW, WT/DS113/AB/RW, adopted 18 December 2001, DSR 2001:XIII, 6829
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<i>Japan – Apples</i>	Appellate Body Report, <i>Japan – Measures Affecting the Importation of Apples</i> , WT/DS245/AB/R, adopted 10 December 2003, DSR 2003:IX, 4391
<i>Korea – Alcoholic Beverages</i>	Appellate Body Report, <i>Korea – Taxes on Alcoholic Beverages</i> , WT/DS75/AB/R, WT/DS84/AB/R, adopted 17 February 1999, DSR 1999:I, 3
<i>Korea – Commercial Vessels</i>	Panel Report, <i>Korea – Measures Affecting Trade in Commercial Vessels</i> , WT/DS273/R, adopted 11 April 2005, DSR 2005:VII, 2749
<i>Korea – Dairy</i>	Appellate Body Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3

Short Title	Full Case Title and Citation
<i>Mexico – Corn Syrup</i> (Article 21.5 – US)	Appellate Body Report, <i>Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS132/AB/RW, adopted 21 November 2001, DSR 2001:XIII, 6675
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<i>US – Shrimp</i>	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, 2755
<i>US – Shrimp</i> (Article 21.5 – Malaysia)	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia</i> , WT/DS58/AB/RW, adopted 21 November 2001, DSR 2001:XIII, 6481

Short Title	Full Case Title and Citation
<i>US – Softwood Lumber IV</i> (Article 21.5 – Canada)	Appellate Body Report, <i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada – Recourse by Canada to Article 21.5 of the DSU</i> , WT/DS257/AB/RW, adopted 20 December 2005, DSR 2005:XXIII, 11357
<i>US – Softwood Lumber IV</i> (Article 21.5 – Canada)	Panel Report, <i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada – Recourse by Canada to Article 21.5 [of the DSU]</i> , WT/DS257/RW, adopted 20 December 2005, upheld by Appellate Body Report, WT/DS257/AB/RW, DSR 2005:XXIII, 11401
<i>US – Softwood Lumber VI</i> (Article 21.5 – Canada)	Appellate Body Report, <i>United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada</i> , WT/DS277/AB/RW, adopted 9 May 2006, and Corr.1
<i>US – Upland Cotton</i>	Appellate Body Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, 3
<i>US – Upland Cotton</i>	Panel Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/R, and Corr.1, adopted 21 March 2005, as modified by Appellate Body Report, WT/DS267/AB/R, DSR 2005:II-VI, 299
<i>US – Upland Cotton</i> (Article 21.5 – Brazil)	Panel Report, <i>United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil</i> , WT/DS267/RW and Corr.1, circulated to WTO Members 18 December 2007
<i>US – Wheat Gluten</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/AB/R, adopted 19 January 2001, DSR 2001:II, 717

TABLE OF ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Definition
CCC	United States Commodity Credit Corporation
DSB	Dispute Settlement Body
DSU	<i>Understanding on Rules and Procedures Governing the Settlement of Disputes</i>
ETI Act of 2000	United States FSC Repeal and Exterritorial Income Exclusion Act of 2000, Public Law No. 106-519
Ex-Im Bank	United States Export-Import Bank
FAIR Act of 1996	United States Federal Agricultural Improvement and Reform Act of 1996, Public Law No. 104-127
FAPRI	Food and Agricultural Policy Research Institute of Iowa State University and the University of Missouri-Columbia
FCRA	United States Federal Credit Reform Act of 1990, enacted as part of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508
FSRI Act of 2002	United States Farm Security and Rural Investment Act of 2002, Public Law No. 107-171
FY	Fiscal year. In the United States, the fiscal year runs from 1 October of the previous calendar year and ends 30 September of the year with which it is numbered. For example, FY 2008 began on 1 October 2007 and will end on 30 September 2008.
GATT 1994	<i>General Agreement on Tariffs and Trade 1994</i>
GSM 102	General Sales Manager 102
GSM 103	General Sales Manager 103 (Intermediate Credit Guarantee Program)
Illustrative List	Illustrative List of Export Subsidies, Annex I to the <i>SCM Agreement</i>
LCI	Letter of Credit Insurance (an Export-Import Bank programme)
MTI	Medium-Term Export Credit Insurance (an Export-Import Bank programme)

