

# Challenging US cotton subsidies

*What can explain the change in US policy vis-à-vis  
Brazil in the WTO case on cotton subsidies?*

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IV

# Abstract

This thesis aims to explain the outcome of the WTO dispute on cotton subsidies between Brazil and US by analysing possible factors for the change in US policy vis-à-vis Brazil in the case. Brazil challenged US cotton subsidies through WTO dispute settlement in 2002, and the process has been running since, with a preliminary stop in June 2010. The WTO dispute settlement body issued two sets of recommendations in the case: One in 2005, after the first treatment of the case, and one in 2008 after the second. This essay attempts to explain why US changed their policy from after the first to after the second report.

The essay concludes that the Brazilian threat of cross-retaliation was necessary for the change of US policy. However, more factors contributed to the outcome. The situation of the US economy, particularly in the aftermath of the financial crisis, enhanced the effect of the sanctions significantly. The cross-retaliation threat thus opened up a window of opportunity. The changed bilateral power relationship between US and Brazil was an important factor, as Brazil became a relatively more powerful actor. The role of the domestic ratification procedures in US played in, particularly in explaining why Brazil accepted the lack of full US compliance. Also, the relative strength of different US lobbies changed the US domestic coalition after the Brazilian cross-retaliation threat, weakening the US bargaining position.

# Abbreviations

AB: Appellate Body

AoA: The WTO Agreement on Agriculture

ASCM: The WTO Agreement on Subsidies and Countervailing Measures

C4: Cotton 4, the four West-African cotton-exporting nations Mali, Burkina Faso, Chad, Benin

CCC: Commodity Credit Corporation, a body under USDA

CCP: Counter-Cyclical Payments

DS267: Dispute Settlement 267: United States – Subsidies on Upland Cotton

DSB: Dispute Settlement Body

DSU: Dispute Settlement Understanding, the WTO agreement that covers dispute settlement.  
In full: the Understanding on Rules and Procedures Governing the Settlement of Disputes

EC: European Communities. Previously the official name of the European Union in the WTO.

GATS: The WTO's General Agreement on Trade in Services

G2: EU and US

IP: Intellectual Property

MAS: Mutually Agreed Solution between two parties in a WTO dispute settlement

TRIPS: Trade Related Aspects of Intellectual Property Rights

US: United States

USDA: United States Department of Agriculture

USTR: United States Trade Representative

WTO: World Trade organisation

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*Word Count: 41 575*





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# 1 Introduction

”We want to show the US that it doesn’t matter if you are big or small, or how much money you have as a nation. We all want to be respected and to be treated fairly”.

*Luiz Inacio da Silva, President of Brazil, March 10<sup>th</sup> 2010*

The World Trade Organization (WTO) dispute between US and Brazil on upland cotton was initiated by Brazil in 2002. Being a major cotton exporter, Brazil argued that the United States (US) subsidies on upland cotton were trade-distorting, suppressing cotton prices on the global market, and in violation of WTO rules. The case has attracted attention among scholars and media for several reasons; it touches upon cotton subsidies, a subject of controversy among several developing countries; Brazil threatened with cross-retaliation<sup>1</sup>, a retaliation<sup>2</sup> tool that never before has been used; and one of the outcomes was that the US government today actually subsidises Brazilian cotton farmers. Also, it is one of WTO’s longest-running trade disputes, as it has been going on for almost a decade – since 2002. Like Hillary Clinton said: “I feel like I have walked into a movie that has been going on for years” (Clinton 2010). This thesis aims to analyse the factors which can explain the outcome of the dispute, and more concretely, the change in the relevant US policy over the dispute’s life-span. The research question I aim to answer in this thesis is:

*What can explain the change in US policy vis-à-vis Brazil in the WTO case on cotton subsidies?*

## 1.1 Research question

### 1.1.1. Research question

Within the field of international trade, the arguably most important set of international agreements and rules are organized within the WTO. A central question when studying

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<sup>1</sup> I define *cross-retaliation* as “a situation where the complaining country retaliates (i.e. suspends concessions or other obligations) under a sector or an agreement which has not been violated by the defending country” (WTO 2005.)

<sup>2</sup> I define *retaliation* as what WTO refers to as *countervailing measures*: “Action taken by the importing country, usually in the form of increased duties to offset subsidies given to producers or exporters in the exporting country” (WTOd).

international organizations, is what makes member states comply, and not least, how do you deal with non-compliance.

An important answer to this in WTO is the WTO dispute settlement mechanism. It can be viewed as the judicial court of WTO. Member countries can challenge other member countries in the Dispute Settlement Body<sup>3</sup> (DSB), given that the former believes that the latter has broken WTO law. However, in a case of non-compliance, WTO does now have the possibility to by itself impose sanctions against a non-compliant country. In such a case, WTO can authorise the right to retaliate to the complaining country, but it is up to this state to actually retaliate (WTO 2011a).

Horlick (2002: 636) argues that the Dispute Settlement Understanding (DSU), which is the legal text about dispute settlement in the WTO agreement (WTO 1994), is the “crown jewel of the Uruguay Round”, as it is regarded as having brought something close to judicial order to WTO (Horlick 2002: 636). Within the range of international agreements, and compared to GATT’s dispute settlement system in particular, the WTO dispute settlement system is viewed as strong. One reason for this is the negative consensus rule in the DSB when adopting reports. This means all member states have to agree in order to *not* adopt a report (WTO 1994: Article 17). In general, the system is viewed to be working rather well - most disputes are solved rather smoothly; either bilaterally, or by the offending country implementing the recommendations from the DSB report (Hoekman and Kostecki 2009: 93). However there are important exceptions - one being the dispute which is the subject of this essay: The Dispute on Upland Cotton (DS267) between US and Brazil.

The DSB has treated the issue over two sessions, adopting the first Appellate Body<sup>4</sup> (AB) report in 2005, and the second in 2008. The second part of the process was initiated by Brazil in 2006, when Brazil requested a compliance panel to examine whether US had complied with the recommendations from the report (WTO 2010b). Both the 2005 and the 2008 reports concluded by largely agreeing with Brazil’s complaints. After Brazil got the right to cross-retaliate against a broad range of US industries, the countries signed an agreement in June

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<sup>3</sup> The *Dispute Settlement Body* is what the WTO General Council is referred to as “when the WTO General Council meets to settle trade disputes” (WTOd)

<sup>4</sup> The *Appellate Body* is “an independent seven-person body that considers appeals in WTO disputes. When one or more parties to the dispute appeals, the Appellate Body reviews the findings in panel reports” (WTOd)

2010 in which US vowed to comply with the WTO recommendations, as well as issuing considerable economic compensation to Brazilian farmers.<sup>5</sup>

The possible explanations for the outcome of dispute (DS267) are the subject of this paper. Based on the changes in the US response from after the first to after the second report, the thesis will analyse how and why relevant US policies changed from after the first to the second report, and which factors that may have motivated these changes.

**The research question is:**

*What can explain the change in US policy vis-à-vis Brazil in the WTO case on cotton subsidies?*

I specify this research question with the following points:

*Change* refers to the change in US policy between the two time spans defined below. I will define this by answering the following additional research question, which I will refer to as my background research question, as it constitutes the background for my main research question.

**The background research question is:**

*What was the change in relevant US policy actions after the 2005 report to after the 2008 report?*

The background for the relevant US policy actions will be presented in Chapter 2. The definition of the *change* which the background research question asks for, will be discussed and answered in Chapter 4. The answer to this background research question constitutes the background for my analysis.

*The two time spans* suggested in the background research question above are defined as 1) from when DSB adopted the AB report on March 21<sup>st</sup> 2005 to the enactment of the US farm bill in June 18<sup>th</sup> 2008 and 2) from when DSB adopted the AB report on June 25<sup>th</sup> 2008 to the Framework Agreement was reached between US and Brazil on June 17<sup>th</sup> 2010. The analysis thus ends with the June 17<sup>th</sup> 2010 Framework Agreement between US and Brazil.

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<sup>5</sup> For details on how the dispute settlement system works, see WTOa.

I understand some of the most important changes between the two reports as the following: When answering the background research question in Chapter 4, I will argue that US went further in pleasing Brazil after the 2008 report than after the 2005 report. US went further in complying with the DSB recommendations after the 2008 ruling, and promised to comply in the 2012 farm bill. It is important to note, however, that US has not to date fully complied with DSB's recommendations. Notably, the US and Brazil also agreed on some seemingly curious policy actions post-2008: US agreed on issuing compensation to Brazil, in the form of what can be viewed as a subsidy to Brazilian farmers. Also, US lifted bans on Brazilian beef by recognizing an area of Brazil as free of foot- and mouth-disease and other diseases. It might seem odd to the reader what this has to do with cotton subsidies, and indeed, I wish to analyse the possible explanations for these US actions.

Another important note is that none of the parties can be declared as the indisputable "winner" following the outcome after 2008. Both US farmers and Brazilian politicians expressed satisfaction with the outcome, while US farm policy reformers and non-Brazilian cotton exporters (for instance, West-African cotton producers, whose situation will be mentioned below) were dissatisfied. Note also that the focus of this essay is not the legal process in the DSB. Rather, I'm analysing the reasons for why the US changed their policy *following* the reports.

For a reader familiar with the case, the answer to the research question might seem straightforward: As Brazil was given the right to cross-retaliate against US goods after the 2008 report, change in US policy was due to the Brazilian threat of cross-retaliation in 2010, could be an intuitive answer. However, in my analysis, I will show that there are many factors that may have affected the US policy choices relevant to this case. Several of these factors have changed within the time scope of my analysis. A central part of my analysis will be to see how the different factors have influenced the process, and how the factors have interplayed with the cross-retaliation threat.

### **1.1.2. Context**

Despite the uniqueness of the case, I believe my case of study is relevant within a broader context. Below I will discuss the following issues that I believe are a part of the context of the case on US cotton subsidies: first, the debate on reaching an agreement on agriculture in WTO, or more particularly the debate on agricultural subsidies, second, the particular

relevance of trade in cotton (particularly for developing countries), and third, the situation for developing countries in the Dispute Settlement Body.

#### **1.1.2.1. Agriculture and agricultural subsidies in the WTO**

It is quite a widespread perception among scholars that agriculture in the WTO is a central issue for many developing countries (see Schuh 2002). Developed countries' protection of the agricultural sector, including agricultural subsidies, is a central issue in WTO negotiations. A common appeal from developing countries in WTO has been that the richer countries should cease the dumping of subsidized products on foreign markets and abandon subsidies that distort market prices on the global market for agricultural products. Also, several developing countries argue that developed countries should open their markets to agricultural export from developing countries (Schuh 2002: 441, Hoekman and Kostecki 2009: 275). Also, NGOs have argued that the DS267 ruling implied that US as well as EU have used loopholes in the system and creative accounting in order to hide dumping of agricultural products on the global market (Oxfam 2004:1).

Disagreement on agriculture is argued to be one of the main obstacles for achieving an agreement in the WTO Doha Round (Hoekman and Kostecki 2009: 21; Hertel and Keeney 2006). This is despite the fact that agriculture only accounted for 8 percent of world trade in 2006 (Hoekman and Kostecki 2009: 12). This can be explained by the possibilities of gains which lie within increased trade with agricultural goods. An estimate from 2006 concludes that full liberalization in agricultural trade would generate significant gains to developing countries and transition economies (Hertel and Keeney 2006: 13, Schuh 2002:435). However, according to other scholars (Bureau, Jean and Matthews 2005: 4), such estimates are often overrated, as they often don't include the factor that full liberalisation can cause developing countries to lose the benefits of preferential access to US and EU markets. However, these scholars also argue that for several developing countries, in particular middle-income countries, liberalisation can be a source of gain (Bureau, Jean and Matthews 2005: 4). The US-Brazil case on upland cotton showed that it is possible to argue in WTO that subsidies in rich countries depress global market prices (Hoekman and Kostecki 2009: 298). The case is therefore likely to be of interest for several WTO members who have an interest in removing developed countries' agricultural subsidies.

### 1.1.2.2. The particular importance of cotton in WTO

In the Doha round, cotton subsidies was early a prominent issue when discussing agriculture. This concerned US cotton policy in particular: “US resistance to making this a priority area for reform played an important role in souring the atmosphere” (Hoekman and Kostecki 2009: 285). The US subsidies on cotton were criticised as having negative spillover effect on other cotton producers. The West African cotton producers Benin, Mali, Burkina Faso and Chad (termed the Cotton 4, or the C4 in the Doha round) have particular interest in this. For Burkina Faso, for example, the cotton sector accounts for 75 percent of exports. Sumner (2006) estimates that the removal of cotton subsidies can expand Sub-Saharan cotton exports with 75 percent. And in the case of removal, by 2015, the developing countries’ share of global cotton exports would rise from 56 to 85 percent. Removing US cotton subsidies would “increase household incomes of cotton producers by 2.3 to 8.8 percent, enough to support the expenditure on food for one million people in” C4, according to one study (Alston, Sumner, Buncke, 2007 in Kostecki and Hoekman 2009: 297). The conclusion that removal of cotton subsidies can lead to significant gains in developing countries, is supported also by Bureau, Jean and Matthews (2005: 4).

US subsidised its cotton sector with an average amount of USD 3.5 billion per year between 2000 and 2010 (see paragraph 2.3). If such subsidies encourage greater production and exports than the market would request otherwise, it will contribute to lower world market prices. This price distorting effect is part of what Brazil challenged, and, as we will see, WTO judged this to cause serious prejudice<sup>6</sup> and adverse effects in the global cotton market (Schnepf 2010: 3)

In 2004 the C4 launched a “cotton initiative” in the Doha negotiations which led to the establishment of the Cotton Sub-Committee, and the launching of an official WTO communiqué in Hong Kong in 2005, which included promises of subsidies reduction (OECD 2006, WTOb). The C4 were also third parties in the dispute between US and Brazil (WTO 2010b). Thus, they have followed the dispute closely throughout the process since Brazil launched the case against US cotton subsidies in 2002.

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<sup>6</sup> *Serious prejudice* is a type of adverse effect that a subsidy can cause. WTO explains it as such: “Serious prejudice usually arises as a result of adverse effects (e.g., export displacement) in the market of the subsidizing Member or in a third country market. Thus, unlike injury, it can serve as the basis for a complaint related to harm to a Member's export interests.” (WTOc)



### 1.1.2.3. The DSB and developing countries<sup>7</sup>

A common critique of the WTO, for instance from anti-globalisation protesters, has been that it favours the richest countries. WTO itself states that equal treatment is an important principle for the organization: the non-discrimination principle states that each state should treat each other member state equal in trade related matters, unless you are in a customs union (Hoekman og Kostecki 2009: 41-42). In addition to this, the consensus principle of WTO entails in principle one vote and the right to veto to all the member states (Hoekman og Kostecki 2009: 68). Thus, all the member states should in principle be on a level playing field. However, this does not remove the importance of asking whether this is a reality: Is a state's power after all a more important factor when it comes to achieving compliance with WTO decisions? And can the DSB can be as useful for developing countries as for developed countries?

It has been argued that DS267 showed that developing countries were willing to challenge developed countries through the dispute settlement system in WTO (Kostecki and Hoekman 2009: 298). However, it is important to note when discussing this case in the context of developing countries in DSB, that classifying Brazil as a “developing” country is not unproblematic. Over the last years, Brazil has frequently been classified as an emerging economy, and the country might have as little or much in common with Tanzania as it has with Canada. This point will be expanded upon under the discussion about generalisation (see 1.3) and about the Brazilian economy (see 2.2). Nevertheless, here and in the literature review below, I will discuss the role of developing countries in DSB. One reason for why I see this to be a relevant part of the context is the “David/Goliath” relationship between Brazil and US. The experiences from challenging a stronger country through the dispute settlement mechanism can be relevant for more developing countries. I will refer to Brazil as a developing country in this thesis, however, with the term's limitations in mind.

One particularly interesting aspect related of the context of this case is what possibilities the WTO agreements, and the DSU texts in particular, give developing countries to retaliate in a dispute settlement. What possibilities do developing countries have to take a case to the DSB

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<sup>7</sup> I define *developing country* in accordance of the The World Bank's understanding, which uses the term “developing country” for countries that are low-income and middle-income economies. For more details, see World Bank's website (The World Bank 2011)

and see policies change in richer countries as a result? The imbalance between US and Brazilian economic power is thus an important element in the analysis. How could Brazil which, despite being an emerging economy and rising global power, is so much smaller in economic power than US, induce change in the US politics? The experiences from this case can be of interest for other countries that want to challenge countries that are stronger than them in a WTO dispute settlement. Today's system is viewed by some developing countries to favour the richest countries, as the retaliation tools are more readily available to them:

“Developing countries are pushing more vehemently for changes in compliance. They feel the current system is unfair because it leaves them with ineffective remedies. For example, it can be counterproductive for a small developing country to enact retaliatory tariffs - the sanctions provided for in current WTO rules - against a much larger trading partner” (ICTSD 2011a).<sup>8</sup>

The general success Brazil has had in DSB since its establishment (see 2.1.3) can be of interest for other developing countries; as a possible model for how to mobilize legal resources in DSB, and thus achieve success when challenging other members, particularly developed countries. This is one reason why this case is interesting in a broader context.

