Denver Journal of International Law & Policy

Volume 36
Number 3 *Summer/Fall - 2007 Sutton Colloquium & ILSA Conference*
Article 6

April 2020

The Doha Round Negotiations on Agricultural Subsidies

Kevin C. Kennedy

THE DOHA ROUND NEGOTIATIONS ON AGRICULTURAL SUBSIDIES

KEVIN C. KENNEDY*

For the past seven years the international trade community's attention has been fixed on the issue of agricultural subsidies, both at the on-going Doha Round negotiations and in recent World Trade Organization (WTO) dispute settlement proceedings. But the issue of agricultural subsidies is not strictly speaking just a trade issue. Reform of agricultural subsidies in developed countries embraces the broader issue of economic development in developing countries and a humanitarian concern for the poorest countries in the world, especially those in sub-Saharan Africa.

I would like to discuss the specific issue of cotton subsidies. What is the likelihood of a commodity-specific agreement on cotton and cotton subsidies as part of the Doha Round negotiations? If the Doha Round fails, will litigation replace negotiation as the default mechanism for reforming farm subsidies? My short answer to the first question is that a commodity-specific agreement on cotton is out of the question unless WTO reforms are achieved within the agricultural sector as a whole. My short answer to the second question is that in the absence of such WTO reforms, WTO dispute settlement proceedings could end up replacing negotiation as the mechanism for reforming government subsidies to the farm sector.

Let me begin by briefly reviewing the critical role that agriculture, in particular cotton production, plays in the economies of a large group of least-developed countries located in sub-Saharan Africa. Thirty-four of the world's fifty poorest countries, the Least Developed Countries (LDCs), are located in sub-Saharan Africa.[1] Farming plays a leading role in the work force and the overall economies of LDCs in sub-Saharan Africa (SSA), with the balance primarily in the extractive industries of mining and oil.[2] With the exceptions of Cape Verde and Lesotho, agriculture employs at a minimum more than 50 percent of the total labor

* Professor of Law, Michigan State University College of Law. Professor Kennedy can be contacted at kennel11@law.msu.edu.

1. UNITED NATIONS OFFICE OF THE HIGH REPRESENTATIVE FOR THE LEAST DEVELOPED COUNTRIES, LANDLOCKED DEVELOPING COUNTRIES AND SMALL ISLAND DEVELOPING COUNTRIES, LIST OF LDCS, LLDCS AND SIDS BY REGIONS, http://www.un.org/special-rep/ohrlls/ohrlls/allcountries-regions.pdf (last visited Feb.14, 2008).

2. *See* U.N. Econ. & Soc. Council [ECOCSOC], *Overcoming Poverty Through Productive Employment and Decent Work for Income Generation in Least Developed Countries*, 2, (July 3, 2007), http://www.unohrlls.org/UserFiles/File/LDC%20Documents/ECOSOC2007/ECOSOC%202007-ILO%20paper.pdf.

force in all SSA LDCs.[3] One of the most important crops grown in sub-Saharan Africa is cotton.[4] As a percentage of total world merchandise trade, raw cotton's share is miniscule (approximately one-tenth of one percent).[5] Nevertheless, cotton is one of the most important textile fibers in the world, accounting for over 40 percent of total world fiber production.[6] While some eighty countries produce cotton, cotton production is concentrated in a handful of countries (see Table 1).

Table 1. World Cotton Production, 2001/02-2006/07 Marketing Years

(Season Beginning August 1) (1,000 Metric Tons)

Country	**2001/02**	**2002/03**	**2003/04**	**2004/05**	**2005/06**	2006/07 (forecast)
China	5,313	4,921	4,855	6,314	5,704	5,987
United States	4,421	3,747	3,975	5,062	5,201	4,507
India	2,678	2,308	3,048	4,137	4,137	4,355
Pakistan	1,807	1,698	1,687	2,426	2,145	2,286
Brazil	766	847	1,310	1,285	1,023	1,197
Uzbekistan	1,067	1,002	893	1,132	1,241	1,110
Turkey	865	910	893	904	773	904

Source: U.S. Dep't of Agriculture, Foreign Agricultural Service[7]

The world's four largest producing and consuming countries are China, the United States, India, and Pakistan, with the United States, China, and India together providing over half the world's cotton. As Table 2 illustrates, the world's largest importer is China, consuming 40 percent of the world's total production.

3. *See* U.N. Conference on Trade and Development 2004, *The Least Developed Countries Report 2004: Linking International Trade with Poverty Reduction*, 349, U.N. Doc. UNCTAD/LDC/2004 (2004).

4. *See* World Trade Organization, Committee on Agriculture, Joint Proposal by Benin, Burkina Faso, Chad and Mali, *Poverty Reduction: Sectoral Initiative in Favour of Cotton*, 2-3, TN/AG/GEN/4 (May 16, 2003), *available at* http://www.agtradepolicy.org/output/resource/CottonSubmissionWTO.pdf.