Abbreviation	Definition
MPRs	Minimum premium rates
MY	Marketing year. The marketing year for cotton runs from 1 August to 31 July of the following year. For example, MY 2007 runs from 1 August 2007 until 31 July 2008.
OECD	Organisation for Economic Co-operation and Development
OECD Arrangement	OECD Arrangement on Officially Supported Export Credits
Original Panel Report	Panel Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/R, and Add.1-Add.3, and Corr.1
Panel Report	Panel Report, <i>United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil</i> , WT/DS267/RW, 18 December 2007
SCGP	Supplier Credit Guarantee Program
<i>SCM Agreement</i>	<i>Agreement on Subsidies and Countervailing Measures</i>
Step 2 payments	User marketing (Step 2) payments
USCBO	United States Congressional Budget Office
USCRS	United States Congressional Research Service
USDA	United States Department of Agriculture
<i>Working Procedures</i>	<i>Working Procedures for Appellate Review</i> , WT/AB/WP/5, 4 January 2005
WTO	World Trade Organization

I. INTRODUCTION

1. The United States and Brazil each appeals certain issues of law and legal interpretations developed in the Panel Report, *United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil* (the "Panel Report").¹ The Panel was established to consider a complaint by Brazil concerning the consistency with the *Agreement on Agriculture* and the *Agreement on Subsidies and Countervailing Measures* (the "SCM Agreement") of measures taken by the United States to comply with the recommendations and rulings of the Dispute Settlement Body (the "DSB") in the original proceedings in *US – Upland Cotton*.²

2. In the original proceedings, Brazil challenged various United States measures³ that Brazil alleged constituted actionable subsidies within the meaning of Part III of the *SCM Agreement*, prohibited subsidies within the meaning of Part II of the *SCM Agreement*, export subsidies within the scope of the *Agreement on Agriculture*, and/or subsidies actionable under Article XVI of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"). Brazil also challenged certain of these measures under Article III:4 of the GATT 1994.⁴ The United States argued that, by virtue of paragraphs (a) and (b) of Article 13 of the *Agreement on Agriculture*, some of the measures were domestic support measures that were exempt from being challenged under the *SCM Agreement* and the GATT 1994.⁵

3. The following conclusions of the original panel are relevant for purposes of these proceedings pursuant to Article 21.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"). First, the original panel found that export credit guarantees provided to unscheduled agricultural products (including upland cotton) and to one scheduled product (rice) under three export credit guarantee programmes—the General Sales Manager ("GSM") 102, the GSM 103, and the Supplier Credit Guarantee Program ("SCGP")—are

¹ WT/DS267/RW, 18 December 2007.

² The recommendations and rulings of the DSB resulted from the adoption on 21 March 2005, by the DSB, of the Appellate Body Report, WT/DS267/AB/R, and the Panel Report, WT/DS267/R, in *US – Upland Cotton*. In this Report, we refer to the panel in these Article 21.5 proceedings as the "Panel", and to the panel that considered the original complaint brought by Brazil as the "original panel" and to its report as the "original panel report".

³ Brazil made claims in respect of marketing loan programme payments, user marketing (Step 2) payments ("Step 2 payments"), production flexibility contract payments, market loss assistance payments, direct payments, counter-cyclical payments, crop insurance payments, cottonseed payments, export credit guarantees and the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, Public Law No. 106-519 (the "ETI Act of 2000"). Brazil also made claims regarding legislation and regulations underlying certain of these programmes. (See Appellate Body Report, *US – Upland Cotton*, footnote 2 to para. 1; see also Original Panel Report, paras. 7.200-7.250)

⁴ See Appellate Body Report, *US – Upland Cotton*, para. 1.

⁵ *Ibid.*