An interesting question is thus whether cross-retaliation can be a useful tool for developing countries that challenge richer countries in the DSB. The Brazil-US case on cotton subsidies is particularly interesting as threats to retaliate (and cross-retaliate in particular), which we saw in this case, are rare: The authorisation to retaliate (or suspend obligations, as it is referred to in WTO) has only been sought and authorised<sup>9</sup> in six cases, in addition to the US-Subsidies on Upland Cotton case (WTO 2010f). Cross-retaliation has only been requested in two other cases than DS267 (namely, the EC-Bananas case (DS27) and the US-Gambling case (DS285)), and in both cases the DSB arbitrator found that the conditions for seeking cross-retaliation were met. However, in the latter case, the complaining party (Antigua) has not to date sought authorisation to retaliate (WTO Enquiries 2011 [e-mail]). Thus the actual authority to cross-retaliate has only been issued in one other case than the one under study. Also, the case is special due to the fact that the retaliation level authorised is very high – the second highest in the history of WTO (Itamaraty 2010).

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<sup>8</sup> See also Pauwelyn's (2000) discussion about this referred to below, under pt. 2.1.

<sup>9</sup> In the retaliation process in the WTO DSB, the offended country requests the right to retaliate, and the question of whether the conditions necessary for retaliation are met is concluded on by the Arbitrator, *before* the offended country seeks authorisation to actually retaliate. Thus the DSB have found that conditions for retaliation have been met in cases in which the offended country has not actually proceeded to seek the right to retaliate.

As will be discussed in detail in the literature review below, the patterns of developing countries' use of DSB demonstrate a quite significant difference between low-income and middle-income economies. While the poorest countries are close to absent in WTO dispute settlement, certain, developing countries with larger economies are highly active as complainants (Evans and Schaffer 2010: 2).

## **1.2 Literature review**

In this part, I will review works which have been written on the WTO dispute settlement mechanism. I will focus in particular on how well dispute settlement has worked for developing countries, how successful the DSB has been in inducing compliance, how well countermeasures have worked, and how the Article 21.5 compliance panel has worked.<sup>10</sup>

### **1.2.1 Developing countries in WTO Dispute Settlement**

Several studies have been done on developing countries' use of the WTO dispute settlement system. As suggested above, a general trend is that least developed countries (LDCs) are under-represented, but that, excluding LDCs, developing countries are rather active. It should be noted that the definition of the term "developing country" can vary significantly, as the same definition is not used in the different studies.<sup>11</sup> The World Bank typology (The World Bank 2011) is the most authoritative one.<sup>12</sup>

One may expect EU/EC and US to be dominant in the WTO dispute settlement system. However, the literature written on this shows a mixed picture. While they have been complainants in 41 percent of the cases, they have also been respondents in 40 percent of the cases (Evans and Schaffer 2010: 2). This suggests that other countries are not as scared of "tackling the giants" as sceptics might fear. This is confirmed by a World Bank Report from 2008 (Horn and Mavroidis 2008) that displayed statistics from the WTO dispute settlement system from 1995 to 2006. The report supports Busch and Reinhardt in that LDCs are close to completely absent within WTO dispute settlement. Thus, the authors conclude that "a large fraction of the WTO Membership is passive as it comes to the WTO system". (Horn and

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<sup>10</sup> For background information about the WTO dispute settlement system, see chapter 2, WTOa and WTO 1994.

<sup>11</sup> For numbers on developing countries in the dispute settlement mechanism, see 2.1.

<sup>12</sup> As mentioned in footnote 7, the World Bank (2011) typology is the base for developing country in this essay.

Mavroidis 2008: 34). However, they also find that countries that are classified as developing, and thus more developed than the LDCs, have a “surprisingly high participation rate (Horn and Mavroidis 2008: 34). This is supported by Francois, Horn and Kaunitz (2008: 29 - 30). Horn and Mavroidis conclude that a certain portion of the developing countries should be looked upon as a significant player in the WTO dispute settlement system. Interestingly, the study also adds that G2 (EU and US) are “less dominant than we would have guessed. It tends to be much more often the subject of complaints than a complaining party, and G2 has a very low share of all panellists” (Horn and Mavroidis 2008: 34). This can suggest that asymmetry in size or power does not frighten other countries from targeting stronger states (Hoekman and Kostecki 2009: 111). Busch and Reinhardt (2002: 477), argue that LDCs are disadvantaged in the dispute settlement mechanism because they have fewer experts on the matters concerned, and are less likely to access legal advice.

Several case studies have been made on developing countries in WTO (e.g. Bown 2004b, Plasai 2006), as well as case studies on developing countries in WTO dispute settlement. They include studies on Egypt (Shahin 2006), Pakistan (Latif 2007) and Benin, Burkina Faso and Mali (Heinisch 2006).

### **1.2.2 Compliance in the dispute settlement system<sup>13</sup>**

Compliance can be challenging to measure statistically, as a party can regard itself as “winning” without winning on all cases, as some parts of the dispute might be more important than others. Or, a party could wish to be “losing”, as this might help them resolve matters within their domestic constituency (Hoekman and Kostecki 2009: 96 - 97). As this case shows, a party can claim that it is in compliance, while another party can claim it does not comply.

Despite the challenges of measuring compliance, statistical studies on the degree of compliance in the WTO dispute settlement process do exist, and the general finding is that compliance rates are quite high. In 2005, Davey found that just about 17 percent of the cases end up with disagreements about compliance and retaliation requests, while the DSB recommendations have been successfully implemented in 83percent of the cases which is

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<sup>13</sup> The principles of the dispute settlement system are described in the Marrakesh Agreement, Annex 2 (WTO 1994). For facts on how the dispute settlement process works, see WTO 1994.

included in this calculation (Davey 2005: 47). Of these, several are resolved after some time, as resolving often requires domestic legislative changes, which takes time that exceeds the WTO time limit. As we will see, DS267 can be an example of this.

Bjørndal (2009) wrote a master's thesis in political science, comparing the dispute settlement in GATT and in WTO by analysing the degree of compliance within cases in the two mechanisms. Among his findings are that power and the sovereignty of the state remain significant factors in trade negotiations in the WTO, that the WTO rules seem to have enhanced cooperation, that intentions of future trade policy affect compliance, and that the increased legalisation in WTO can be used to convince domestic actors about the need for policy change (Bjørndal 2009).

### 1.2.3 Retaliation in the dispute settlement system<sup>14</sup>

Studies on retaliation in DSB show that only five percent of the DSB cases between 1995 and 2006 led to a request for retaliation. Also, retaliation had per 2008 only been implemented by OECD countries - never by a developing country. Hoekman and Kostecki argue that this can be because developing countries believe they are unlikely to be able to change the behaviour of large nations, and that the costs of retaliation will be too high on their citizens.

Pauwelyn (2000) writes about the challenges of enforcement and countermeasures in the dispute settlement system. He argues that the problem of non-compliance is more likely to occur in politically sensitive disputes. Also, he argues that economic and political power is an important factor when it comes to achieving compliance: weaker member countries that find themselves in the face of noncompliance with a stronger member, can find countermeasures to be difficult or impossible to impose. (Pauwelyn 2000: 338). There is also the fear that retaliation can provoke counter-retaliation in other fields, like aid, or that imposing tariff barriers on products from a stronger country can harm local consumers more than it induces compliance in the offending country (Pauwelyn 2000: 338).<sup>15</sup>

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<sup>14</sup> For facts on retaliation and other mechanisms to induce compliance, see 2.1.

<sup>15</sup> I define *power* according to Bachrach and Baratz' understanding of the term. See 3.4.

Pauwelyn's findings are supported by an analysis of trade disputes in GATT/WTO between 1974 and 1998 that shows that a successful solution of a WTO dispute, is dependent on whether the accused party is concerned about the possibility of retaliation (Bown 2004a: 822). Busch and Reinhardt argue that if a developing country threatens to retaliate, the threat will often not be credible enough. This will decrease the developing country's chances to ensure change in the policies of the country they have accused. (Busch and Reinhardt 2003: 4). This makes it interesting to analyse how the threat of retaliation in this case worked between Brazil, which is a developing country, and US.

Another problem with compliance is that often occurs after quite a long time, often several years<sup>16</sup>. Also, if there is compensation, it is "nearly guaranteed to be less costly to the defendant than removing the offending measure in the first place" (Busch and Reinhardt 2002:478). And, as mentioned, least developed countries will not be able to make credible threats of retaliation. According to this argument, the retaliation system is therefore unlikely to deter many violations with WTO law (Busch and Reinhardt 2002: 478).

Horlick (2002) has criticised DSB for breaking with the main aim of WTO. He identifies several problems with the WTO compliance system, but the negative effects that of trade retaliation, are particularly problematic (Horlick 2002: 637). He points to the only case in GATT when retaliation was authorised<sup>17</sup>, and argues that the authorisation of retaliation had no influence on the level of compliance. He also says that retaliation often is applied on other sectors than those who benefit from the defection from WTO rules, and that it thus is not effective as a sanction. And as Charnovitz, he points out that it threatens the fundamental free trade principles of WTO, and that it raises costs for the offended member country. This, Horlick says, makes retaliation less attractive for weaker countries (Horlick 2002: 641).

However, the strengthened retaliation system of WTO compared to the GATT system, has also received praise, and is often described as better than compliance mechanisms in most other treaties (Davey 2005 in Jackson 2006:199). The retaliation system and its countermeasures are also seen as very powerful within international law (Jackson 2006: 197). Some WTO members wish to make the system even more legalised (Hoekman and Kostecki

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<sup>16</sup> See description of the dispute settlement process in WTOa.

<sup>17</sup> A case between The Netherlands and United States

2009:121). The compliance school, which is discussed in *chapter 3: Theory*, argue that retaliatory measures can be necessary (see Downs et al 1996, or Downs and Jones 2002), and in the analysis in this thesis I will argue that trade retaliation has been an effective tool for enforcement in DS267.

#### 1.2.4 **Cross-retaliation**<sup>18</sup>

When cross-retaliation has been addressed by scholars, the focus has often been on the possibilities for developing countries to use it, and particularly on using it under the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). In his study of the use of cross-retaliation under TRIPS, Basheer (2009) concludes that for developing countries, cross-retaliation is a more effective tool than “traditional” retaliation in most cases. He argues that in a case of credible cross-retaliation, developed countries are more likely to comply (particularly under disputes concerning the TRIPS agreement). He therefore recommends that cross-retaliation should become a “mainstream retaliatory technique” in WTO dispute settlement, as this would make more developing countries view the DSB framework as relevant (Basheer 2009: 79-80). Spadano (2008) believes cross-retaliation can be a feasible tool for developing countries, but only if certain conditions are met (see Spadano 2008). Subramanian and Watal (2000: 415) are very optimistic about the possibilities of cross-retaliation as a tool for developing countries aiming to induce compliance among developed countries. Vranes (2003: 128), however, is pessimistic, believing that cross-retaliation will not make developing countries significantly stronger when sanctioning against larger parties.

#### 1.2.5 **The role of Article 21.5 – the compliance panel**

The possibility in WTO dispute settlement to request a compliance panel was used by Brazil in this case. The 2008 report which I refer to in this thesis is a result of the compliance panel process<sup>19</sup>. How does the compliance panel affect dispute settlement?

The DSU Article 21.5 about the compliance panel is one aspect of WTO dispute settlement which has received slightly less attention than other aspects of the DSU, but some research

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<sup>18</sup> For facts on cross-retaliation, see 2.1.

<sup>19</sup> For details about the Compliance Panel, see WTO 1994.

has been done. In an analysis about the disputes which had been through an Article 21.5 compliance panel, Kearns and Charnovitz (2002) finds that the mechanism has worked as intended: Experience suggests that it has been used when it has been needed, and that member countries are confident that its findings will be valuable for the process. Kearns and Charnovitz conclude that the compliance panel works efficiently and, most importantly, that it detects non-compliance (Kearns and Charnovitz 2002: 338 – 339).

This article is based on a dataset of only twelve cases, as the data is collected in February 2002 (Kearns and Charnovitz 2002: 338). Since then, several cases have been treated by a compliance panel. It would then be interesting to see an analysis on the cases that has been treated after 2002. I have not found any work that analyses this, however.

Nobody else have, as far as I have been able to ascertain, looked at this particular case by analysing the change in US policy from after the DSB adoption of the 2005 report to after the adoption of the 2008 report. This thesis aims to add to the research which is done on WTO dispute settlement.

## **1.3 Research design**

### **1.3.1 Case study method**

This thesis is a single case study with interpretative case study design. In such a design, theory is used to interpret the chosen case in light of theory. I believe this is appropriate for my thesis, as the aim of the thesis is not to test a theory, but rather to utilize theory in the analysis of my case (Andersen 2007 in Bratberg 2010). Also, the main motivation for the thesis is that I find the case to be interesting in itself.<sup>20</sup>

The research question will be addressed by analysing what caused US actions after the report in 2005 and the report in 2008. I analyse a process over time and with particular focus on the reactions after two separate reports. The unit of analysis is the bilateral relation between US and Brazil. The dependent variable that I'm aiming to explain is the change in US policy choices after the 2005 report to after the 2008 report.<sup>21</sup>

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<sup>20</sup> The reasons for why I believe the case is interesting were given under 1.1.

<sup>21</sup> Will be defined in chapter 2 and chapter 4.



The case study design may have elements of process tracing, which Gerring defines as “a style of analysis used to reconstruct a causal process that has occurred within a single case” (Gerring 2007: 216). Process tracing is defined by multiple types of evidence/factors that are used to explain one causal outcome, and that the causal factors are quite complex (Gerring 2007: 216). Process tracing is extremely challenging in terms of gathering all types of relevant information. I do not argue that I have gathered all types of evidence relevant for the case here, as this probably is a task too big for the scope of this essay. The empirical content used here is gathered on the factors that theory (chapter 3) suggests can be relevant for the case.

The analysis will be a two-level game analysis where both countries are represented on each one of the levels. The two-level game approach will thus constitute the basic model for my research. However, as the focus of the research question is on the implementations of US policy/political consequences in the US, I will place more emphasis on the US national level than on the Brazilian national level. I have supplied Putnam’s theory on two-level games with other theories (see chapter 3). The theories are chosen on the basis of what I believe could be fruitful in order to answer the research question. Due to the limitations of this essay, I have therefore included theories that represent factors that may have influenced the change in US policy in this particular case, and excluded theories that may be relevant to issues discussed, but that I did not view as essential to answer the research question.

### 1.3.2 **Validity**

The case is chosen due to reasons discussed. There are, however, possible arguments against choosing this particular case (DS267). If an aim of the case was to be able to generalise to other cases, I would for instance modelled it after a most similar system design model or a most different system design model (Landman 2008: 70). However, the main aim of this thesis is not generalisation, but interest in the case in itself. Also, as argued under 1.1.2., I believe the case can shed light on certain processes that can be of relevance to other cases.

Note that this case is not “representative” for most dispute settlement cases, as most countries comply with the DSB findings most of the time (Hughes 2006: 195). This case, in which US has repeatedly been found to be in non-compliance most of the time, is therefore an exception

from the general trend. However, as the level of compliance is likely to decrease when the cost of compliance increases,<sup>22</sup> cases in which DSB recommendations are costly to implement can be said to be of particular interest.<sup>23</sup> This essay will argue that implementation of the DSB findings in DS267 would be costly for US, which makes the case interesting in a discussion of compliance.

The case study is generally seen as having limitations when it comes to the potential of generalisation, and thus low external validity. (Gerring 2007: 43). In the case of this thesis, it will be difficult to generalise from Brazil's case in WTO to other countries. One could, for instance, imagine that one could take the factors that made Brazil more or less successful, and apply them to other developing countries challenging richer countries through WTO's dispute settlement mechanism. However, there are several reasons for why such generalisations should be difficult. Brazil is in many ways a unique case. It has a unique position in the South American region as a leading emerging economy, and the bilateral relationship and historically complex links between the two actors in question (US and Brazil) are in many ways different from those applying to other states. And as discussed above it can be argued that Brazil does not fit into a definition as a "developing country".