5. *See John* Baffes, *Cotton: Market Setting, Trade Policies, and Issues* v (World Bank Policy Research Working Paper 3218 2004), *available at* http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/06/03/000009486_20040603091724/Rendered/PDF/wps3218cotton.pdf.

6. *See id.* at 29.

7. FOREIGN AGRIC. SERV., U.S. DEP'T AGRIC., COTTON: WORLD MARKETS AND TRADE, CIRCULAR SERIES, 7 tbl. 1 (June 2006), http://www. fas.usda.gov/cotton/circular/2006/07/table01.pdf.

Table 2. World Cotton Imports, 2001/02-2006/07 Marketing Years

(Season Beginning August 1) (1,000 Metric Tons)

Country	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07 (forecast)
China	98	681	1,923	1,390	4,137	4,355
Turkey	648	493	516	742	751	555
Indonesia	513	485	468	479	479	479
Pakistan	218	185	403	730	370	370
Bangladesh	261	348	370	403	446	468
Thailand	410	423	365	497	435	468
Russia	392	359	321	316	327	327

Source: U.S. Dep't of Agriculture, Foreign Agricultural Service[8]

The world's largest exporter of cotton is the United States, which ranks second to China in cotton production, accounting for 40 percent of global trade in raw cotton (see Table 3). In fact, 70 percent of cotton grown in the United States is for export.

Table 3. World Cotton Exports, 2001/02-2006/07 Marketing Years

(Season Beginning August 1) (1,000 Metric Tons)

Country	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07 (forecast)
United States	2,395	2,591	2,995	3,137	3,658	3,658
Uzbekistan	762	740	675	860	1,045	991
Australia	681	578	470	436	675	610
Greece	218	250	267	255	294	316
Brazil	147	106	210	339	446	327
Burkina Faso	142	158	207	212	294	305
India	13	12	152	144	544	827

Source: U.S. Dep't of Agriculture, Foreign Agricultural Service[9]

Table 4 lists the ten largest producers of cotton in sub-Saharan Africa for 2003/04-2006/07. In the West and Central African (WCA) countries of Benin, Burkina Faso, Chad, Mali, and Togo (the Cotton Four), cotton production accounts

8. *Id.*
9. *Id.*

for up to 10 percent of gross domestic product.[10] Over 90 percent of the cotton produced in the WCA countries is for export.[11] Exports from these WCA countries are dominated by cotton, which represents approximately 30 percent of total export earnings and over 60 percent of earnings from agricultural exports.[12]

Table 4. Cotton Production in Sub-Saharan Africa, 2003/04-2006/07 Marketing Years (Top 10 Producers) (Season Beginning August 1) (1,000 Metric Tons)

Country	2003/04	2004/05	2005/06	2006/07 (Forecast)
Burkina Faso	210	200	218	294
Mali	261	233	218	239
Zimbabwe	100	114	76	114
Benin	149	147	131	109
Cameroon	109	109	94	109
Côte d'Ivoire	87	105	124	109
Sudan	76	87	93	87
Togo	71	72	69	50
Tanzania	51	71	103	65

Source: U.S. Dep't of Agriculture, Foreign Agricultural Service[13]

Collectively, the WCA countries are the seventh largest global producer of cotton after China, the United States, India, Pakistan, Brazil, and Uzbekistan. With approximately a 15-percent share of global exports, the WCA countries collectively are the second largest exporter after the United States.[14] Although cotton plays only a minor role in the economic activities of industrialized countries, it is of vital importance in many WCA countries. Over 10 million people in the region – where people earn less than a dollar a day – depend directly on cotton production, making it possible to improve the physical and social infrastructure in cotton-producing regions, including roads, schools, and health centers.[15] Cotton occupies a strategic position in the development policies and poverty reduction programs of the WCA countries. Cotton accounts for 5-10

10. World Trade Organization, *supra* note 4, at 1.

11. *Id.* at 4

12. *Id.* at 1.

13. FOREIGN AGRIC. SERV., U.S. DEP'T AGRIC., COTTON: WORLD MARKETS AND TRADE CIRCULAR SERIES FC 07-04, 13-17 tbls. 5a & 6a (July 2004), *available at* http://www.fas.usda.gov/cotton/circular/2004/07/CottonWMT.pdf; FOREIGN AGRIC. SERV., U.S. DEP'T AGRIC., COTTON: WORLD MARKETS AND TRADE, CIRCULAR SERIES FC 06-06, 13-18 tbls. 5a & 6a (June 2006), *available at* http://www.fas.usda.gov/cotton/circular/2006/06/CottonWMT.pdf.

