

Member's Schedule, as well as domestic support within de minimis levels and in conformity with paragraph 2 of Article 6, shall be:

- (i) exempt from the imposition of countervailing duties unless a determination of injury or threat thereof is made in accordance with Article VI of GATT 1994 and Part V of the Subsidies Agreement, and due restraint shall be shown in initiating any countervailing duty investigations;

Article 6. In either case, they must conform fully to the provisions of Article 6 and, hence, are subject to paragraph (b).

The conditions that apply to green box measures are set out in the chapeau of paragraph (a). The conditions that apply to non-green box measures are set out in the chapeau of paragraph (b), subject to an additional condition in the proviso in subparagraphs (ii) and (iii) that 'such measures do not grant support to a specific commodity in excess of that decided in the 1992 marketing year'. Each of these two groups of conditions provides exemptions from actions based on certain provisions, including paragraph 1 of Article XVI of the and Articles 5 and 6 of the

¹ Domestic support measures that satisfy

a particular thing or person, or a class of these; peculiar ()'. In our view, the term 'specific' in the phrase 'support to a specific commodity' means the 'commodity' must be clearly identifiable. The use of term [] 'to' connecting 'support' with 'a specific commodity' means that support must 'specially pertain' to a particular commodity in the sense of being conferred on that commodity. In addition, the terms 'such measures ... grant' indicates that a discernible link must exist between 'such measures' and the particular commodity to which support is granted. Thus, it is not sufficient that a commodity happens to benefit from support, or that support ends up flowing to that commodity by mere coincidence. Rather, the phrase 'such measures' granting 'support to a specific commodity' implies a discernible link between the support-conferring measure and the particular commodity to which support is granted."¹²

10. In the Appellate Body rejected the argument that the phrase "support to a specific commodity" should be limited only to "product-specific support". First, it noted that the drafters chose a different phrase from those used elsewhere in the Agreement on Agriculture. Second, the Appellate Body noted that the scope of domestic support measures that may grant "support to a specific commodity" includes all non-green box domestic support measures identified in the chapeau of Article 13(b), which are the following:

"Measures covered by Article 6 include both product-specific and non-product-specific amber box support subject to reduction commitments. In addition, measures covered by the chapeau include product-specific and non-product-specific s[(su)-5(p)-3(p)-3316-t

support was granted as a result of those decisions is not addressed in the text. Decisions taken during the 1992 marketing year could have related to support granted in the same marketing year or in a later marketing year or in several marketing years. The text does not preclude any of these possibilities."¹⁶

14. The Panel on ~~the~~ did not find any particular policy decisions taken by the United States during the 1992 marketing year that added up to a measure of support. Instead, the only decisions on support for upland cotton taken by the United States during the 1992 marketing year were those to effectuate payments pursuant to programmes that provided support to upland cotton¹⁷:

"The only other decisions on support for upland cotton in the United States during the 1992 marketing year were decisions to make particular payments under programmes to support upland cotton. Each of those was a 'determination' of a recipient's entitlement to a payment, in a particular amount, according to the programme and payment conditions, and hence a 'decision on 'support' taken 'during the 1992 marketing year'. Those determinations involved consideration by the United States government of its obligations or authority to make payments, and matters such as eligibility criteria, compliance with acreage conditions, relevant rates and prices, and volume of upland cotton harvested and used, as set out in the applicable laws and regulations. There is no evidence that payments determined by these decisions involved substantial delays from the time these decisions were taken such that they were made in a different marketing year from that in which the payments were made. The sum of these decisions represents an amount of support that can be compared meaningfully with implementation period support and which can be measured according to the same methodology. In the Panel's view, this is the correct measure of the MY 1992 benchmark in this dispute."¹⁸

15. The Panel on also found that two 1992 EC regulations reforming the Common Agricultural Policy, which the condition in Article 13(b)(ii) may have been designed to protect, provided no assistance in interpreting the phrase "support decided in the 1992 marketing year" because they were "done" on the day before the beginning of the 1992 marketing year:

"The two EC regulations submitted to the Panel show that they were both 'done' on 30 June 1992. This appears to mean that the decisions to adopt those regulations were taken on that day, although they entered into force the following day. Both define the marketing year for the relevant products as beginning on 1 July and ending on 30 June of the following year so that, for those products and the European Communities, the 1992 marketing year did not begin until 1 July 1992. Therefore, on their own terms, neither regulation appears to have b the phrase "supporo()-140(h)ties,000008871 0 595.32 841.92

(which includes Articles 8 through 11, as well as, by reference, Article 3.3, of that Agreement) and export subsidy reduction commitments in each Member's Schedule.

...

Our examination of the export subsidy claims of Brazil under the will, in the first instance, determine the merits of Brazil's claims under the export subsidy provisions of the . Where substantive compliance with the provisions of Part V and fulfilment of Article 13(c) of the are both squarely before us, these findings will also be determinative for the purposes of the examination of consistency with Part V of the called for under Article 13(c)(ii) of the . Should we find a violation of the export subsidy provisions in Part V of the we may then conduct an examination, as necessary and appropriate for the resolution of this dispute, under Articles 3.1(a) and 3.2 of the and/or Article XVI of the .²⁰

Current as of: December 2023

²⁰ Panel Report,

, paras. 7.675 and 7.677.