However, the case study is viewed as having high internal validity. In other words, in explaining the causal processes in a case, the internal validity increases (Gerring 2007: 43). Causal mechanisms are defined as "independent stable factors that under certain conditions link causes to effects" (George and Bennett 2004: 8). Being a single case study, this thesis can also include far more factors than a large-N study, which strengthens the internal validity.

Although single case studies are viewed as scoring high on internal validity, the study is vulnerable for omitted variable bias, which occurs when key variables that may explain the outcome are excluded from the analysis. In this case, an identified factor could be erroneously taken as the explanation for the outcome. I cannot exclude the possibility that I have excluded key factors from the analysis. I have aimed to minimize the chances for this by basing the choice of factors included in the analysis on theoretical considerations. However, this requires that my choice of theory is sound and appropriate for my analysis. I can therefore not be

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<sup>22</sup> See chapter 3

<sup>23</sup> I understand "cost" as political cost and economic cost: Political in terms of votes and other types of support from a negotiator's constituency, and economic cost in terms of gains for the home country's economy, measured e.g. in terms of GDP.

certain that relevant variables or relevant theories are not excluded. This may possibly weaken the internal validity of the case.

Including elements of process tracing in the analysis is a way of strengthening inner validity, as it aims to identify as many relevant variables as possible. The process tracing method's focus on thick description, thorough document studies and following the process over time, contributes to this. As I include elements of process tracing in the analysis, I hope that this strengthens the internal validity of the essay. However, again, I cannot be certain that all variables are included.

It is therefore important to be cautious in suggesting causality between the WTO DSB reports and the US actions following the case. It is a challenge to differ between the policy choices that were made as direct reactions to the recommendations of the DSB reports, and policy choices that were relevant to the process, but that may have been influenced by other factors. The policy changes US made after the two reports were not necessarily a direct consequence of the reports themselves. My thesis focuses on explaining the relevant US policy choices that occurred after the DSB reports. I will attempt to explore the possible causal link between report recommendations and policy, but I will be careful to conclude about causality. Nevertheless, based on the theories chosen in this thesis, I believe I can suggest certain possible explanatory factors for why US changed their actions the way they did, and by this answer my research question.

I have earlier written an essay related to this topic (Stolpestad: 2010). This essay analysed the second part of the cotton dispute in terms of Putnam's theory of two-level games. However, this essay differs significantly from this master thesis, as the scope of the essay was much smaller, and the empirical base was narrower. The theoretical framework and the method are different in this study.

### **1.3.3 Data collection methods**

The design contains text and content analysis of primary and secondary sources. Documents from WTO, analytical articles, press releases, official statements, articles from the governments of Brazil and US and news articles will be among the sources. I base the description of the US policy choices and the change between the two report on analysis and

data from WTO and US Congressional Research Service. I have collected the data by systematically searching in the databases of the relevant US and Brazilian departments, in scholarly articles through databases of academic articles, through institutes that have followed the case, and through news search in magazines and newspapers. This has necessitated the use of quite a large number of sources, which has made the bibliography of this essay quite comprehensive. This has contributed to the length of this thesis.

I utilise a lot of internet sources. I view this to be a consequence of my research question, which specifies that my topic takes place close to present date. Also, I have been critical of my sources, assessing the credibility of the different sources as I have collected the data.

A challenge with this analysis is that the final verdict of the implementation of the 2009 report will not be known until 2012, when the US farm bill is to be approved in Congress. I solve this by defining the time of analysis as starting with the AB report of 2005, and ending in June 2010. The reason for why this date is chosen is derived from my research question, and on the fact that Brazil and US agreed on a temporary solution in June 2010.

## **1.4 Structure of essay**

**Chapter 1** is the introduction.

**Chapter 2** presents background for my case.

**Chapter 3** presents the theoretical framework for my analysis.

**Chapter 4** will define the change between the policy choices after the two reports, and then present a theory-based analysis of the data.

**Chapter 5** will conclude.

## 2 Background

This chapter will describe the details of the case that I'm looking at. It will present the main conclusions of the 2005 and 2008 AB reports, and the relevant policy choices US made after those reports.<sup>24</sup> The definition of the change in US policy, which my background research question asks for, will be found in the beginning of Chapter 4.

Before presenting the findings of the WTO reports, I will present background information on the WTO dispute settlement process, how Brazil previously has fared in the DSB, and in the US and Brazilian economy.

### 2.1 Dispute settlement in the WTO

#### 2.1.1 The dispute settlement system<sup>25</sup>

When GATT was replaced by WTO in 1995, the old dispute settlement system was replaced with a new one. The WTO dispute settlement system is generally viewed as stronger in several ways: It has negative, not positive consensus (i.e. in order to block a decision, all parties must agree), time limits were introduced, an appeal process was implemented, and retaliation became easier to authorise (Hoekman and Kostecki 2009: 91). The elaborate enforcement mechanisms of WTO are regarded as highly developed in the context of international law, compared to other bodies. WTO settlement procedures are legally binding (Pauwelyn 2000: 341) and must be self-enforcing, as the WTO is inter-governmental, and there is no supra-national body to "impose rulings and enforce judgments" (Hoekman og Kostecki 2009: 85).

The disputes are dealt with by the DSB - which is the name of the WTO general council when dealing with dispute settlement. The DSB establishes panels, adopts the reports from these panels, can examine the implementations of the panel recommendations, and, if the offending country is found to be in noncompliance, authorises retaliatory measures. A country cannot take WTO law into its own hands, so to speak, and retaliate without being allowed to do so by

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<sup>24</sup> For detailed timeline of the DS267 case, see Schnepf 2010: 34 - 37.

<sup>25</sup> For facts about dispute settlement, see WTOa.

the DSB. It must go through the dispute settlement process first (Hoekman and Kostecki 2009: 88). It should be noted that the only actors that can bring cases to WTO DSB, are governments.

The process starts with an arbitration stage. If this does not lead to a solution within a certain time limit, the complaining party can request the establishment of a WTO dispute settlement panel. The panel then produces a report, which is adopted by the DSB, if an appeal is not requested. If an appeal is requested, an appellate body (AB) goes to work. This report is final, and adopted by the DSB (unless there is a consensus among the DSB member *not* to adopt the report). If a complaining party does not believe that the defending party has complied with the findings in the panel/AB report, the complaining party can request a compliance panel. If this panel finds that the defending party has not complied, the complaining party can request the right to retaliate (WTOa). In DS267, the parties went through all these stages.

The incentives in WTO dispute settlement to comply with WTO rules are described as asymmetric. The reason for this is that no other WTO members than the offended party in a dispute can retaliate. The country which is entitled the right to retaliate has to carry the cost of the legal proceedings as well as the cost of the countermeasures (Pauwelyn 2000: 345). Such countermeasures can be costly since they often include raising import barriers, which affect the retaliating country's consumers. As mentioned, the credibility of the threat of smaller countries, will often be low, as raising import barriers is unlikely to have a significant impact on the target country. (Hoekman and Kostecki 2009: 114). A suggestion to counter this dilemma is to introduce collective retaliation, e.g. that all WTO members, not only the offended party, retaliates against the offending party. By this, weaker members who have won a DS case, but who lack the power to retaliate efficiently, will be able to retaliate efficiently (Pauwelyn 2000: 345). However, such suggestions have not yet received much support; one reason being that it would imply significant intrusion into state sovereignty (Hoekman and Kostecki 2009: 115).

The DSU states that cross-retaliation<sup>26</sup> can be authorised when it is not “practicable or effective” for a complaining party to retaliate within the same sector or even within the same agreement as the violation has occurred in, cross-retaliation can be requested. How important the trade in the sector in question is for the complaining party, and the broader economic

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<sup>26</sup> Cross-retaliation as a term is not mentioned in the principles of the Dispute Settlement Understanding, but according to WTO, the term is used for what is described in DSU Article 22.3 (WTO 1994).

consequences of retaliation within that sector, is also taken into account (WTO 1994). This means that cross-retaliation can be considered in cases when the complaining country's economy is significantly smaller than the defending country (like the case often is when a developing country is the complainant), when the consumers of that country may be harmed by retaliation within one sector or agreement, and when the sector in question is of particular importance for that country.

### **2.1.2 Brazil and the US in WTO dispute settlement**

Brazil has been described as a leading example for developing countries in WTO dispute settlement. It is regarded as one of the most successful users of the DSB, both as a plaintiff and as a defendant, and compared to both developing and developed countries (Shaffer, Sanchez, Rosenberg 2006: 3 - 4). It is the developing country that has issued most complaints in the DSB (Evans and Shaffer 2010: 2).

Brazil has been a complainant in 25 cases, respondent in 14, and a third party in 61 cases (WTOe). US on the other hand, has been a complainant in 97 cases, a respondent in 112 cases and a third party in 84 cases (WTOf). Thus US has more cases in numbers. However, considering the fact the US GDP is almost ten times the size of the Brazilian GDP (see 2.2.), Brazil is a relatively more active user of the DSB. Also, notably, Brazil has been a complainant more times than she has been a respondent, while the opposite is true for US. Brazil is referred to as having achieved great success, having "largely prevailed in each of its complaints, and the settlements that it obtained have been largely to its satisfaction", according to Schaffer et al (2006: 21).

The increased legalisation of dispute settlement in the WTO after its establishment in 1995 increased the demand for legal expertise among countries involved in the dispute. Since the establishment of the DSB, Brazil has developed a sophisticated model for dealing dispute settlement. It has a specialised WTO dispute settlement unit in the foreign ministry, and Brazil's mission in Geneva has been expanded. Brazil has mobilised significant legal capacity to deal with dispute settlement. This strategy has strengthened Brazil's capacity in dispute settlement cases (Shaffer, Sanchez, Rosenberg 2006: 5 - 6). I see this as relevant to my research question as the cotton subsidies case against US evolved parallel to that Brazil's commitment to dispute settlement in general increased. This suggests that Brazil

demonstrated a strong belief in the dispute settlement system in general during the time period in which this case evolved.

## **2.2 The economy of US and Brazil in the 2000s**

Brazil is a member of the so-called BRIC group of emerging economies, and over the last decade Brazil has emerged as a regional superpower and a leading country on the global scene. GDP per capita increased from USD 3766 in 2000 to USD 8237 in 2009, total GDP from USD 645 to USD 1577 billion over the same years. In 2009, Brazil was the world's 8<sup>th</sup> largest economy. Unemployment rates have also gone down: In August 2007 the rate was 9,5percent, same month 2010 the number was 6,7percent (MDICE 2010). Brazil has a positive trade balance for 2010: The estimated export numbers are USD 199, 7 billion, while the import was USD 187.7 billion. Brazil has also experienced increased macroeconomic stability since 2003 (CIA 2011).

Despite GDP decrease in 2009 the country has dealt relatively well with the blow following the financial crisis. The real growth in Brazil was -0.2 percent, however the global total growth was worse, -0.6 percent. In 2007 and 2008, the country experienced record growth. Brazil was hit by the financial crisis in September 2008, and experienced recession in two quarters. But after this, Brazil was one of the first countries to recover from the crisis, as exports started picking up, and the GDP growth for 2010 turned positive (CIA 2011a).

With a GDP of USD 14.1 trillion (2009) (IMF 2010), US is the world's largest economy, but despite still being technologically in the forefront within important sectors, the US advantage has narrowed since the Second World War. Throughout the last decade, US has met several severe economic challenges. The wars on Iraq and Afghanistan have required a significant part of the national resources being shifted to the military. Also, US is highly dependent on the global oil market: of US oil consumption, imported oil accounts for about 60 percent. When oil prices soared from 2005 and early 2008, inflation and unemployment was threatened. US has also struggled with enormous trade and budget deficits over the last years: the trade deficit was USD 840 billion in 2009, USD 506 billion in 2008, and USD 630 billion in 2010. The financial crisis hit US hard: in the middle of 2008 US was pushed into a recession which lasted until the third quarter of 2009 (CIA 2011b).



### **2.2.1 The bilateral economic relationship between US and Brazil**

USDA tells us that “agricultural trade between Brazil and the United States exceeds USD 6.2 billion annually, of which Brazilian exports account for more than 90 percent” (USDA 2010a). And US is indeed important for the Brazilian economy: both as supplier of goods, and as buyer of US exports. In 2009, US supplied 16.12 percent of Brazilian imports and bought 10.2 percent of its exports, which makes US Brazil’s largest import partner and second export partner (China is the largest with 12.49 percent) (CIA 2011a). However, Brazil exports and imports a lesser part of its goods to and from US. The most significant decrease is seen in share of exports, as the share of Brazilian exports to US decreased from 14 percent in 2008, to 9.8 percent in 2010 (2010 numbers estimated in September 2010). At the same time, we see a significant increase in Brazilian exports to Asia, as well as an increase in imports from Asia (MDICE 2010). In 2006, which is the year after the first DSB report, US was an even larger Brazilian export partner, buying 17.8 percent of Brazil’s exports. The imports to Brazil from US have also experienced a significant downturn, from 16.2 percent in 2006 (CIA 2007).

Brazil is far from the largest trading partner of US goods, although it is gaining importance. In 2009, Brazil was US’ 11<sup>th</sup> largest trading partner in total, the 10<sup>th</sup> largest market for export goods, (2,5percent of total exports) and the 16<sup>th</sup> largest supplier of goods (1,3 percent of total US imports) (USTRa; US Census Bureau 2010). In 2006 Brazil was US’s 13<sup>th</sup> largest trading partner in total (1,6percent of all trade) and the 13<sup>th</sup> largest export partner (1,9percent of all exports) (U.S. Census bureau 2007).<sup>27</sup> The data suggests that Brazil is increasing its importance as a US trading partner. The 2010 statistics that have been issued to now, suggest that Brazil has increased its importance further, as the country now is the 10<sup>th</sup> largest partner when it comes to total trade, and the 8<sup>th</sup> largest export partner (U.S. Census Bureau 2011).

### **2.2.2 Agricultural economy in US and Brazil**

US is the world’s largest agricultural exporter (USDA). The US agricultural sector is one of, if not the, most industrially and technologically advanced agricultural sectors in the world. In 2008, agriculture in the US accounted for 821 700 jobs (USDL 2010) and for 2010, 9.2percent of US exports, though only 1.2percent of GDP (CIA 2011b ). Thus the agricultural

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<sup>27</sup> I have unfortunately not been able to find the ranking of Brazil as an import parntner for 2006, as FTS only issues top 15-ranking. Neither have I found the import numbers for this year.

business is not a dominating part of the US economy, although US is a major agricultural player on the global scene.

US farm policy as it is known today originates from the end of the First World War, when the US farming sector entered a deep crisis. In order to counter this, governmental programmes aiming to control agricultural supply and prices were launched, with the Agricultural Adjustment Act of 1933 initiating “a new era of direct big government involvement in U.S. farms” (Paarlberg and Paarlberg 2000: 140). Over the 20<sup>th</sup> century, agricultural support programmes grew increasingly comprehensive, and also, more beneficial for larger farms rather than smaller or medium-sized farms (Paarlberg and Paarlberg 2000:143 - 144).

It has been argued that the extensive farming support programs underscore a US double standard of proclaiming the virtues of free trade, but at the same time, advocate protective measures for certain sectors – of which, agriculture is a typical example (Hufbauer et.al. 1986: 2). Following the 2005 report in DS267, researcher Daniel A. Sumner stated that more farm programmes could be challenged in WTO, as several of them were in conflict with WTO obligations. He further argued that the US agricultural subsidies for 2006 were projected to USD26.3 billion, exceeding a WTO limit of USD19.1 billion (Sumner 2005). Following this, a USDA economist warned that more trade cases could come as a result of the DS267 case (The Farmer 2005b).