14. World Trade Organization, *supra* note 4, at 2.

15. *Id* at 1-4.

percent of GDP in Burkina Faso and Benin, but less than 0.1 percent in the United States.[16]

With at least a dozen countries around the world subsidizing their cotton producers, including China and the United States which subsidize their cotton growers up to 20 percent and 50 percent of world prices, respectively, world prices for cotton have been suppressed due to overproduction.[17] In an attempt to correct this situation, a joint proposal was submitted by the four West and Central African nations of Benin, Burkina Faso, Chad, and Mali at the 2003 WTO Ministerial Conference in Cancún, México, requesting that all subsidies on cotton be eliminated immediately.[18] Their proposal, commonly known as the Cotton Initiative, contends that WCA countries have undertaken internal market reforms in order to make their respective cotton sectors more competitive globally, but that these reforms have been virtually nullified by the subsidies given by other WTO members to cotton farmers.[19] The Cotton Initiative proponents argue that if these domestic and export subsidies were eliminated, "cotton production in WCA countries would be highly profitable and could act as an important catalyst for poverty reduction in the countries concerned."[20]

The joint proponents of the Cotton Initiative (popularly known as the "Cotton Four") have called for a "complete phase-out of support measures for the production and export of cotton."[21] Countries that subsidize their cotton growers were expected to agree to a total elimination of domestic and export subsidies "immediately" and independent of any other commitments from other WTO members on other agricultural issues.[22] Until such time as cotton subsidies are completely eliminated, the Cotton Initiative requests that cotton growers in LDCs receive compensation offsetting income lost as a result of such subsidies.[23]

In July 2004, a group of ninety developing countries championed the Cotton Four's cause by insisting that cotton subsidies be dealt with as a stand-alone issue and outside the agriculture negotiations.[24] The G90's position was met with stiff resistance from former U.S. Trade Representative Robert Zoellick, who was adamant that the issue of cotton subsidies be negotiated within the broader context

---

16. CHARLES E. HANRAHAN, THE AFRICAN COTTON INITIATIVE AND WTO AGRICULTURE NEGOTIATIONS 2 (2004), *available at* http://www.ncseonline.org/NLE/CRSreports/04Jan/RS21712.pdf.

17. *See* World Trade Organization, *supra* note 4, at 4; *see* INT'L COTTON ADVISORY COMM., PRODUCTION AND TRADE POLICIES AFFECTING THE COTTON INDUSTRY 1-3 (Sept. 2006), *available at* http://www.icac.org/govt_measures/documents/govt_measures06.pdf.

18. *See* World Trade Organization, *supra* note 4, at 2.

19. *See id.* at 3.

20. *Id.* at 1.

21. *Id.* at 2.

22. *See id.* at 6.

23. *Id.* at 7.

24. World Trade Organization, ACP Ministerial Declaration on the Doha Work Programme, *Communication from Trinidad and Tobago*, WT/L/578, at 6, (July 26, 2004) ("Cotton continues to be a vital issue for ACP [African, Caribbean, and Pacific] States and requires an urgent solution. In this regard, the ACP States underscore that it should be treated as a stand-alone issue and not as a part of the overall negotiations on agriculture.").

of the agriculture negotiations.[25] The European Union and the WTO Director-General supported Zoellick's position.[26] In the end, perhaps knowing that Brazil would keep pressure on the United States on the issue of cotton subsidies, the G90 and the Cotton Four backed off from their demand that cotton be dealt with as a stand-alone item.[27]

Following weeks of intense negotiations, preceded by months of stalemate, the WTO General Council reached an eleventh-hour framework agreement on agricultural negotiations in late July 2004 that included a compromise reached between the United States and the Cotton Four.[28] The cotton provision of the WTO General Council's August 2004 Doha work program provides that (1) cotton will be addressed "ambitiously, expeditiously, and specifically" as part of the Doha Round agriculture negotiations; (2) a subcommittee on cotton will be created that will meet periodically with the WTO Committee on Agriculture ensuring "appropriate prioritization of the cotton issue independently from other sectoral initiatives;" and (3) the WTO Director General is to work with international organizations to direct additional resources towards development of economies where cotton has vital importance.[29]

The Cotton Initiative languished thereafter for more than a year. At the December 2005 Hong Kong Ministerial Conference language was included in the Ministerial Declaration that reiterates that reform of trade-distorting cotton subsidies is to go farther and faster than reforms on subsidies for other agricultural commodities.[30] The Ministerial Declaration provides that:

- All forms of export subsidies for cotton be eliminated by developed countries in 2006.
- On market access, developed countries give duty and quota free access for cotton exports from least-developed countries (LDCs) from the commencement of the implementation period.
- Trade distorting domestic subsidies for cotton production be reduced more ambitiously than under whatever general formula is agreed and that it

25. Robert B. Zoellick, U.S. Trade Rep., Remarks at the Opening Ceremony of the G-90 Trade Ministers Meeting (July 12, 2004), http://www.ustr.gov/Document_Library/Press_Releases/2004/July/Section_Index.html.

26. Danuta Hübner, E.U. Comm'r, Address at the G-90 Ministerial Meeting Plenary Opening Session, 2 (July 12, 2004), http://trade.ec.europa.eu/doclib/docs/2004/july/tradoc_118016.pdf; Supachai Panitchpakdi, Dir.-Gen., WTO, Statement Distributed to G-90 Ministers (July 12, 2004), http://www.wto.org/english/news_e/news04_e/stat_dg_mauritius_july04_e.htm.