Farming is an essential part of Brazil’s economy. 2011 is estimated to yield the highest gross agricultural revenue in fourteen years; breaking a record which was previously set in 2008 (Portal Brasil 2011). After US and EU, Brazil is the world’s third largest agricultural exporter, and Brazil accounts for 25 percent of the global food market. Brazil ranks number one in the world in production and export of coffee, sugar and frozen concentrate orange juice. It is also a major producer and exporter of soybeans, tobacco, beef, poultry, corn, pork and cotton (USDA 2010a). 20 percent of the Brazilian labour force works in agriculture (CIA 2011a). Farming and cattle raising account for 17 million Brazilian jobs and 42.5 percent of Brazil’s total exports (Portal Brasil 2010). In 2009, agriculture constituted 6.1percent of Brazilian GDP (CIA 2011a). This number has been more or less stable for the last decade, varying between 5.5percent of GDP in 2006 and 7.4 percent of GDP in 2003 (MDIC 2010). Brazilian agriculture has therefore grown significantly in numbers (as Brazilian economy has grown), however not in share of the economy. When you include activities like processing and

marketing, the Brazilian agrifood sector accounts for as much as 28 percent of GDP in 2008<sup>28</sup> (USDA 2009). This underlines the vital importance of agriculture for the Brazilian economy. Structurally, Brazil's agribusiness sector has been becoming more and more technologically advanced during the last years (Portal Brasil 2010). However, compared to US, the Brazilian agricultural economy still lags behind in industrialisation and technology.

## 2.3 The cotton sectors of US and Brazil

In 2009, as the year before, US was the third largest producer of cotton in the world (after China and India) and the world's largest cotton exporter (NCC 2010). Cotton is one of the most important US export crops. The average cash receipts from cotton production between 1991 and 2008 were USD 4.9 billion per year, the export sales USD 2.9 billion per year. US cotton production has increased in the 2000s compared to the 1990s, also in relative terms. US export reached its highest point until now in 2005 – however, the second highest was in 2010 (NCC 2011).

The largest cotton-producing state in US is Texas, which since 1990 has produced about a quarter of all US cotton. However, cotton is produced in a stretch of Southern US states, from Virginia, through Georgia and westwards to California. In 2002, 17 of these states produced cotton for over USD 20 million each (Schnepf 2010a: 2-3).

US has increased exports in the past ten years. In the early 1990s, US exported on average 40 percent of its production. Since 2001, however, US has exported almost 70 percent of its production. This accounts for on average 37 percent of world cotton trade since 2000, up from 25 percent of the cotton world trade in the 1990s. The average amount of US cotton subsidies from 2000 to 2010 was USD 3.5 billion per year<sup>29</sup>, while the average value of the cotton production was USD 4.3 billion. Thus, the value of the subsidies added up to more than 80 percent of the total production. Research suggests that cotton producers receive support more routinely than producers of other crops (Schnepf 2010a: 2-4).

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<sup>28</sup> The difference between the numbers can probably be accounted for that a lot of the agrifood sector service/industrial sector.

<sup>29</sup> Including cash and non-cash support, the latter including loan repayment write-offs (Schnepf 2010: 4)

A different type of US subsidies than the domestic program support, are the export credit guarantee programs, which aim to extend credit to and thus facilitate export of US agricultural products. In 2002, when Brazil issued the first complaint to the DSB, three such programs were under operation.<sup>30</sup> Economists have estimated the average negative impact on world prices, due to cotton subsidies, to be between 6 and 14 percent (Alston, Sumner and Buncke 2007 quoted in Kostecki and Hoekman 2009: 296).

Brazil is the fifth largest producer of cotton in the world, and the fourth largest exporter. The production increased steadily since 1996 (NCC 2010). Brazilian cotton exports have increased sharply in the last decade; 2010 was the largest production year and second largest export year for Brazilian cotton ever (NCC 2011), and in 2008 there was exported almost eight times as much cotton as in 2000 (NCC 2010). And cotton is estimated to be the best performing product of 2011, with an expected increase in the gross production value of 50.1 percent (Portal Brasil 2011).

Although it experienced a drop in 2009 (NCC 2010), this illustrates that cotton exports is becoming an increasingly important part of the Brazilian export economy. Brazil is a major agricultural exporter, and has thus a strong interest in liberalising global agricultural trade (Hoekman and Kostecki 2009: 286). However, it is important to note that cotton is not the largest agricultural export of Brazil, and thus not the most important Brazilian crop. In 2009, cotton was “only” the 10<sup>th</sup> largest agricultural commodity of Brazilian agricultural produce, as Brazil produced cotton worth USD 1.95 billion (FAO 2009).

## 2.4 Brazil’s 2002 claims

When Brazil first initiated the case, it was with six main claims. The first was that the US subsidies were not covered by the “peace clause”<sup>31</sup> in the WTO Agreement on Agriculture (AoA). US argued that they were within the limits of the peace clause. The second claim was that two types of US direct payments to cotton farmers did not qualify for exemption from the

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<sup>30</sup> I will not go into details about these here, suffice to say that Brazil challenged two of them under their 2002 complaint.

<sup>31</sup> *The peace clause* is the “provision in Article 13 of the Agriculture Agreement saying agricultural subsidies committed under the agreement cannot be challenged under other WTO agreements, in particular the Subsidies Agreement and GATT. Expired at the end of 2003.” (WTOd )

WTO AoA, and that they were trade-distorting. US argued that these subsidies qualified for the “green box”<sup>32</sup>. Claim 3 and 4 aimed at two programmes (Step 2 program and US export guarantees) which Brazil argued functioned as export subsidies, inconsistent with US WTO obligations. US argued that these programmes were consistent with US obligations under WTO. The fifth claim was that the US subsidies have caused serious prejudice, by leading to significant overproduction (particularly from 1999 to 2002), and thus resulting in an export surge of US cotton, this again leading to a decline in world cotton prices. Brazil also argued that the subsidies led to an increase of the share of US cotton on the global cotton market, and displacement of Brazilian cotton sales in third countries. Brazil calculated the damages to its economy to amount to more than USD 600 million in 2001, and further argued that these programs would threat serious prejudice in the coming years. US argued that the subsidies were within the limits of the WTO obligations, that the increase in US cotton exports are due to decline in domestic cotton consumption, and that there are international market forces that have contributed more to the drop in global cotton prices than US subsidies. The sixth claim Brazil made was arguing that a US Act which eliminated tax liabilities for cotton exporters selling to foreign markets constituted an export subsidy (Schnepf 2010: 5 – 12, WTO 2002. Except for the last claim, the WTO first dispute settlement panel and the AB largely found that Brazil’s claims were right (Schnepf 2010: 5 – 12). This will be discussed in further detail below.

## 2.5 The 2005 report

The 2005 report referred to here is the AB report that was adopted by DSB in 2005. The measures at issue were the “US agricultural “domestic support” measures, export credit guarantees and other measures alleged to be export and domestic content subsidies” on US upland cotton (WTO 2010a; Schnepf 2010: 5-12). The main findings of the 2005 report were that<sup>33</sup>:

- The peace clause in the AoA did not cover several of the contested measures. This included the domestic support measures for upland cotton (WTO 2010a; Schnepf 2010: 6)

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<sup>32</sup> *Green Box* is “domestic support for agriculture that is allowed without limits because it does not distort trade, or at most causes minimal distortion.” (WTOd)

<sup>33</sup> For details on what articles the measures were inconsistent with, see Schnepf 2010 and WTO 2010a

- The contested direct payments did not qualify for “green box”, and should therefore be calculated as distorting, and included with other programmes under evaluations of whether US has exceeded the “peace clause” (WTO 2010a; Schnepf 2010: 7). In other words, this boosted the size of the payments supposed to fit within the “peace clause”, making less room for other commodities.
- The step 2 payments<sup>34</sup> to domestic users as well as to exporters of US upland cotton were found to be export subsidies, and were thus prohibited<sup>35</sup>. (WTO 2010a, Schnepf 2010: 8)
- The report also stated that the US export credit guarantee programmes functioned as export subsidies, and furthermore that this applied also to other commodities covered by this programme. Therefore, they were a violation of the WTO agreement<sup>36</sup>. These are thus export subsidies in violation of US WTO commitments (WTO 2010a, Schnepf 2010: 9).
- The following subsidy programmes were challenged for causing serious prejudice: marketing loan programme payments, step 2 payments, market loss assistance payments and counter-cyclical payments. The 2005 report concluded that all these programmes caused significant price suppression on the global market, causing serious prejudice to Brazil (WTO 2010a). Considering Brazil’s claim of future threat of serious prejudice, the report concluded that as it demanded that US must remove the prohibited subsidies, this future threat would be eliminated (Schnepf 2010: 11).

**The recommendations from the Appellate Body report:** All those programmes identified as prohibited subsidies should be withdrawn by the US within July 1<sup>st</sup> 2005. This included the export credit guarantees and step 2 payments. About the subsidies that caused serious prejudice (frequently referred to as “actionable subsidies”)<sup>37</sup>, the Panel recommended that US

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<sup>34</sup> *Step 2 Payments*: “One of the three cotton competitiveness provisions intended to keep U.S. cotton competitive in domestic and export markets (...) The payments provide a subsidy to U.S. cotton users and exporters so that U.S. rather than foreign cotton will be utilized, even when U.S. cotton is higher-priced.” (Womach 2005: 245)

<sup>35</sup> Under AoA and ASCM (The WTO Agreement on Subsidies and Countervailing Measures)

<sup>36</sup> Under AoA and ASCM

<sup>37</sup> These subsidies are frequently referred to as “actionable subsidies” and consist of marketing loan provisions (loan settlement provisions securing farmers low rates eg when world prices are low (Womach 2005), Step 2 payments and CCP payments (Counter-Cyclical Program payments)

should take “appropriate steps” to remove the adverse effect of them, or withdraw the subsidy completely. The deadline for this was September 21<sup>st</sup> 2005 (WTO 2010a, Schnepf 2010: 13; Grimmett 2010: 28).

## **2.6 The process and the relevant US policy actions after the 2005 report**

The main point to be made about the US reactions to the 2005 report is that although certain changes were made, the changes were not according to DSB recommendations on most points. Below I list relevant changes made in US policy. I will also include Brazilian actions relevant to the process. The incidents are listed chronologically.

On June 30<sup>th</sup> 2005, The United States Department of Agriculture (USDA) announced that they would “institute a temporary fix for its export guarantee programs” (Schnepf 2010: 15), which made the fee structure on the programs risk-based, responding to a panel finding that the previous 1 percent cap on the fees for certain of the programmes<sup>38</sup> contributed to making it a subsidy. By making the fees higher for users of these export guarantee programs, USDA aimed to eliminate the subsidy component. The Commodity Credit Corporation (CCC), a body under USDA, “stopped accepting applications for payment guarantees under GSM-103” (Schnepf 2010: 15).

By July 1<sup>st</sup> 2005, the prohibited export subsidies should have been removed. As they were not, Brazil requested a DSB meeting to consider authorising the right to retaliate against US. Brazil sought at this point in time to cross-retaliate (Grimmett 2010: 29). Five days later, on July 5<sup>th</sup> 2005, USDA announced that they had started the Congress process of eliminating the Step 2 program, removing the 1percent cap on the GSM-102 program fees and eliminating the GSM-103 program. The same day, DSB got a notification from Brazil and US saying they “had entered into a procedural agreement covering the implementation phase of the dispute” (Grimmett 2010: 30). Thus they had entered bilateral consultations on how US should implement the findings, and Brazil had withdrawn their request for retaliation.

US did not comply with the AB report’s demand to change or remove the actionable subsidies by September 21<sup>st</sup> 2005. Due to this, Brazil again proposed retaliation. This led to arbitration

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<sup>38</sup> This included GSM-102, which is the primary export program, and the most controversial export program.

between the two parties, which led to reaffirmation by the US that they would implement the DSB recommendations, and again Brazil withdrawing the retaliation request.

On August 1<sup>st</sup> 2006 US Congress eliminated the Step 2 cotton program (WTO 2010a). Thus US met this demand, however delayed. “At this point the Administration likely felt that sufficient program changes had been enacted to fully comply with both the prohibited and actionable subsidies portions of the WTO ruling” (Schnepf 2010: 16).

As was shown by the later compliance panel “US had not fully complied with the March 2005 WTO ruling” (Schnepf 2010: 18). The most important program which was not changed according to DSB’s wishes, was the GSM-102 program, which guaranteed export credits. As Brazil rightly claimed later (2006) in their request of a compliance panel, the GSM-102-programs were not revised according to the recommendations of 2005. Thus US had not brought this into compliance, despite WTO demands that they did so (Schnepf 2010: 18). In 2006, Brazil requested a compliance panel. The findings of this panel are discussed under 2.7.

On June 18<sup>th</sup> 2008, President Bush signed the “Food, Conservation and Energy Act of 2008” (the 2008 farm bill). This was a week before the DSB adopted the compliance panel’s reports, thus I view the relevant actions in the farm bill as relevant for the question of compliance with the 2005 report, not with the 2008 report.

I present here the relevant points in the 2008 farm bill. The GSM-103 and SCGP programs were eliminated. The 1 percent cap on fees under GSM-102 was removed. However, the GSM-102 program was left intact, and “counter-cyclical payments and marketing assistance loans for cotton and other commodities for the 2008 – 2012 crop years” were reauthorized. The later findings of the DSB arbitrator, referring to the new counter-cyclical payments and market loan provisions, were that “the Arbitrator compared the 2002 and 2008 farm bills and concluded that the replacement of the 2002 provisions with new measures [were] ‘essentially the same’” (Grimmett 2010: 36). These programs were as mentioned successfully challenged by Brazil as actionable subsidies, and should therefore, according to the DSB recommendations, have been removed. Thus, although some changes were made here, the 2008 farm bill did not comply with DSB recommendations.

Based on this, I define the most relevant US policy reactions following the DSB recommendations of the 2005 report as:



- The counter-cyclical payments and marketing assistance (actionable subsidies) were reauthorized with the 2008 farm bill, and still trade-distorting, despite US promises that they would change these.
- GSM-102 (the most controversial export subsidy program) was slightly changed, but still constituting an export subsidy.
- The Step 2 program was eliminated – 13 months late.
- The GSM-103 and SCGP programs were eliminated, but not before 2008, which was three years late.

## 2.7 The 2008 report

As mentioned, Brazil requested an Article 21.5 Compliance Panel in 2006. The panel was established September 28<sup>th</sup> 2006, and the final AB report was adopted June 20<sup>th</sup> 2008 (WTO 2010a). The compliance panel was established to see whether US had brought policies in compliance with the recommendations of the first report adopted by DSB in 2005, or if US measures still were contradicting WTO rules. The main findings of the compliance panel were<sup>39</sup>:

- The new export credit guarantees, including the controversial GSM-102 programme, were illegal export subsidies (WTO 2010a).
- US “had failed to comply with the DSB’s recommendations and rulings” (WTO 2010a).
- US had “failed to comply with the DSB’s recommendations and rulings in that the effect of marketing loan and counter-cyclical payments provided to United States upland cotton producers was significant price suppression in the world market for upland cotton (...), constituting “present” serious prejudice to the interests of Brazil” (WTO 2010a).

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<sup>39</sup> For details on what articles the measures were inconsistent with, see Schnepf 2010 and WTO 2010a

In other words: the new export guarantee programmes were in fact working as export subsidies and thus illegal under WTO law, and the subsidies to cotton farmers continued to lead to suppressed cotton prices on the global market. According to the compliance panel, US had therefore not complied.

On June 20<sup>th</sup> 2008, the DSB adopted the Appellate Body report. By this, the DSB requested that US should “bring its measures, found to be inconsistent with the Agreement on Agriculture and the SCM Agreement<sup>40</sup>, into conformity with its obligations under those agreements” (WTO 2010b). US had to change its policy in order to be in compliance, in accordance with the findings above.

## **2.8 The process and the relevant US policy actions after the 2008 report**

On August 25<sup>th</sup> 2008, Brazil requested that arbitration about possible retaliation measures (which Brazil first initiated in 2005) should be resumed. In March 2009 Brazil followed up on this request by formulating retaliation requests totalling USD 2.5 billion (this was lower than the original requests). This included three components: a one-time countermeasure due to the delay of the abolishment of the Step 2-programme, an annual retaliation for the GSM-102 export credit guarantee program, and an annual countermeasure in response to the actionable subsidies<sup>41</sup> (Grimmett 2010: 34).

Then, on August 31<sup>st</sup> 2009, the WTO arbitrator authorised Brazil to request retaliation. The arbitrator granted Brazil the right to request for an amount determined by a certain formula (see WTO2009a 121 – 124). The formula did not meet Brazil fully in all its requests. However, the possibly most remarkable element was that Brazil was given authorisation to request cross-retaliation (Grimmett 2010: 34). The cross-retaliation rights were given if certain conditions were met. These conditions were dependent on whether the total level of countermeasures that Brazil was entitled to enact exceeded certain thresholds on import of US consumer goods. I will not go into the details of the conditions for cross-retaliation here (see Grimmett 2010: 35 – 36). However, the logic behind is that it is preferred that Brazil retaliates within the area of US consumer goods, but in order to shield Brazilian consumers of certain

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<sup>40</sup> *SCM Agreement: ASCM*

<sup>41</sup> Marketing loan and countercyclical payments

goods from significant economic strain, retaliation within other sectors is allowed when retaliation against consumer goods reaches a certain level.