27. Trade Observatory, Africa Softens Stand on Cotton Subsidies (July 26, 2004), http://www.iatp.org/tradeobservatory/headlines.cfm?refID=36851.

28. *See* Elizabeth Becker, *Geneva Talks Move Towards Farm Pact*, N. Y. TIMES, July 30, 2004, § W.

29. World Trade Organization, Decision Adopted by the General Council 1 August 2004, WT/L/579 at ¶ 1(b), Annex A at ¶ 4, (Aug. 2, 2004), *available at* http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm.

30. World Trade Organization, Ministerial Declaration Adopted on 18 December 2005, WT/MIN(05)/DEC, at 3, ¶ 11 (Dec. 22, 2005), *available at* http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm.

should be implemented over a shorter period of time than generally applicable.... [31]

In connection with the third point, in an attempt to make concrete the phrase "more ambitiously," the Cotton Four proposed a formula in March 2006 that called for deeper subsidies cuts for cotton if reductions for other commodities are modest, and a timetable for making such reductions that are one-third the time for agriculture as a whole.[32] Their proposal received a warm reception from China and the EU, but the United States was more reserved in its response.[33] In July 2007 the chairman of the WTO committee responsible for agriculture negotiations, Crawford Falconer, issued a draft paper that contained the following provisions on cotton subsidies:

- Cut amber box support for cotton – the most trade-distorting of all domestic subsidies -- by 82.2%.
- Cut blue box support for cotton to a level that is one-third that for other crops (blue box subsidies are production-limiting subsidies).
- Reduce trade-distorting domestic support on cotton over a period that is one third of the implementation period for other crops.
- Eliminate export subsidies on cotton by the start of the implementation period (as opposed to 2013 for export subsidies on other agricultural commodities that are provided by developed countries).[34]

Whether the WCA cotton producers actually will receive special consideration in the Doha Round agriculture negotiations remains doubtful. Predictably, the U.S.-based National Cotton Council and some members of Congress are opposed to any special agreement in the WTO that singles out cotton and cotton subsidies.

What impact have agricultural subsidies had on cotton growers in sub-Saharan Africa? That question was indirectly answered in the 2004 WTO dispute settlement proceeding brought by Brazil against the United States. Brazil was ultimately successful in proving that U.S. domestic subsidies to cotton producers have a price suppressing effect on world prices for cotton, thus causing serious prejudice to Brazil in world cotton markets.[35] In a similar vein, SSA cotton

31. *Id.*

32. *See* Sub-Committee on Cotton, *Communication from the Co-Sponsors of the Sectoral Initiative in Favor of Cotton*, TN/AG/SCC/GEN/4, at 2, 4 (Mar. 1, 2006); *see also* Press Release, WTO Cotton Sub-Committee, Members Mull New Details in "Cotton Four" Proposal (Mar. 2, 2006), http://www.wto.org/english/news_e/news06_e/cotton_2march06_e.htm.

33. *See* Press Release, WTO Cotton Sub-Committee, Members Mull New Details in "Cotton Four" Proposal (Mar. 2, 2006), http://www.wto.org/english/news_e/news06_e/cotton_2march06_e.htm.

34. *See* WTO Committee on Agriculture, Special Session, Revised Draft Modalities for Agriculture, TN/AG/W/4, at 9, 24 (Aug. 1, 2007).

35. *See* Appellate Body Report, *United States – Subsidies on Upland Cotton*, ¶ 763, WT/DS267/AB/R (Mar. 3, 2005) [hereinafter *Upland Cotton*]. In its 2008 report on the whether the United States had complied with the Appellate Body's 2005 report, the Appellate Body once again confirmed that U.S. cotton subsidies violate the WTO Agreement on Subsidies and Countervailing Measures. *See* Appellate Body Report, *United States – Subsidies on Upland Cotton, Recourse to Article 21.5 of the DSU by Brazil*, WT/DS267/AB/RW (June 2, 2008).

growers maintain that they have to contend with artificially low prices for cotton on world markets as a result of being forced to compete with subsidized cotton in those markets.[36] Let me briefly summarize the argument that subsidies suppress the price of cotton in third-country and world markets.

At least a dozen countries provide direct support to cotton production: the United States, China, India, Greece, Spain, Turkey, Brazil, Mexico, Uzbekistan, Colombia, Benin, and Egypt.[37] Subsidies that are tied to the price of a commodity encourage production, which in turn encourage overproduction even when market forces are signaling that production should be decreased. By encouraging overproduction, these subsidies prevent the price of cotton on world markets from naturally rising as they would in a market of steady demand and declining supplies. In a report published in April 2007, the Congressional Research Service estimated that subsidies to U.S. cotton growers over the ten-year period 1996-2005 averaged $2.47 billion annually.[38] In 2003/04 the amount of support was over $5 billion.[39] The adjusted world price for cotton in 2004 was nearly $.56 per pound, the highest it has been in seven seasons.[40] In 2006/07, the average international price for cotton rose to $.60 per pound.[41] But these prices are still down from their 1994-1995 high of over $.76 per pound.[42]

Although the United States Trade Representative's office and U.S. cotton farmers contend that the most important determinant of world cotton prices is Chinese production and Chinese import levels, various studies conclude that world cotton prices are also affected by U.S. subsidies.[43] An agriculture economist with

---

36. *See* Int'l Centre for Trade and Sustainable Dev., *Brazil: WTO Cotton Victory Against U.S. Reaffirmed*, BRIDGES: WEEKLY TRADE NEWS DIGEST, Mar. 9, 2005, *available at* http://www.ictsd.org/weekly/05-03-09/story1.htm; *see also* World Trade Organization, *supra* note 4, at 2.