On November 6<sup>th</sup> 2009 Brazil requested the right to retaliate as described by the Arbitrator. November 9<sup>th</sup> 2009 Brazil published a list of 200 US products (mostly consumer and agricultural goods) which could be subject to retaliation, i.e. increased tariffs (WTO 2010b). Brazil was given the right to retaliate when DSB authorised it November 19<sup>th</sup> 2009 (WTO 2010b). The same day, US stated the following at a DSB meeting: “the United States wishes to reiterate at the outset that it intends to comply with the DSB’s recommendations and rulings in this dispute. Thus (...) we do not believe that it will be necessary for Brazil to exercise that authorisation” (United States Mission to the United Nations and other International Organizations in Geneva 2009).

At the same time as Brazil was working on the retaliation request (US fall 2009), USDA made administrative changes to its GSM program. On November 17<sup>th</sup> 2009 the CCC (Commodity Credit Corporation) and the Foreign Agricultural Service revised the GSM-102 programme by increasing the fees<sup>42</sup>, aiming for this to make the programme more consistent with DSB recommendations (WTO 2010b).

However, Brazil was clearly not satisfied with these alterations. March 8<sup>th</sup> 2010 Brazil notified DSB that it would impose retaliating tariffs on US goods starting April 7<sup>th</sup>. The tariffs would be applied through an increase in import duties on US products. This was supplied by a list of products, and the suspension corresponded to a total value of USD 591 million. The goods included cars, pharmaceutical and medical products, electronics and textiles, among several other products (WTO 2010d). However, according to the formula given from the arbitrator (see WTO 2009a), the total amount of countermeasures that Brazil was entitled to impose for more than this, USD 829.3 million, which exceeded the threshold given by the formula. Thus Brazil had the right to cross-retaliate under TRIPS and GATS, and announced that they would notify DSB about the details in the cross-retaliation (WTO 2010d). On March 15<sup>th</sup> Brazil released a preliminary list of retaliation against patents and IP rights.

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<sup>42</sup> Responding to the demand that the previous fees were too low and that the programme thus functioned as an export subsidy

The retaliation was paused a few weeks after. On April 30<sup>th</sup> 2010 Brazil informed DSB that it had postponed the retaliation mentioned above, and that they now were in dialogue with US. Countermeasures were postponed until June 21<sup>st</sup> 2010 (WTO 2010e).

On June 17<sup>th</sup> 2010 Brazil and US agreed on a framework agreement. It was called *A Framework for a Mutually agreed Solution to the Cotton Dispute in the World Trade Organization (DS267)* and stated the following:

“The Framework sets out parameters for discussion on a solution with respect to domestic support programmes for upland cotton in the United States, as well as a process of joint operation reviews as regards export credit guarantees under the GSM-102 programme. Brazil and the United States also agreed to hold consultations not less than four times a year, unless they agree otherwise, with the aim of obtaining convergence of views in respect of a solution to this dispute. The Framework also provides that, upon enactment of successor legislation to the US Food, Conservation and Energy Act of 2008, Brazil and the United States will consult with a view to determining whether a mutually agreed solution has been reached. As long as the Framework is in effect, Brazil will not impose the countermeasures authorised by the DSB.” (WTO 2010b)

The Framework constituted several of the US relevant actions after the 2008 report, agreeing on the path towards the next US farm bill: “The agreement ends with the development of the 2012 farm bill that would contain mutually agreed-upon outcomes on upland cotton provisions, ultimately bringing a dispute settlement” (NCC 2011b). The Framework included the following relevant points:

- The framework delayed the trade sanctions until 2012 (ICTSD 2010).
- The framework also stated that the parties would work towards benchmarks for changes on the GSM-102 programme (WTO 2010c).
- Washington also promised to establish a limit on trade-distorting domestic support for US upland cotton, with a level that was going to be “significantly lower than the average annual level of trade-distorting domestic support provided for upland cotton in the period MY<sup>43</sup> 1999-2005” (WTO 2010c; see also USTR2010).

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<sup>43</sup> MY: Market Year

- The Framework also promised annual payments to Brazilian farmers: USD 147,3 million a year “in form of a ‘technical assistance fund’ to help Brazilian farmers” (ICTSD 2010). This fund was first issued on April 1<sup>st</sup> 2010. It will continue until the next US Farm bill is passed or until Brazil and US reach a Mutually Agreed Solution on the dispute (USTR 2010). That this is the same amount as the retaliation amount WTO approved for US subsidies (Grunwald 2010).
- Also, on April 16<sup>th</sup> 2010, US agreed to recognize an area of Brazil (Santa Catarina) as free of certain diseases (foot-and-mouth, rinderpest, swine fever), thus lifting trade restriction on Brazilian products, including beef (USTR 2010). The point that US decided this, which one should have thought would be dependent on non-political factors, by a political decision, will be discussed in the analysis.
- The framework agreement set out an outline for how the negotiations will take place until the next US Farm Bill. The parties will meet at least four times a year to discuss the next bill. The current bill will expire on September 30<sup>th</sup> 2012 (ICTSD 2010).

Based on this, I define the main US reactions to the 2008 DSB recommendations as:

- Easing restrictions on Brazilian products, among them beef, through the recognition of Santa Catarina as free of certain diseases.
- Making modifications on the export-guarantee programme GSM-102.
- Promising to limit trade-distorting support to US cotton farmers.
- Issuing an annual payment of 147.3USD million to Brazilian cotton farmers.
- Setting up regular meetings towards the next US Farm bill.

# 3 Theory

The theoretical framework for this paper will to a large extent be based on Putnam's analytical model of two-level games. I will first outline the basic assumptions of Putnam's theory. Then I supplement with other theories. These theories are:

- elements of public policy theory, particularly about the role of interest groups and institutional factors
- compliance theory, with particular focus on the debate between the management and the enforcement school, and the conditions for effective enforcement
- Bachrach and Baratz's theory on power relations

With this, I create a theoretical framework for my analysis.

## 3.1 Two-level games

The basis of my theoretical framework is Putnam's two-level game theory. He presented his theory in the essay "Diplomacy and domestic politics: The logic of two-level games" from 1988. In this essay, Putnam explains how his theory fits analyses of international negotiations particularly well:

"At the national level, domestic groups pursue their interests by pressuring the government to adopt favourable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. (Putnam 1988: 434)"

Within two-level game theory, the realist assumption that states act like unitary actors on the international scene does not hold. Rather, domestic policies are thought to influence international relations and the other way around. Also, policies that are rational abroad can be irrational, or politically inedible, at the domestic scene (Putnam 1988: 434).

Putnam divides international negotiations into two stages, or scenes. This illustrates how he sees the dynamics of international negotiations. The international scene is referred to as level 1 and the domestic scene as level 2. At level 1 the negotiators bargain and reach a tentative agreement. After this, different constituents at level 2 discuss whether to ratify the agreement (Putnam 1988: 436).

Here we get into what Putnam calls the win-set, which represents the manoeuvring space of the countries. The win-set is defined as “the set of all possible Level 1 agreements that would “win” – that is, gain the necessary majority among the constituents – when simply voted up or down (Putnam 1988: 437).” Thus in order to reach an international agreement, the agreement has to be possible to ratify at each country’s level 2. In other words, an agreement can only be reached when the negotiating countries’ win sets overlap (Putnam 1988: 438).

The win-sets must then be large enough to overlap in order to reach an agreement. However, it can in fact be a bargaining advantage to have a small win-set. This is because a negotiator with a large win-set risks being “pushed around” by the other negotiators – his constituencies are willing to accept a broad range of policy (Putnam 1988: 440). The size of your win-set as a negotiator is therefore crucial for how strong your position is: your win-set at home must be large enough to allow for ratification, but small enough to avoid being pushed around by other states’ negotiators. I will now discuss what decides the size of your win-set.

Putnam discusses several factors at the domestic level that influence the win-set size. I will present those I believe are most relevant in this essay. First, the win-set will be smaller the lower the cost of non-agreement is at level 2 (Putnam 1988: 443): if reaching an agreement is not very important for your state, the chance to reach an agreement decreases. An element of this factor is the relative strength between isolationists (actors favouring state isolation) and internationalists (actors favouring international cooperation). The more dependent a state is on other states, the more likely is it to have more of the latter. Thus, states that are relatively more self-sufficient should be expected to take part in fewer international agreements (Putnam 1988: 443). One of the most important actors is likely to be the leader of the state. Thus I will also discuss how internationalist he or she is.

Another factor is the structure of the national government: Governments restricted to one single policy are less likely to reach an agreement than more internally divided governments. Single-policy governments therefore have smaller win-sets (Putnam 1988: 445).

The nature of the issue in question is, of course, of high relevance. The more people affected by the issue, the harder will it be to ratify. Thus issues that affect many have smaller issues than issues that affect a few. Trade negotiations typically affect a large number of people. Also, the more politicized an issue is at level 2, the smaller the win-set (Putnam 1988: 445). This point is supported by, and expanded on, by theories on interest groups (see below).

Negotiations involving more than one issue complicate the negotiating process. Different domestic groups tend to have different views on the agreement. In such a case, the chief negotiator must balance different domestic interests. He will often end up counting votes: how many votes are lost versus how many are won dependent on the outcome of the agreement. Also, leaders sometimes use an international agreement to get through a domestic reform which they would not otherwise get through. This method of using the pressure of an international agreement to get policies through at level 2 is known as “synergistic linkage” (Putnam 1988: 445 – 447).

The domestic ratification procedure is an important element of the win-set size. The more strict or slow a procedure at level 2 is, the smaller will the win-sets tend to be. The US Congressional processes are typical of this: The US chief negotiator can seem to be positive to an agreement, but if the agreement needs to be treated by the Congress, his power diminishes, decreasing the US win-set. Thus the negotiator can use strict ratification procedures at home to increase his bargaining power. The flip-side is, of course, that international agreements can be harder to reach (Putnam 1988: 448). Not least, the domestic coalition, i.e. who the supporters of the negotiator are, is important. Will the negotiator offend his supporters by signing an agreement and what would such an offence cost? If there is a high risk of losing a significant number of votes, the negotiator’s win-set decreases (Putnam 1988: 458). These factors are discussed further and expanded on by Birkland and Hiscox.

In my essay I will therefore analyse how important it has been for Brazil and US to reach an agreement on the case I’m discussing, and how the relationship has been between isolationists and internationalists. I will also discuss how dependent US and Brazil are on each other. The structure of the governments of US and Brazil, and how significant the issue of cotton subsidies are in the two constituencies, will be discussed. Also, I will analyse the interplay between different interest groups, which I expect to have been of particular importance after the Brazilian threat of cross-retaliation. I will also analyse whether the negotiators, in particular the US negotiator, has used synergistic linkage, or the need to get acceptance from



Congress, in this case. The role of the domestic coalition, particularly in US, will also be discussed.

I will now turn to discussing how factors at the international level, or level 1, affect the win-set size. A negotiator will always seek to find the perfect size of the win-sets. In general, a negotiator would want to maximize the win-set of his opponent. However, as we have seen, the motives are more mixed when it comes to your own win-set: A large win-set makes it easier to reach an agreement, but a smaller win-set betters your relative bargaining position. For example, a negotiator can motivate his own constituency to support a certain position, in order to demonstrate commitment to the issue and strengthen his bargaining position. “Denouncing unfair trading practices abroad” is a typical example of this, according to Putnam. However, this can strike back later, as it may be more difficult to ratify the agreement at level 2 once it has been reached at level 1 (Putnam 1988: 450).

In the case of a negotiator wishing to expand the win-set, he can give side-payments to certain parts of the constituency – either his own constituency, or the opponent’s. However, this should be used in a way that maximises the cost-effectiveness. Putnam actually uses trade retaliation to illustrate this: “Trade retaliation should be targeted, neither at free-traders, nor at confirmed protectionists, but at the uncommitted” (Putnam 1988: 450). There is a lot more to be said on the effective use of side-payments in the form of retaliation and compliance enforcement. This will be expanded upon in the section about compliance theory.

Thus, a negotiator should know both his own and his opponent’s constituencies well. This information, particularly about the opponent’s constituency, is unlikely to be perfect. A negotiator can use the opposing negotiator’s imperfect information strategically, by understating his win-set, making it seem smaller than it is. The ideal strategy then is, according to Putnam, to create an impression that your win-set is “kinky”. This means that the agreement is likely to be ratified, but not if it is altered more in favour of the opponent (Putnam 1988: 452 – 453).

The last issue to be mentioned here is reverberation. Reverberation is what happens when governments try to expand each other’s win-sets. This clearly implies that governments in fact are able to act within each other’s constituencies. A message from state A can influence people in state B (Putnam 1988: 454). According to Putnam, reverberation “is more likely among countries with close relations and is probably more frequent in economic than in

political-military negotiations” (Putnam 1988: 455). I understand reverberation as mainly occurring through diplomacy, statements and window-dressing, and not including side-payments, like trade retaliation. When I discuss reverberation, I will discuss how e.g. statements from a political actor in state A can have influenced the constituency in state B. Thus the Brazilian threat to retaliate against US will not be discussed under when discussing reverberation in the analysis.

In my analysis, I will discuss to what extent the negotiators have expanded the opponent’s win-sets, and whether and how they have tried to influence the size of their own win-sets, e.g. by rallying support among their constituencies. I will also analyse whether and how side-payments have been used by US and by Brazil, and whether this has been used in a cost-effective way. I will discuss whether the negotiators have tried to make their win-sets seem smaller than they are, and whether the strategy of “kinky” win-sets has been used. I will analyse if reverberation has been used strategically, i.e. if US or Brazil have tried to influence each other’s win-sets.

Putnam’s theory on two-level games received significant attention after the launch of the 1988 essay. In 1993, Putnam, Evans and Jacobsen released *Double-eyed diplomacy*. In his concluding remarks, Peter Evans supplements Putnam’s theory of two-level games with some notes for future research, based on the case-studies conducted in the book. There were three points in particular that modified Putnam’s theories (Evans in Putnam, Evans and Jacobsen 1993: 427).

1. Transnational actors are often *not* interested in the success of agreements. One should look at *what kinds of* transnational alliances which are likely to increase the probability of agreements between states, not assume that all of them do. Thus, one should not assume that all transnational actors are aiming for the success of an agreement.
2. “Hawkish” behaviour by a chief negotiator or political leader can be successful, depending on the configurations of domestic interest (not that relevant for my essay).
3. Synergistic linkage can be a source of leverage in order to change domestic policies; however, it is rarely a sufficient condition for making this change. Thus synergistic linkage can be a source of leverage, but is unlikely to have a large impact in itself.

## 3.2 Public policy theory

### 3.2.1 Interest groups

I understand public policy as referring to “the actions of government and the intentions that determine those actions” (Cochran in Birkland 2005: 18). Much public policy theory is developed in the context of decision-making in the US. Thus, I believe public policy theory can supplement the theoretical framework of this essay.

Interest groups are viewed as central actors in public policy theory, and, indeed, in this essay. What decides interest groups’ power and potential to alter policy? Thomas Birkland (2005) argues that one important factor is knowledge, or how much information a group has. Also, the more effective the interest group is at channelling information to decision-makers, the more defining power do they have. And not least, the amount of money the group have is relevant. Both degree of knowledge and money is related to how large the group is, and how much resources the organization can mobilize in a policy conflict (Birkland 2005: 82).

Notably, size is not the only factor when deciding the power of a group. Birkland (2005: 83) suggests that business interest groups can be particularly powerful due to the keen interest the members have in the issues in question. Thus, if people are *directly affected* by the change in issue, the interest group is likely to be more influential, as the members are investing stronger interest in it (Birkland 2005: 83). Also how much people are affected, is (naturally) relevant – the stronger an issue affects people, the more motivated will they be to create policy solutions that are positive for them (Birkland 2005: 83). I will argue that in my case, the farmers’ organisations in US can be described as large and powerful in this definition.

If we look specifically on the area of trade policy, theory suggests that actors interested in protection are likely to be far louder than actors supporting freer trade. The reason for this is that the benefits of a tariff are more concentrated than the costs, which are shared very broadly among the rest of the economy. The cost of a tariff will thus not be severely felt by individual consumers. Collective action will thus be easier to organise among the beneficiaries of a tariff than of those who pay. Agricultural lobbying groups in Japan, Europe and US are regarded as the perhaps most typical examples of this (Hiscox in Ravenhill 2008: 113).