37. *See* INT'L COTTON ADVISORY COMM., *supra* note 17, at 1-3; *see also* JOHN BAFFES ET. AL., COTTON: MARKET STRUCTURE, POLICIES AND DEVELOPMENT ISSUES 2-3, 6, 7 (2004), http://www.worldbank.org/prospects (follow "Resources: Cotton" hyperlink) (last visited Feb. 19, 2008).

38. RANDY SCHNEPF & JASPER WOMACH, POTENTIAL CHALLENGES TO U.S. FARM SUBSIDIES IN THE WTO 24 (2007), *available at* http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf.

39. *Id.* at 28.

40. *See* FOREIGN AGRIC. SERV., U.S. DEP'T AGRIC., COTTON: WORLD MARKETS AND TRADE, CIRCULAR SERIES FOP 08-02, 24 tbl. 8 (Feb. 2008), *available at*: http://www.fas.usda.gov/cotton/circular/2008/February/cotton0208.pdf; *see also* Kevin C. Kennedy, *The Incoherence of Agricultural, Trade and Development Policy for Sub-Saharan Africa: Sowing the Seeds of False Hope for Sub-Saharan Africa's Cotton Farmers?*, 14 KAN. J. L. & PUB. POL'Y 307, 315 (2005).

41. *See* FOREIGN AGRIC. SERV., *supra* note 40, at 24 tbl. 8. *See also* Karen Halverson Cross, *King Cotton, Developing Countries and the 'Peace Clause': The WTO's U.S. Cotton Subsidies Decision*, 9 J. INT'L ECON. L. 149, 183 n. 206 (2006) (explaining the WTO Appellate Body's decision to uphold the finding that the Cotlook Index-A reflected the world market price for cotton).

42. *See* FOREIGN AGRIC. SERV., *supra* note 40, at 24 tbl. 8.

43. *See* OFFICE OF THE U.S. TRADE REP., DISPELLING MYTHS ABOUT U.S. SUPPORT TO COTTON FARMERS 3-4 (2004), http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2004/asset_upload_file784_6153.pdf ; *see also* Ron Smith, *The China Syndrome Dictates U.S. Cotton Prices*, SW. FARM PRESS, Nov. 19, 2004,

the University of California concludes that the elimination of U.S. cotton subsidies would increase world prices by about 10 percent.[44] Other studies have shown an impact as high as 30 percent, while others, including one by the International Monetary Fund, find an impact of 2-3 percent.[45] A number of factors affect these findings, including the base year used for counting U.S. payments, which are often linked to prices and rise when prices fall, and to production in other countries. While findings range from a 30-percent impact to a 2-percent impact, the real impact is probably somewhere in between.

Putting to one side the question of what impact subsidies have on the world price of cotton, from the standpoint of comparative advantage, should either sub-Saharan Africa or the United States be growing cotton? By international standards, the WCA countries produce high-quality cotton with production costs among the lowest in the world, clearly lower than those of the United States and the European Union. According to a 2002 World Bank working paper, cotton is "an economically viable crop" in West and Central Africa "that has had a significant and positive impact on exports, economic growth, and rural development."[46] The region produces high-quality cotton and high average crop yields by international standards, and does so using farming techniques that are labor intensive (in contrast to mechanized cotton farming in the United States) and on small, one-to-three acre farms.[47] U.S. cotton growers, on the other hand, are not low-cost producers of cotton. On the contrary, statistics from the U.S. Department of Agriculture estimate that the average cost of producing a pound of raw cotton in the United States is $.73 per pound, compared to an average cost of production in Burkina Faso of $.21 per pound.[48] According to the Congressional Research Service, 37 percent of U.S. cotton growers' total costs are covered by subsidies.[49] In other words, U.S. cotton farmers' revenue covers only 63 percent of their total costs. As noted by the Congressional Research Service, "These comparisons

---

http://southwestfarmpress.com/news/041119-china-cotton-prices/'

44. Daniel A. Sumner, A Quantitative Simulation Analysis of the Impacts of U.S. Cotton Subsidies on Cotton Prices and Quantities, 1 (reproduced in Brazil's Further Submission of Sept. 9, 2003, Annex 1), *available at* http://www.mre.gov.br/portugues/ministerio/sitios_secretaria/cgc/analisequantitativa.pdf.

45. U.N. Econ. Comm'n for Afr., Economic Report on Africa 2004: Unlocking Africa's Trade Potential at 34, U.N. Sales No. E.04.II.K.12 (2004), *available at* http://www.uneca.org/era2004/chap1.pdf; Stephen Tokarick, Trade Issues in the Doha Round: Dispelling Some Misconceptions, IMF Policy Discussion Paper PDP/06/4, at 15 (2006), *available at* http://www.imf.org/external/pubs/ft/pdp/2006/pdp04.pdf.

46. Ousmane Badiane, Dhaneshwar Ghura, Louis Goreux, & Paul Masson, *Cotton Sector Strategies in West and Central Africa* 9 (World Bank Policy Research Working Paper No. 2867, 2002), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=636229.

47. *Id.*; *see also* Gérald Estur, Int'l Cotton Advisory Comm., Speech Presented to the Beltwide Cotton Economics and Marketing Conference: Is West African Cotton Competitive with the U.S. on the World Cotton Market?, at 1-2, 4 (Jan. 7, 2005), http://www.icac.org/cotton_info/speeches/estur/2005/beltwide_05.pdf.

48. KEVIN WATKINS, CULTIVATING POVERTY: THE IMPACT OF US COTTON SUBSIDIES ON AFRICA 11(Oxfam Briefing Paper 30, 2002), *available at* http://www.ictsd.org/issarea/ag/resources/Oxfam1.pdf.

49. SCHNEPF & WOMACH, *supra* note 38, at 26.

suggest that it is only with the aid of subsidies that a substantial portion of U.S. [cotton] production is made economically sustainable."[50]

Sub-Saharan Africa faces many complex problems, and complex problems generally call for complex solutions. However, in the case of cotton, the answer to the question of how to help the region's cotton producers seems to call for an economically simple solution, but unfortunately one that is politically difficult: eliminate government subsidies to cotton producers and create an interim mechanism to compensate SSA cotton producers for lost income until all government subsidies to cotton producers are phased out. A recent World Bank working paper supports the view that subsidies reform in developed countries would be beneficial to West African cotton producers.[51]

What are the prospects for subsidies reform by the world's major cotton producers? The U.S. Trade Representative and U.S. Agriculture Secretary stated in 2005 that if a Doha Round agreement on agriculture is not concluded, then it would be very difficult to address the African demands on cotton.[52] The complete elimination of both domestic and export subsidies seems unlikely, although WTO members have pledged to eliminate export subsidies on all agricultural products by "by a credible end date," which is probably 2013.[53] Because export subsidies are deemed to be per se trade distorting, they have been prohibited on all non-agricultural trade since 1995.[54] Extending this prohibition to agricultural trade has been agreed to in principle; the next step is to agree on a phase-out period.

With regard to the thornier issue of domestic subsidies, perhaps the best near-term solution for WCA cotton producers is for subsidizing nations to move to a system of fully decoupled support (that is, support that is not tied to production in any respect) rather than price support.[55] In order for decoupled support to work in a less market distorting way than it currently does, such support must have the following features.

First, to ensure that production is not encouraged, decoupled support has to be the only form of farm support. The 2008 farm bill that was enacted over President Bush's veto moves in that direction, but only slightly.[56] Likewise, the condition that land stay in agriculture as a condition for receipt of decoupled support should be eliminated because it only serves to encourage production. The amber box and blue box categories of farm support that are tied either to price or production, as

50. *Id.* at 25.

51. *See* Kym Anderson & Ernesto Valenzuela, *The World Trade Organization's Doha Cotton Initiative: A Tale of Two Issues* 7, 17-18 (World Bank Policy Research Working Paper No. 3918, 2006), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=917489.

52. *See* Bruce Odessey, *U.S. Waits for Substantial Agriculture Offers from Others at WTO*, U.S. DEP'T OF ST., Oct. 11, 2005, http://usinfo.state.gov/ei/Archive/2005/Oct/11-415211.html.

53. World Trade Organization, *supra* note 29, at ¶ 17.

54. *See* Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, art. 3.1-3.2, 33 I.L.M. 1125 (1994) [hereinafter SCM].

55. *See* Baffes, *supra* note 5, at 32.

56. *See* Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-234, 122 Stat. 923 (2008).

well as exempted de minimis subsidies of up to 5 percent of a country's total agricultural production, must be eliminated. Second, just as import quotas on textile and clothing were gradually phased out over a ten-year period under the Agreement on Textiles and Clothing, so too all export subsidies and domestic subsidies in the form of decoupled support should be progressively phased out.[57]

Turning to internal reforms within sub-Saharan Africa, room exists for greater market reforms within WCA cotton-producing countries.[58] In addition, only 10 percent of African trade is with other African nations, leaving a fragmented market that cannot achieve economies of scale, making the region less attractive as a destination for foreign investment.[59] Underscoring this point, United Nations Conference on Trade and Development (UNCTAD) observes that "the full potential of intra-African trade has yet to be fully exploited through greater coordination of efforts aimed at harmonizing customs procedures and reducing tariffs and non-tariff barriers, and at improving transport and communications links through greater investment in developing regional infrastructure."[60] For this reason, it has been suggested that the key to sub-Saharan Africa becoming a significant player in the global economy is for SSA countries to form a regional trading bloc.[61] However, the record of existing SSA free trade areas and customs unions in integrating the economies of their member states is at best mixed. Based on the region's choppy experience with free trade areas and customs unions, I find the suggestion to create a pan-SSA trading bloc, whether in the form of a free trade area or a customs union, to be extremely problematic.