‘Group coalescence’ implies that interest groups that originally may have had different focus areas can cooperate in certain issues, like when fishermen’s’ organisations and environmental groups cooperate on marine oil spill issues. Combining their resources, smaller groups can achieve more results (Birkland 2005: 122 – 124). This is supported by deSombre’s (2000) ‘Baptists and bootleggers’-analogy This theory supports the idea that strong domestic pressure from groups of opposing interest, but with the same aim, can induce powerful results.

John Kingdom used the term ‘window of opportunity’ to explain what happens when different factors come together at the same time, creating an opportunity for increased attention on an issue, and thus increasing the possibility of changing policies. (Kingdom in Birkland 2005: 116).

To sum up, “the likelihood that an issue will rise on the agenda is a function of the issue itself, the actors that get involved, institutional relationships, and, often, random social and political factors that can be explained but cannot be replicated or predicted” (Birkland 2005: 133 – 134). As I will show later, I will argue that the 2009 situation with the US unemployment rates and the financial crisis can have played a particular role for deciding the outcome in my case.

In my analysis, I will discuss the power of interest groups in relation to the following factors: degree knowledge, effectiveness/ties with decision makers, and how much money interest groups have had. Also, I will discuss to what degree change in this issue would directly affect people’s lives, and the consequences of this. I will discuss whether group coalescence was used as a technique here, and also if this case has included what can be viewed a window of opportunity. I will also discuss whether the issue trade protection has aroused interest groups proportionally more then others.

### **3.2.2 Institutional factors**

The characteristics of a political system for the outcome of public policy are relevant in this essay. Here, I will discuss how electoral systems, the rules of policy-making and bureaucracy can affect policy.

The electoral systems can affect the power of specialized interest groups. Proportional representation systems are less likely to induce a lot of power to narrowly defined interest groups. The reason for this is that PR systems encourage the making of more cohesive parties that appeal to a national constituency. On the other hand, plurality systems, in which politicians are elected by the majority of their electoral district, are more likely to be responsive to particular and local interests and lobby groups (Hiscox in Ravenhill 2008: 113). Thus one should expect higher level of trade protection in plurality systems than in proportionality systems (Hiscox in Ravenhill 2008: 113).

The US electoral system is a plurality system. And the system is likely to enhance the power of agricultural lobbyists for one more reason: the seats in the US Senate are divided along political-geographical lines, and not according to population. Each state gets two seats, independent of the number of inhabitants within the state. The relatively scarcely populated farming regions of US are thus likely to get more power in legislative chambers like the Senate than in the House of Representatives, in which seats are divided according to the number of voters in each state (Hiscox in Ravenhill 2008: 114). One should thus expect the interest of farmers to be more strongly represented in the Senate than in Congress.

Policy-making rules are also a relevant factor here. The farm bill, as other bills, must be passed in the House and Senate, and receive the president's signature. If changes are to be made in the US budget, this must also be passed in both Houses, but does not need the signature from the president (The Library of Congress).

In terms of international trade, the fast-track authority of the president, also known as the trade promotion authority, is particularly relevant. This means that the president has particular authority when it comes to negotiating reciprocal reductions in trade barriers with other states. After negotiation, the Congress can approve or disapprove the agreement, but not amend it. The fast-track authority act was in use from 1975 to 1994, and from 2002 to 2007 (Dauster 2007, Hiscox in Ravenhill 2008: 115 – 116).

However, the president's party affiliation will also affect his decisions. The preferences of a party are dependent on the preferences of its electoral base, which influences the president. The relevance of party colour in this case will be discussed in the analysis.

Bureaucratic capture is what happens when the bureaucracy of a department, through the bureaucratic independence of the party, can develop a close relationship with the sector which their department is linked to - and assigned to regulate. One example of this may be agriculture - in fact, the Department of Agriculture is cited as a typical example of this, regarded as an advocate of protection of US farmers (Hiscox in Ravenhill 2008: 118).

In my analysis, I will argue that US farmers' lobbies have quite intertwined ties with the US legislatures and bureaucracy. This will lead us to expect that removing tariffs on agriculture is likely to be difficult in the US political climate.

In my analysis, I will discuss what role the electoral system can have played in order to affect the power of interest groups, the agricultural lobby and others. I will also discuss whether policy-making rules and the president's party colour has played in, and whether bureaucratic capture has been an issue.

### **3.3 Compliance theory**

As noted above, Putnam mentions side-payments as an important tool for international negotiators. Compliance enforcement, like trade retaliation, is listed by Putnam as one example of such side-payments. Compliance theory examines the factors which affect degree of compliance. In this essay, I argue that enforcement was necessary. I will discuss the efficiency and credibility of the enforcement mechanisms used in the DS267 case. Here I present the management school, the compliance school, and the factors needed for effective enforcement.

#### **3.3.1 The management school**

The management school argues that states in general do comply with international agreements, and that there is therefore not a huge need for enforcement mechanisms. One important reason for this is that reputation has an important role for deciding state actions, and states do not wish to have a reputation as a non-complier, as this can be a disadvantage in later international negotiations (Chayes and Chayes 1993). "Sanctioning authority is rarely granted by treaty, rarely used when granted, and likely to be ineffective when used" (Chayes and Chayes 1995: 32 – 33). The Chayeses thus argue that sanctions are not decisive for

compliance. Rather, states comply due to the following factors: it is in general economically effective to comply with the international commitment (Chayes and Chayes 1993: 179).

Second, the state enters an agreement out of self-interest, and is unlikely to enter an agreement which it does not see it in their interest to comply with (Chayes and Chayes 1993: 184). And third, states, “like other subjects of legal rules, operate under a sense of obligation to conform their conduct to governing norms” (Chayes and Chayes 1993: 187). Here the point of reputation plays in: hostile reactions due to non-compliance can jeopardize possible future agreements (Chayes and Chayes 1993: 186). Also, the management school argues non-compliance can be due to inaccurate language and ambiguity in international agreements (Chayes and Chayes 1993: 188 – 189).

Thus, in the management school, states tend to comply with treaties. Reputation is a decisive factor in state commitments to international treaties. Enforcement, like economic sanctions, are neither necessary nor desired. And norms play an independent role in inducing states to comply; international norms have an independent impact on state behaviour.

### **3.3.2 The compliance school**

The compliance school, on the other hand, argues that enforcement is necessary in order to offset the possible benefits of not complying. The high compliance rates which Chayes and Chayes refer to are due to selection bias: most treaties have shallow commitments, i.e. commitments which are not costly to comply with, and states are therefore likely to comply anyway (Downs et. al. 1996: 399). The less costly it is to comply; the more likely is it that states will comply. Further, in the compliance school, reputation is not as important as believed by the managerial school, as states tend to have multiple reputations. Also, reputational consequences are likely to be more severe for weaker than for stronger states. Thus stronger states are less dependent on reputation than weaker states, and defection from international agreements is likely to be less costly for them. Another factor influencing the importance of reputation is the importance of the agreement: The less important an agreement is, the less severe are the reputational consequences for a defecting state (Downs and Jones 2002 111 - 112). Thus, multiple reputations imply that reputations of a state vary between issues, arenas, and costs of compliance. This is not to say that reputation is not important at all. Rather, it is supposed by the enforcement school to be more important in some agreements than others (Downs and Jones 2002: 112).

In order for an enforcement system to be effective, these factors should be present: Non-compliance should be identified quickly. Sanctions should not make compliance more difficult. And not least, the compliance enforcement should be sufficiently severe. This means that the cost of non-compliance should be larger than the benefit of not complying (Aakre & Hovi 2010: 431 – 433, Hovi 2010).

However, the punitive consequences also need to be credible. This is of vital importance for my research question: If Brazil's threat to retaliate against US goods after 2008 had any effect on US actions the question of whether they were credible is decisive. The credibility increases when it is controlled by the regime itself, or by the countries which are hurt by the non-compliant behaviour. Political influence should be minimised – the retaliation can for instance be decided by an expert panel. One should also avoid the need for the cooperation of the punished country– the punishment should be independent of the actions of the punished country. The countries that comply should not be hurt by the retaliation. Automatic punishment also increases the credibility, and the outcome should be pareto-optimal (Aakre and Hovi 2010: 437, Hovi 2010). And last, the country which issues the threat should be better off if they carry out the threat than if they don't (assuming that the deviant country changes behaviour). Barrett and Stavins mentions trade between two countries as a typical case of international negotiations in which retaliation is likely to be in the interest of the hurt country (Barrett and Stavins 2003: 362 – 363).

I will use these theoretical points to examine how credible and effective the Brazilian threat of retaliation against US was. This can in turn shed light on to what degree the enforcement system had something to say in this case: I assume that the more credible and effective an enforcement system is viewed as by a non-complier, the more likely is it that the threat of enforcement had an effect. Thus, if Brazil's threat was effective, and viewed as credible by US, I expect it to be likely that they played a role in shaping US decisions on policy actions. I will also discuss whether reputation is a possible explanatory factor in this case. Following the enforcement school's line of thought, the real test of states' willingness to comply, comes when compliance is costly. In chapter 4 I will show that my case is a case in which compliance was costly. Therefore, following the enforcement school's argument, it is likely that reputations will not suffice to make US comply, and enforcement mechanisms are needed. Whether this was the case in my case will be discussed.



## 3.4 Decisions and non-decisions

In order to supply the compliance theory above, I will outline the basics of Bachrach and Baratz's theoretical framework for analysing decision making and compliance, as explained in their article "Decisions and non-decisions" (1963). I believe this theory can deepen the understanding for whether, and, if so, why the threat of Brazil to retaliate against US had effect on US policies. I believe that this theory complements the compliance school theory above.

Bachrach and Baratz address the question of what makes actor B decide to comply or not comply with actor A's wishes. They argue that while the making of decisions can be due to a power-relationship, often it is due to other factors (Bachrach and Baratz 1963: 641).

They define power as being relational, dependent on the relationship between A and B. In order for there to be a power relationship between A and B, there must be a conflict between the two, B must comply according to what A wants, and B does this "because he is fearful that A will deprive him of a value or values which he, B, regards more highly than those which would have been achieved by noncompliance" (Bachrach and Baratz 1963: 635). The latter point, whether one country can threaten to invoke sanctions against another, is a necessary, but not sufficient condition to power. A has power over B if:

- B knows what A expects him/her to do
- The sanction that A threatens with is viewed by B as a deprivation
- The value of the sanction must be greater by the value of noncompliance
- B must believe that A will in fact fulfil the sanctions, in the case of noncompliance (Bachrach and Baratz 1963: 634)

As we see, several of these points are parallel to the compliance theory points.

There can be other reasons than power for why B complies, or things can happen that look like power. I will briefly outline these aspects. I will use these terms to discuss whether we saw an exercise of power in the Brazil-US case.

*Force* should not be mixed up with power. By use of force, B does not have the possibility of a choice, while in a power relationship it is B's choice whether to comply (Bachrach and Baratz 1963: 636). *Influence* is another term that can be confused with power. A has influence over B if A makes B change behaviour without the use of threat. As power, influence is relational and rational, but unlike power, influence does not depend upon the possibility of sanctions (Bachrach and Baratz 1963: 637).

Communication and reasoning are important aspects to understand Bachrach and Baratz' understanding of *authority*. It is, as power, relational and rational. The difference lies in that B does not comply because of the threat of sanctions, but because B recognizes the reasoning behind A's order (Bachrach and Baratz 1963: 638.)

Thus B's compliance with A's wishes, can be due to several other things than *power*. In this essay, I will discuss whether any of these other terms can have been relevant factors for the outcome of the case.

## 3.5 An analytical model

Based on the abovementioned theories, in this section I will outline the analytical model to be used in this thesis. I will also suggest some theory-based hypotheses for the analysis. I will analyse developments in the two time periods along the lines of the factors of the theoretical framework established in chapter 3. The structure of the analysis will be as follows:

Following Putnam's logic, I will first discuss factors at the national level ("level 2") and then the international level ("level 1"). At the national level I will implement both Putnam's theories on level 2, as well as public policy theories. At the international level, I will discuss Putnam's level 1 theories, and expand this with compliance theory and Bachrach and Baratz's theories. I will use the points to analyse the situation after the two reports, and the change between them.

### 3.5.1 The domestic level (level 2)

For the domestic level, I will discuss the following points:

- How important it was for Brazil and US to reach an agreement on the case
  - How important are the industries in question
  - How have the constituencies been affected by the issue
  - Have there been possible positive or negative repercussions of the issue
  - To what degree would change in this issue directly affect people's lives
- The relationship between the isolationists and the internationalists
  - How was the political atmosphere in the two countries in this respect
- The role of the domestic coalition
  - The domestic political coalition – the political divisions in the case
  - The role of the interest groups
    - Whether the issue of trade protection aroused interest groups proportionally more than others
  - Was group coalescence used as a technique
- Timing: Whether this case included what can be viewed a window of opportunity
- Synergistic linkage: Evans suggests this is not likely to be decisive
- How have the domestic ratification procedure of the countries affected the case?

- Have the negotiators used strict ratification procedures at home in order to increase its win-set?
- How have policy-making rules played in?
- What role can the electoral system have played in order to affect the power of interest groups, the agricultural lobby and others?
- Has bureaucratic capture been a factor?

### 3.5.2 The international level (level 1)

For the international level, I will address the following points:

- How the bilateral dependence between the countries has affected the win-sets of the two countries
- Whether and how the parties have strengthened their bargaining position by making their own win-set smaller
  - Common methods are “demonstrating a strong stance on a case and rallying domestic support
- Making your own win-set seem smaller than it is
  - Whether the negotiators have attempted the strategy of making your win-set seem “kinky”
- Expanding the opponents’ win-set by side-payments. Here trade retaliation is to be discussed under compliance theory.
  - The management school
    - The international laws have power in themselves.
    - The role of reputation
  - The enforcement school
    - Discuss whether enforcement was effective
    - Discuss the credibility of the sanctions
  - Reverberation: Analyse if reverberation has been used strategically; if US or Brazil have tried to influence each other’s win-sets/constituencies.
  - “Decisions and non-decisions”: Discuss whether force, influence or authority, rather than power, was a source of change in US behaviour in this case

### 3.5.3 Hypotheses

Although this is not a hypothesis-testing case study, I have some expectations for the analysis that I choose to formulate here in the form of hypotheses. This is in order to clarify my expectations. I will also include some assumptions that I use as a base for my hypotheses.

**Main hypothesis:** The Brazilian threat of cross-retaliation was a necessary, but not sufficient factor to explain the change in US policies as asked for in the research question. It acted together with other factors.

#### **Hypotheses about level 2 processes:**

- H1: The importance of the case changed after the Brazilian threat of cross-retaliation. This was a factor in the change in US policies.
  - Assumption: the saliency of the case for US widened the US win-set after the 2008 report, as it was more important for US to strike a deal.
- H2: The US domestic balance between the internationalists and nationalists (Putnam) changed during the time period, which made change in US policies more likely.
  - Assumption: Obama administration had a more multilateral stance than the Bush administration
- H3: The domestic ratification procedure of US is an important factor to explain why US did not comply fully, and why US issued side-payments to Brazil
  - H3.1: The US policy-making rules (Hiscox) was a central factor in the process
  - H3.2: The US plurality electoral system and bureaucratic capture makes US responsive to farmers' lobbies, but this can't explain the change in US policy
- H4: Change in the domestic coalition (Putnam), particularly in US, was an important factor for change in US policies.
  - H4.1: Change in the domestic political coalition in US widened the US win-set
  - H4.2: The involvement of new interest groups (Birkland) after the cross-retaliation threat widened the win-set significantly, and had a decisive effect for the outcome
  - H4.3: After the cross-retaliation threat, there was a case of group coalescence (Birkland) between parties which opposed the cotton subsidies
  - Assumptions:

- The relative power of different interest groups (Birkland) was decisive: US farmer's groups are powerful, but not as powerful as other interest groups who were involved after the retaliation threat
  - The issue did at first not mobilise other interest groups in US than farmers, but when more groups were directly affected (Birkland), the size of the US win-set increased significantly
  - Farmers' groups are proportionally more loud than their size suggests, due to the issue of trade protection (Hiscox in Ravenhill)
- H5: A window of opportunity (Kingdom in Birkland) enhanced the effect of the Brazilian cross-retaliation.
  - Assumption: The financial crisis weakened the targeted industries. This contributed to a window of opportunity

#### **Hypotheses about level 1 processes:**

- H6: The change in bilateral power relations between the two countries enhanced Brazil's bargaining position. This was a factor for the change in US policy.
  - Assumption: Brazil has become less economically dependent on US, while US has become more dependent on Brazil.
- H7: Throughout the process, both parties used statements and "window-dressing" to demonstrate commitment to the case (Putnam), thus narrowing their win-sets.
- H 7.1: The parties attempted to make their own win-set seem smaller than they were, in order to better their bargaining position.
- H8: Side-payments in the form of retaliation expanded US's win-set, which was a decisive factor for change
  - H8.1: Reputation and international norms (the management school) were not decisive factors for the change in US policy.
  - H8.2: Brazil's retaliation threats were credible and efficient (the compliance school), which widened the US win-set. YES
    - Assumption: WTO issuing Brazil the right to cross-retaliate made Brazil relatively stronger.
  - H8.3: Reverberation (Putnam) was used to widen the win-set
- H9: Authority (Bachrach and Baratz) was a factor in the change in US policy
  - Assumption: US recognised the reasoning behind Brazil's wishes

## 4 Analysis

I will now turn to analysing the situation after the adoption of the 2005 report and the situation after the 2008 report, and what can explain the change between them. The aim is to answer the research question: *What can explain the change in US policy vis-à-vis Brazil in the WTO case on cotton subsidies?*

However, I will start this chapter with an analysis of what *the change in US policy vis-à-vis Brazil* consisted of. Thus I will start with answering the background research question: *What was the change in relevant US policy actions after the 2005 report to after the 2008 report?*

### 4.1 The change from 2005 to 2008

I start with repeating the outcome after 2005 and after 2008. I define the most relevant US policy actions following the DSB recommendations of the 2005 report as<sup>44</sup>:

- The counter-cyclical payments and marketing assistance (actionable subsidies) were reauthorized with the 2008 farm bill, and still trade-distorting, despite US promises that they would change these.
- GSM-102 (the most controversial export subsidy program) was slightly changed, but still constituting an export subsidy.
- The Step 2 program was eliminated – 13 months late.
- The GSM-103 and SCGP programs were eliminated, but not before 2008, which was three years late.