UNCTAD has also suggested that phasing out agricultural support should coincide with increased international financial and technical assistance to agriculture in the LDCs to promote agricultural productivity growth and commercialization.[62] In 2001 government payments to farmers in Organization for Economic Co-operation and Development (OECD) countries were actually seven times the level of total official development assistance (ODA) to the LDCs.[63] In 2001, net flows of ODA to LDCs would have doubled if just 14 percent of the 2001 value of government payments to OECD agricultural producers had been redirected in aid to the LDCs.[64] There is thus an opportunity for major poverty

57. *See* Agreement on Textiles and Clothing, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, art. 3, 33 I.L.M. 1125 (1994) (terminated Jan. 1, 2005).

58. *See* Ben Shepherd & Claire Delpeuch, *Subsidies and Regulatory Reform in West African Cotton: What Are the Development Stakes?* (Groupe d'Economie Mondiale, MPRA Paper No. 2289, 2007), *available at* http://mpra.ub.uni-meunchen.de/2289/.

59. *See* Gumisai Mutume, *How to Boost Trade within Africa: Lower Barriers and Diversify Production*, 16 AFRICA RECOVERY 20 (2002).

60. *See* U.N. Conference on Trade and Development, 2003, *Economic Development in Africa: Trade Performance and Commodity Dependence* 54, U.N. Doc. UNCTAD/GDS/AFRICA/2003/1 (2003).

61. *See id.* at 53-54.

62. *See id.* at 55-60.

63. U.N. Conference on Trade and Development, 2004, *The Least Developed Countries Report 2004: Improving the Trade-Poverty Relationship through the International Trade Regime*, 229, U.N. Doc UNCTAD/LDC/2004 (2004).

64. *Id.*

reduction benefits not only through phasing out agricultural support but also by increasing international assistance to promote agricultural development in the LDCs. With regard to UNCTAD's suggestion of providing aid to SSA cotton producers during the transition period, it is time for the European Union and the United States to agree to a coordinated, collaborative trade and development program for sub-Saharan Africa. As the region's first and second largest trading partners, accounting for nearly 60 percent of all trade with the region, the European Union and the United States are perfectly placed to influence the economic course of sub-Saharan Africa through a coordinated trade, aid, and development program for the region. It is time to join forces for the good of the world's poorest nations.

Considering the heavy dependency of sub-Saharan Africa on agriculture, U.S. agricultural policy appears to be unintentionally punishing SSA cotton growers and working at cross purposes with the U.S. trade preference and development program for the region, the African Growth and Opportunity Act. SSA cotton producers, who are internationally competitive, are hobbled when it comes to fully competing in international markets largely due to a single, but formidable, exogenous factor: a subsidies-distorted international market for cotton. Elimination of cotton subsidies in China, the European Union, and the United States – especially in China and the United States, the world's two largest producers, and, in the case of the United States, the world's top exporter with a 40-percent share of total world exports – would lead to a reallocation of production to lower cost producers, including those in West and Central Africa. The latter in turn would experience increased income and a reduction in poverty in what is the poorest region of the world. At the same time, however, internal reforms within the SSA cotton sector need to be vigorously pursued, including reform of inefficient monopsonies within the region and greater vertical integration of cotton production. In addition, if the region is to be weaned from its overdependence on agriculture, then sending signals in the form of increased prices to current cotton farmers to stay in cotton production, and to potential cotton farmers to grow cotton, has to be anticipated and planned for.

With the Doha Round negotiations on reducing agricultural subsidies and improving market access deadlocked, which in turn has led to stalemate in the overall negotiations, the hurdle of eliminating cotton subsidies is clearly insurmountable in the absence of forward movement on agriculture negotiations as a whole. The 2002 U.S. Farm Act has been replaced with the 2008 Farm Bill that essentially maintains the status quo. The same subsidy programs for U.S. farmers that were part of the 2002 Farm Bill are continued at approximately the same rates of payment.[65] Even if the Doha Round negotiations can be revived soon, it might be impossible to achieve meaningful reform of agricultural subsidies.

In the meantime, as Brazil has successfully defended its 2005 victory at the WTO in the 2008 Appellate Body report in the *Upland Cotton* case,[66] African

65. *See* Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-234, 122 Stat. 923 (2008).

66. *See* Appellate Body Report, *United States – Subsidies on Upland Cotton, Recourse to Article 21.5 of the DSU by Brazil*, WT/DS267/AB/RW (June 2, 2008). *See also* RANDY SCHNEPF, BRAZIL'S

countries are themselves threatening to bring a WTO complaint unless meaningful progress is achieved soon on the Cotton Initiative.[67] With the expiration of the "peace clause" in the Agreement on Agriculture in 2003, [68] other U.S. crops besides cotton might also be vulnerable to litigation, not only at the WTO, but also from domestic producers in countries that import U.S. agricultural commodities who could file countervailing duty petitions with their national investigating authorities. Earlier this year, Canada filed a WTO complaint against the United States challenging U.S. subsidies to corn producers.[69] I don't want to leave you with the false impression that the United States is a subsidies sinner in a world of free-market saints. On the contrary, the world's largest subsidizer is the EU, followed by the United States, with Japan a distant third.[70] However, when stated as a percentage of total agricultural production, all three provide subsidies that amount to roughly 37 percent of the total value of their respective agricultural production.[71] Having said that, as Table 5 shows, U.S. subsidies on corn, soybeans, sorghum, and wheat are huge.

Table 5. U.S. Commodity-Specific Program Support and Insurance, Subsidy Payments, Yearly Average, FY1996-2005

	Av. Subsidy Payments			Subsidy Payment		Cash Receipts	
Commodity	CCC[a]	Crop Ins.[b]	Total	Period Min	Period Max	Total Value	Subsidy Share of Total Value
	$ Millions						%
Rice	981	9	990	450	1,786	1.379	72%
Upland Cotton	2.221	247	2,468	736	6,522	4.229	58%
Sorghum	376	63	439	188	991	984	45%
Wheat	2,024	288	2.312	1.374	5,418	6,798	34%
Barley	171	18	190	86	414	636	30%
Corn	4.390	88	4.478	1,120	10,149	18.024	25%
Oats	19	4	23	9	64	93	25%
Sunflower Seed	47	29	76	0	178	368	21%
Canola	18	10	27	0	60	137	20%
Flaxseed	5	1	6	0	21	49	13%
Dry Peas	5	1	6	0	36	49	12%
Peanuts	73	31	104	0	332	909	11%
Soybeans	1,362	120	1,481	0	3,520	14.772	10%

Source: Congressional Research Service[72]

WTO CASE AGAINST THE U.S. COTTON PROGRAM 18-20 (2007), *available at* http://www.ncseonline.org/NLE/CRSreports/07Oct/RL32571.pdf.

67. *See id.* at 20-22.

68. Agreement on Agriculture, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, art. 1(f), 33 I.L.M. 1125 (1994).

69. Request for Consultations by Canada, *United States–Subsidies and Other Domestic Support for Corn and Other Agricultural Products*, WT/DS357/1 (Jan. 11, 2007) [hereinafter *U.S. Subsidies and Other Domestic Support*].

70. CONGRESS OF THE UNITED STATES, CONGRESSIONAL BUDGET OFFICE, POLICIES THAT DISTORT WORLD AGRICULTURAL TRADE: PREVALENCE AND MAGNITUDE ix (2005), *available at* http://www.cbo.gov/ftpdocs/66xx/doc6614/08-22-Doha.pdf.

71. *Id.* at xi.

72. SCHNEPF & WOMACH, *supra* note 37, at 23.

These commodities also receive domestic subsidies under the same statutory programs that the WTO Appellate Body found to be WTO-inconsistent in Upland Cotton.[73] And as shown in Table 6, the United States has substantial world market shares of corn, soybeans, sorghum, and wheat.

Table 6. U.S. Share of World Production and Trade for Selected Commodities, Yearly Average, 2002-2005

Commodity	Farm Cash Receipts	Farm Value of Exports	U.S. Exports: Share of U.S. Production	U.S. Share of: World Production	World Exports
	$ Million		Percent	Percent	
Corn	19,587	3,468	18%	40%	61%
Soybeans	16,631	5,791	35%	38%	44%
Wheat	6,807	3,398	50%	9%	25%
Cotton	5,204	3,644	70%	20%	40%
Rice	1,216	638	52%	2%	13%
Sorghum	869	412	47%	18%	83%
Peanuts	761	92	12%	6%	11%

Source: Congressional Research Service[74]

Query whether those world market shares have been at the expense of producers in other WTO member countries? Brazil demonstrated in Upland Cotton that establishing a WTO violation is not an insurmountable obstacle in a WTO dispute settlement proceeding.[75] Canada will press similar arguments in its recent WTO complaint brought against U.S. subsidies to corn growers.[76] In short, U.S. subsidies programs for agricultural commodities are vulnerable to legal challenge at the WTO and possibly in countervailing duties actions brought by domestic producers in other WTO member countries. With the collapse of the Doha Round looming, litigation may unfortunately replace negotiation as the default mechanism for forcing reforms.

73. *See id.* at 9-32; *see Upland Cotton*, *supra* note 35.
74. *See* SCHNEPF & WOMACH, *supra* note 38, at 31.
75. *Upland Cotton*, *supra* note 35.
76. *See U.S. Subsidies and Other Domestic Support*, *supra* note 69.