I define the most relevant US reactions to the 2008 DSB recommendations and the following cross-retaliation threat as:

- Easing restrictions on Brazilian products, among them beef, through the recognition of Santa Catarina as free of certain diseases.
- Making modifications on the export-guarantee program GSM-102.

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<sup>44</sup> This is based on the discussion in chapter 2

- Promising to limit trade-distorting support to US cotton farmers.
- Issuing an annual payment of 147.3USD million to Brazilian cotton farmers.
- Setting up regular meetings towards the next US Farm bill.
- Brazil kept its rights to impose countermeasures

By comparing the points above, I define the *change in relevant US policy actions after the 2005 report to after the 2008 report* as the following:

After 2008:

- US made more significant changes to the export-guarantee program GSM-102
- US made promises to change the trade-distorting support in 2012 Farm bill
- Side-payments or compensation:
  - US would annually, until the farm bill which changes could be implemented, pay Brazil USD147,3 million per year
  - US eased restrictions on Brazilian beef
- The promise of meetings towards the next US farm bill, along with the fact that Brazil still could impose countermeasures

This suggests that US through its policy actions has gone further in complying with the DSB recommendations, and in meeting Brazil's interests, after the 2008 report than after the 2005 report. Note, however, that US has not yet complied with the findings.

Both US and Brazilian officials seemed pleased with the outcome. After the Framework deal of June 2010 was announced, the USTR released a press release in which the US Trade Representative Ron Kirk as well as Secretary of Agriculture Tom Vilsack expressed satisfaction with the outcome (USTR 2010).

Despite that the majority of official statements from Brazil were positive to the outcome, there were also Brazilians who were not pleased with the June 2010 Framework. After its release, some Brazilians were critical, saying it didn't "go far enough to right the wrongs of



US cotton subsidies” (ICTSD 2010a). Former secretary at the Brazilian agricultural ministry, Pedro de Camargo Neto, complained that it “lacked the symbolism of change’ in US policy that Brazil has sought with its WTO suit” (ICTSD 2010a). This may suggest that the outcome of the deal was not as good for Brazil as it could or should have been. Thus one of the things I must explain here is why Brazil didn’t manage to change the US subsidies enough to eradicate their negative consequences, and why they nevertheless accepted the deal, with main officials stating it was a good outcome. I also need to explain why US ended up issuing side-payments to Brazil.

I will now analyse factors that can explain the changes in US policy defined here. I will start with the domestic level, and then move on to the international level. I will refer to relevant hypotheses throughout the analysis. However, as the levels interact (which, indeed, is one of Putnam’s central ideas), there will be some overlapping between the discussions on the different levels.

## 4.2 The domestic level

### 4.2.1 The importance of the case

- *H1: The importance of the case changed after the Brazilian threat of cross-retaliation. This was a factor in the change in US policies.*<sup>45</sup>

I will now discuss how the importance of reaching a solution on the case, and of the case itself, has affected the win-set of the two countries, and thus their bargaining position (Putnam). I will have in mind that these factors may interact. I will start by discussing US, then Brazil.

#### The importance of the case for US

<sup>46</sup>Cotton export has increased its importance in the US economy in the last years. Supporters of the subsidies, and in particular the subsidies linked to export, argued that without these, the producers would not be able to sell the products abroad. Further they argued that this would

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<sup>45</sup> The Brazilian retaliation threat is discussed here, but more thoroughly below (4.3.)

<sup>46</sup> This section is based on data on cotton production and agriculture that is presented in 2.2 and 2.3.

constitute a serious threat to US cotton production (The Farmer<sup>47</sup> 2005a). For cotton farmers, reaching an agreement did not seem important, or desirable, as the farmers are more likely to suffer under an agreement (by decreased subsidies) than under a non-agreement (in which the subsidies are kept at the status quo). Rather, the grown importance of cotton production slightly increases the importance of cotton farmers in the US constituency. This can give US negotiators slightly larger support for a strong stance on US cotton, decreasing their win-set.<sup>48</sup>

The case was, however, important for US in a different sense, as it could have negative repercussions for other types of farm support (Sumner 2005). If US accepted this decision, it could create precedence for other types of subsidies to be challenged in WTO. This was a strong incentive for US to not accept the decision. This made the US win-set smaller and thus post-2005 US compliance increasingly difficult.

President Barack Obama has signalled that he is positive to cuts in farm subsidies. In his speech to Congress February 24<sup>th</sup> 2009, he said that he would “end direct payments to large agribusinesses that don’t need them” (Obama 2009), a stance he repeated when issuing his 2012 budget plan (Reuters 2011). This widened the US win-set on the case of subsidies in general after the 2008 report, and can help explain why US went further in complying. But as the main change did not occur before Brazilian threatened to cross-retaliate in March 2010, this was probably not a decisive factor for the change in US policy.

After the 2008 report the US win-set widened significantly. The reason for this is that more actors than US farmers were involved in the case. This is due to the Brazilian threat of retaliation, which implied that a non-agreement would cause retaliation measures. The most important industries to suffer from this were not cotton farmers, but other manufacturers<sup>49</sup>. The fact that cotton has become more important in the economy is likely to have far less effect on the US win-set than the negative possible impact of retaliation against other sectors. The possible damage done to other US sectors made the possible negative impacts of a non-agreement a lot bigger, as well as increasing the importance of the case. This widened the US win-set after 2008.

To sum up: After the first report, the possible losses for US of a non-agreement were not that large. Thus the win-set of US was smaller, and they had more bargaining strength. But after

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<sup>47</sup> The Farmer is published by FarmProgress, the largest US media company for the agricultural market

<sup>48</sup> Expanded upon in 4.3.1.

<sup>49</sup> See 4.2.4.

the second report, the Brazilian retaliation threat made it important for US politicians and a significant part of the constituency to reach a deal. This significantly widened the US win-set, and weakened the US bargaining position.

### **The importance of the case for Brazil**

<sup>50</sup>Cotton production is gaining importance within the Brazilian agricultural economy. This makes the case of cotton subsidies increasingly relevant and perhaps even more relevant in the future. Also, agriculture persists as a decisive factor for Brazilian growth and an important part of the Brazilian economy. This suggests that the case is important also for Brazil in a broader context, as other sectors may be interested in shedding subsidies in developed countries' production in their competing sectors. This suggests that the case is of high importance for Brazil. This can have two, seemingly opposing implications.

First, it may enlarge the Brazilian win-set. It is important for Brazil to reach a solution on the case, and perhaps more important as cotton has gained importance – in other words, more important after the second than after the first report. In a situation in which it is more important for a country to reach an agreement, Putnam argues that the win-set increases. Thus this suggests that the Brazilian win-set becomes larger after the second report, making Brazil more susceptible to making a deal.

But does this assumption of Putnam really fit for Brazil? The presumption is that Brazil has something to win on an agreement (removing illegal US cotton subsidies) and something to lose on opting out (not getting the subsidies removed). The more important it is for Brazil to delete the cotton subsidies, the more important is it for them to reach an agreement, and the larger is their win-set and the weaker the bargaining power. However, if the issue – US cotton subsidies – is not a very large burden to their economy, Brazil can easily afford to wait for an agreement. As we have seen cotton is rated far from the largest Brazilian agricultural crop, despite its relative growth as a commodity. The relatively low importance of cotton in the Brazilian economy suggests that it may not be that important for Brazil to get rid of the US subsidies immediately, and thus the win-set may not have grown that significantly.

The other implication suggests that the win-set may have become smaller for Brazil after the second report. This is because the increased importance of the cotton sector may have made

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<sup>50</sup> This section is based on data on cotton production and agriculture that is presented in 2.2 and 2.3.

Brazilian voters more devoted to the issue, and thus the support among the Brazilian constituency for a strong stance in the case may increase. This may decrease the size of the Brazilian win-set after the second compared to after the first report.<sup>51</sup> However, the Brazilian cross-retaliation threat in 2010 could harm Brazilian consumers would have to pay more for US goods. This was likely to increase Brazil's need to reach an agreement.<sup>52</sup>

To sum up: the importance for Brazil to reach an agreement in this case can have increased as the cotton production has increased. However, this may not have led to the resulting enlarging of win-set expected by Putnam. The increased Brazilian devotion to the issue, and the fact that cotton still is a relatively small part of the Brazilian agricultural production, may have decreased the win-set. On the other hand again, the interest of Brazilian consumers in avoiding retaliation, may have made it more important to reach an agreement, making the win-set after the second report wider. Thus it seems unclear what effect this aspect has had on the Brazilian win-set, and thus on the Brazilian bargaining power, from after the first to after the second agreement.

#### 4.2.2 The balance between isolationists and internationalists

- *H2: The balance between the internationalists and nationalists (Putnam) changed for US during the time period, which made change in US policies more likely.*

Putnam argues that if internationalists dominate the political scene, win-sets in international negotiations are likely to become larger. In this section I will discuss the characteristics of the political leadership of the two countries in terms of how isolationist or internationalist they were.

Brazil has had a relatively stable and firm stance on defending Brazilian interests throughout the case, at the same time as being dominated by internationalists. Brazil's position in international trade negotiations has been relatively stable throughout the first decade of the millennium, or at least since 2003, as the Lula government was in office from that year to the current (2011). I classify Lula's international trade policy as tough in international trade negotiations (WTO), and as a proponent for freer trade for Brazilian agricultural exporters. Because the richer countries of the world has been weakly committed to this cause, Lula

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<sup>51</sup> This argument is expanded upon in 4.3.1.

<sup>52</sup> This argument is expanded upon in 4.3.2.

could propose freer agricultural trade – a traditional rightist argument – and combine this with an appeal to the leftist sentiments of anti-imperialism and pro-developing country in his constituency (Ondetti and Rhodes 2010: 35). Under Lula, Brazil has been a central actor in uniting developing countries in WTO negotiations, often opposing the proposals of richer countries, highlighting South-South diplomacy. Thus he used trade policy to rally support among his core constituency (Ondetti and Rhodes 2010: 1-2). Brazil under Lula, and thus in the time period of this analysis, can thus be understood as fairly internationalist (in the sense of being positive to international negotiations), however, with a strong stance when it comes to pursuing Brazilian interests, and with a strong support in his constituency for a strong Brazilian stance. This case is thus likely to have strong support in the constituency. The internationalist stance may have widened the Brazilian win-set, but the fierce opposition to rich countries' (in particular the US's) dominance in WTO, narrows the win-set. Thus this factor seems to have had a mixed effect on the Brazilian win-set.<sup>53</sup>

I will now discuss if there has been a change in the balance between internationalists and nationalists in US. Most of the process has played out under the Bush presidency. But most of what is defined in chapter 2 as the outcome after the 2008 report, is expressed in the June 2010 Framework. This is after Barack Obama's inauguration as President. Looking at the overall US foreign policy, several have argued that the Obama administration is significantly more responsive to international norms and law than the Bush administration (see Foreign Policy 2010). Obama himself suggested that his presidency would be more based on multilateral cooperation, and international principles and law in his 2007 essay *Renewing American Leadership* (See Obama 2007: 9, 11, 13, 15). This suggests that the Obama administration would be more responsive to WTO law and recommendations, which would make the Obama administration more likely to change their policies after the 2008 report than after the 2005 report. However, if this was a decisive reason for the change, one should expect US to change its policies earlier, if not immediately after the inauguration of Barack Obama in 2009, then at least show signals towards change after a relatively short time. The final US response I'm referring here only occurred after Brazil's threat of retaliation, which was in March 2010. This suggests that a change towards a more internationalist stance following the change in US presidency was not decisive for the outcome of the case. Also, the balance

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<sup>53</sup> The strong Brazilian stance on Brazilian interests is discussed further under 4.3.

between internationalists and isolationists is dependent on the composition of the members of Congress, which is discussed under point 4.2.4, where also party colour will be discussed.

### 4.2.3 Domestic ratification procedure and institutional factors

- *H3: The domestic ratification procedure of US is an important factor to explain why US did not comply fully, and why US issued side-payments to Brazil*

As suggested in the theory chapter, the institutional factors of the US political system can help explain why narrow interest groups like farmers' lobby groups have a lot of power. And the US negotiators can have used the strict ratification procedures in US in order to increase their own win-set. However, can it explain the change in US policy?

As the change in US policy was dependent on ratification in the US domestic political system, the main focus of this section is on US institutions. However, the Brazilian system also played in after WTO allowed Brazil to cross-retaliate, as I will show below.

#### Policy-making rules

- *H3.1: The US policy-making rules (Hiscox) was a central factor in the process*

The most important policy-making aspect is that the changes in agricultural subsidies which the DSB reports recommend have to go through Congress. This is relevant both for changes that was to be made in the farm bill, and for changes that could be made in separate decisions, or in the US Budget. That the changes had to go through the Congress was underlined by USTR Ron Kirk in 2010 (Imarketnews 2010). As bills must go through both houses, the coalitions in both houses are relevant. Congressmen from the so-called "farm states"<sup>54</sup>, are unlikely to support cuts in farm subsidies (New York Times 2007). The overrepresentation of farmers in the US Senate is likely to make subsidy cuts difficult to ratify.

As discussed in chapter 2, a US farm bill was signed in 2008. The fact that the farm bill debate and resolution was lying ahead of the US policy process when the 2005 report was issued, gave the US negotiators a strong card: they got the possibility to "blame" the need to wait for the farm bill process for not changing the challenged programmes earlier. It is also

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<sup>54</sup> The ten largest agricultural producing states in 2009 were California, Iowa, Texas, Nebraska, Illinois, Minnesota, Kansas, North Carolina, Indiana, and Missouri (USDA 2010b)

fair to assume that Brazilian negotiators hoped for significant change in this bill. This narrowed the US win-set after this first report, as compliance was made dependent on resolutions in the future farm bill. This can help explain why US did not comply more with the first report.

Interestingly, when the 2008 farm bill was to be passed, the agricultural secretary and the Bush administration originally aimed to limit farm subsidies to wealthy farmers. However, these suggestions did not pass in Congress, which ended up passing a much more generous farm bill (The Washington Post 2010). This shows how the power of the Congress narrowed the US win-set.<sup>55</sup>

Some measures could clearly be decided outside Congress, as the modifications of the GSM-102 programme were done by the Department of Agriculture (New York Times 2010). Despite this, the Brazilian acceptance of that US did not immediately bring their cotton programme into compliance with WTO recommendations, suggests that they acknowledged that most of the US policy process had to go through Congress, after the second as well as the first report. This is suggested by the following statement by Márcio Cozendey after Brazil's retaliation threat in March 2010: "We know this depends on Congress and can take time", referring to the US farm bill process (ICTSD 2010b). This Brazilian acceptance widened the Brazilian win-set and helps explain why the Brazilians accepted side payments instead of immediate compliance.

When WTO gave Brazil the right to cross-retaliate against US sectors in 2009, one of the sanction measures that was allowed, was that Brazilian pharmaceutical companies was allowed to produce medicines which ordinarily were protected by US patents. This was retaliation allowed under TRIPS. The Brazilian government immediately prepared a "provisional measure" which allowed Brazilian companies to produce such products. Such a measure is a presidential decree with immediate effect. It must later be ratified by the Brazilian Congress, however (ICTSD 2009a). Nevertheless, the possibility of preparing a "provisional measure" made it possible for Brazil to react quickly, thereby enhancing the efficiency of the threat – showing US that Brazil were serious in their intentions.

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<sup>55</sup> The farm bill process leading to the 2008 bill is also discussed under 2.6. and 4.2.4.

## The electoral system and bureaucratic capture

- *H3.2: The US plurality electoral system and bureaucratic capture makes US responsive to farmers' lobbies, but this can't explain the change in US policy*

I argue that the electoral system does not explain the change in US policy which the research question asks about. Plurality and geographical divisions makes US more responsive to farmers lobbies. However, as there has not been a change in the US electoral system, this cannot explain a change from after the first to after the second report.

As mentioned above, the USDA is listed as a typical example of bureaucratic capture. This is supported by Paarlberg and Paarlberg (2000), who argue that beneficiaries to farmers will be supported by the agriculture committees in Congress and by the USDA, as these institutions are the ones who administer the farming programs. Thus they need these programs in order to justify the size of their budget and organisations (Paarlberg and Paarlberg 2000: 148). This again supports the notion that the Secretary of Agriculture is regarded as an advocate for farmers.

Those who have been Secretary of Agriculture on this case all have had quite similar backgrounds, and support the notion of a stable relationship between the bureaucracy and the . Tom Vilsack (2009 -) has close ties to agribusiness and is previous governor of an agricultural state. Ed Schafer (2009 – 2009) and Mike Johanns (2005 – 2007) were also previous governors of farm states. I have not found data suggesting that change in secretary was a factor in the change in US policies from after the 2005 report to after the 2008 report.

The institutional factors can explain the close ties between the US farmers' lobbies and the US legislatures and bureaucracy, and thus the high support for agricultural subsidies. It can further help explain why removing subsidies is a difficult task in US politics. However, there has not been a change in the electoral system, and I have not found data suggesting that there has been a change in the bureaucratic capture in US agricultural politics. When it comes to explaining the *change* in US policies, we must look for other factors.



#### 4.2.4 The domestic coalition<sup>56</sup>

- *H4: Change in the domestic coalition (Putnam), particularly in US, was an important factor for change in US policies.*

I will now discuss the role of domestic political coalition and of interest groups. Who was likely to support and object to an agreement, and would it be possible to get the agreement through at the domestic level? I will analyse how the domestic coalitions changed after the second report, and how this affected the change in US policies. This discussion is largely based on elements from public policy.

##### The political coalition

- *H4.1: Change in the domestic political coalition in US widened the US win-set*

This hypothesis is based on the assumption that a new Congress in US may have changed the political coalition in a direction which made change in US policies easier to ratify, which could have explained some of the changes in US policy asked for in the research question. However, my analysis suggests that this hypothesis does not hold.

In US, there was a turn from a Republican to a Democratic president in 2009, and there was a Democratic majority in Congress from 2007 to 2011 (Office of the Clerk). However, did this shift the political atmosphere towards a more likely stance on decreasing or eliminating cotton subsidies, as my hypothesis suggests? Republican presidents have repeatedly supported protectionist measures (Hiscox in Ravenhill 2008: 117). Further, Fordham and McKeown (2003) suggest that the party contributors from agricultural sectors are more closely linked to the Republicans than to the Democrats. However, the same literature suggests that cotton-dominated districts were more likely to be Democratic (Fordham and McKeown 2003: 533 – 534). Also, Republicans are in general more market-oriented than Democrats, with a tradition of being oriented towards tight fiscal budgets. Paarlberg and Paarlberg (2000: 160) argue that a Democratic House is less likely to support liberal agricultural reform than a Republican House. Republicans are thought to be more positive towards lowering trade barriers than Democrats (The Economist 2007a). This suggests that the possibility for removing subsidies is larger under a Republican Congress and President, as was the case until January 2007 and January 2009, respectively. Thus the US win-set in this case would be thought to become smaller when Democrats took over the Congress and White House, which was in the period

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<sup>56</sup> For the same reasons as under 4.2.3, the main focus is on the US political coalition.

after the second report. However, as mentioned above, political and Congress support for US farmers, and cotton farmers in particular, are dependent on other factors than party colour: geography, lobbying ties etc, and politicians opposing the subsidies are found among Republicans as well as Democrats. Based on this, I argue that change in party coalition in Congress was not an important factor for the US win-set in this case.

The fast-track authority is mentioned in the theory. President Bush used the fast-track authority to establish several free trade agreements (Tucker and Wallach 2009). However, I have not found that the fast-track authority was used in relevance to this case.

As I discussed in chapter 2, parts of the recommendations from the DSB had to be ratified in the US farm bill. However, the 2008 farm bill extended the support to US farmers<sup>57</sup>, despite Kind and Flake's efforts (see below). The 2008 farm bill process discussed in the following paragraph, illustrates the trade-offs in the domestic coalition between farm policy reform and other policy areas.

Leading up to the 2008 farm bill, two Congressmen, Ron Kind (Democrat) and Jeff Flake (Republican) made a failed attempt to use the farm bill process in the House to make reform in US agricultural policy, including cutting subsidies. They were met with strong resistance. I will not refer the details of the House process here, only the most illustrative points. Early in the process Chair of the House Agricultural committee Collin Peterson (Democrat) warned House Speaker Nancy Pelosi, who had first signalled farm policy reform, that Democratic first-years in Congress could lose votes in rural districts if she supported significant changes in farm policies. Democrats supporting the current agricultural policy threatened Pelosi with withdrawing their support from a health insurance program for children if she supported change in agricultural policy. This led to Pelosi supporting the House Agriculture Committee, a committee which represents districts that receive 42 percent of the total subsidies, and thus depend on votes from these districts. Further, Peterson bought off those in the Agriculture Committee<sup>58</sup> that wanted reform of the farm policy with side-payments, amounting to USD10 billion. The Kind-Flake reform bill was voted down in the House with a significant majority vote (309 to 117), and the House passed a legislation that to a large extent extended the level of government support to farmers from the previous farm bill (Grunwald 2007 and ICTSD 2007a). Later, the farm bill was passed in Senate, and signed by the

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<sup>57</sup> See chapter 2

<sup>58</sup> Including almost USD 5 billion to nutrition, USD100 million to black farmers

president, and, as we saw chapter 2, without meeting the DSB demands from the cotton subsidies case.

Through this political horse trading, the win-set of possibilities for reduction of agricultural subsidies was significantly narrowed. The domestic coalition was clearly opposed to reform of the farm policy at this point. This again narrowed the US win-set in complying with the DSB 2005 findings. This case illustrates that the fear of losing support in the constituency makes ratification difficult. This narrows the win-set, and is a factor explaining why US did not go further in complying after the 2005 report. However, this does not in itself explain the change in policies after the 2008 report, which is what the research question asks about.

A brief note on the Brazilian domestic political coalition: The Brazilian Congress includes a Senate and a Chamber of deputies. There were elections to both chambers in 2006 and in 2002<sup>59</sup>. In 2002 elections, Lula's party PT became the largest party in Senate and in the Chamber of Deputies. This changed slightly after the 2006 election, as the centre party PMDB became the largest in Congress and won most seats in the Senate<sup>60</sup> (Political Database of the Americas 2010). However, as PMDB cooperated with Lula's party PT, the government kept power in Congress. Thus there has been little change in the Brazilian domestic political coalition which can have influenced the process.

### **Agricultural interest groups**

- *H4.2: The involvement of new interest groups (Birkland) after the cross-retaliation threat widened the win-set significantly, and had a decisive effect for the outcome*

The hypothesis points to agricultural interest groups as well as other interest groups. The non-agricultural lobbies and the interplay between different interests will be discussed under the heading "Group coalescence". First I will discuss the role of the agricultural and cotton lobby, and their role in the process.

Among the central agricultural actors in US we find the American Farm Bureau, the National Farmer's Union and the sector lobbies, among them the cotton lobby. The total agribusiness lobby spent more than 120 million USD in 2010 (OpenSecrets.org 2011a). Thus the agriculture committee members are likely to be relatively more dependent on support from

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<sup>59</sup> There was also an election in October 2010, but as this is outside the time scope of this analysis, I will not include the results of this here.

<sup>60</sup> Only a third of the Senate seats were on election this year (Political Database of the Americas 2010)

voters supporting subsidies than others. The US agricultural lobby is viewed as being very effective, and with close ties to central decision makers. Paarlberg and Paarlberg argue that despite the decrease in numbers of US farmers, the US farming lobby has managed to make up for this with high-quality organisation and high campaign contributions (Paarlberg and Paarlberg 2000: 149). It has been argued that the large-scale farmers “dominate the legislative processes in Washington” (Paarlberg and Paarlberg 2000: 159), relating to the legislative processes concerning agricultural policy. This statement supports the notion that the large-scale farmers have an impact on US policy which exceeds the amount of voters they make out.

Since 1998, the Agribusiness has given more money through the Political Action Committee (PAC<sup>61</sup>) system to the Republicans than to the Democrats. However, the gap has diminished, and in 2010, Democrats received 49 percent of the agribusiness PAC contributions. Further, within the crop production subdivision, Democrats received 62 percent of the contributions in 2010. This is a certain turn in trends as the Republicans received 52 percent of the support from 1998 to 2006 (Opensecrets.org 2011d; Opensecrets.org 2011e). As noted above, the Congress turned from a Republican to a Democrat majority in 2007. This suggests that party colour is not the decisive factor when the agricultural lobby decides who to support, but rather, which is in power.

The US Cotton lobby, which is united in the National Cotton Council (NCC), is a strong lobby, with powerful connections in US Congress. Scott Lincicome, blogger and international trade lawyer, stated: “We’ve seen over and over and over that congressmen and senators who are big supporters of agribusiness don’t care about WTO rulings. US cotton farmers are a very powerful lobby” (ICTSD 2010c). As a lobbying client, the NCC has increased its lobbying expenditures the last years. In 2005, it spent USD 260 000, in 2010 it spend USD 380 000 (OpenSecrets.org 2011b). As a PAC, NCC spent about 400 000 USD in 2010, 56 percent of which on Democratic candidates. However, between 1996 and 2006, Republicans were top recipients (Opensecrets.org 2011c). This suggests that the cotton lobby, as the agricultural lobby, choose their recipients depending on who is in power.

In 2005, the cotton industry was backed by Thad Cochran, chairman of the Senate appropriations committee, and of Saxby Chambliss, the chair of the Senate agricultural

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<sup>61</sup> PAC: a committee which normally represents the interests of a certain business, labour interest, or ideology, raises money for the election of certain political candidates (OpenSecrets 2011k)

committee (AFP 2005). In 2010 one of their closest supporters was Blanche Lincoln (Democrat), chair of the Senate Agriculture Committee (ICTSD 2010c). These powerful connections to Congress are generally thought to make reform on cotton subsidies difficult (BBC 2010). This narrows the US win-set. Despite the increase in lobby spending, I have not found other factors suggesting that the strength of the connections to Congress has changed significantly between the two reports. Thus this was not a decisive factor for the change in US policy from after the 2005 report to after the 2008 report.

The reaction of the NCC to the 2005 report was to firmly oppose its findings. NCC repeatedly denied that the US subsidies were a problem for world cotton prices (AFP 2005; Farmprogress 2006). Further, the CEO of NCC argued that the cotton industry was “being punished for all the world’s economic ills”, as it was used as a central case in the WTO Hong Kong minister meeting of 2005 when discussing the need to reducing subsidies (Farmprogress 2006). Following the assumption that the cotton lobby had impact on the US political process, this stance narrowed the US win-set.

The stance of NCC did hardly change from 2005 to 2008, as NCC remained firm on the point that the US subsidies did not significantly oppress world prices (NCC 2010b). The strong opposition from the cotton lobby on this case corresponds with Hiscox’ point that trade protection arises protectionist interest groups proportionally more than others, and with Birkland’s point that groups that are directly affected by a change, will be louder and more influential. A 2007 article about the farm bill underlines this: “For health, business and environmental groups, the farm bill is a compelling issue, but for the farm lobby, it’s *the* issue, and politicians oppose it at their peril” (Grunwald 2007). After the 2005-report, this narrowed the US win-set, as few other US actors had strong interests in the case. As we shall see, this changed after the Brazilian threat of retaliation.

I will now analyse the domestic coalition after 2008. When the WTO panel allowed Brazil to cross-retaliate against US in 2009, the cotton lobby and the farm lobby reacted sharply. They argued that changing the GSM-102 program in the 2008 farm bill had brought US policy into compliance with the WTO demands. Jay Hardwick, the NCC chairman said in a statement: “The US cotton programme and export credit guarantee programmes have changed considerably since 2005. (...) Today’s programmes cannot possibly be determined to be causing injury in the world market” (ICTSD 2009a ). NCC also argued that the subsidies were

necessary for their farmers: “We feel this is a very important financial safety net for producers,” Gary Adams at the NCC stated in March 2010 (BBC 2010).

In fact, after Brazil got the right to retaliate, NCC got together with six other US farming groups and signed a statement asking the US government to “request a new Compliance Panel to update this ruling to reflect the changes in the program made by Congress and the USDA since 2005” (NCC 2009). This clearly demonstrates a strong stance against the ruling, and a strong belief in that they have complied, despite WTO’s findings. Interestingly, US never requested such a new compliance panel. This may suggest that the government and the farm lobby were slightly beginning to part paths in terms of how they perceived the case – that the government had become less supportive to the industries’ claims about compliance.

To sum up this part: I argue that there has not been a significant change in the power of the agricultural and cotton lobbying groups from the period after the first to the period after the second report, when these lobbying groups are seen in isolation. The difference in the party affiliations, which could come in play in the change from a Republican to a Democratic Congress and ditto President, has neither influenced the win-set significantly. However, the agricultural lobbies’ relative power compared with other US interests changed when other industries became part of the game after Brazil’s threat of retaliation in 2010. Before these other industries entered the game, the groups opposing the US agricultural subsidies were neither very loud nor powerful in terms of number of voters or money. And, as mentioned, the groups that suffered from them were primarily tax payers, and the “suffering” was far from serious enough to raise significant opposition.

The Brazilian cotton lobby can have contributed to the fact that Brazil accepted the deal. The Brazilian cotton producers were important drivers behind the Brazilian decision to take the case to WTO in 2002 (New York Times 2010; Le Quotidien Senegal 2010), and in the soon-to-be decade since then, the Brazilian cotton industry has grown significantly (see discussion about Brazilian cotton industry above and Rio Times 2011). The Brazilian cotton lobby put pressure on the government to retaliate, according to Financial Times: “under pressure from its cotton growers, is preparing to retaliate” (Financial Times 2009a) This makes it likely that the Brazilian lobby has become more, not less, powerful during this DSB process. In the June 2010 Framework Agreement, which I define as the preliminary outcome of the process for the purpose of this essay, significant annual payments to the Brazilian cotton industry is an

important part of the deal. The fact that this was accepted in the deal from the side Brazilian negotiators, can perhaps be explained partly by the rising importance of the cotton industry.

### **Group coalescence**

- *H4.3: After the cross-retaliation threat, there was a case of group coalescence (Birkland) between parties which opposed the cotton subsidies*

I will now discuss the role of non-agricultural US lobbies and interest groups. The cross-retaliation threat by Brazil, which was authorised in 2009 and exercised in March 2010, changed the domestic coalition in US. This happened because other interest groups, threatened by the possibility of trade sanctions, were directly affected by the case. Suddenly new groups had an interest in that US complied with DSB recommendations. This move was strengthened by group coalescence between different US lobbies, industries and politicians. The US win-set thus widened significantly, which I argue was a central factor for why US changed more favourably towards Brazil's wishes after the 2008 report.

Among the 102 goods on the first list of retaliation measures that Brazil issued, there were automotives, foods, tires, toiletries, cosmetics, electronics and textiles (WTO 2010d). I will not enter into a discussion on each and one of the lobbying groups connected to the different goods, as this is beyond the scope of this essay. However, this illustrates that a broad range of industries were threatened. Several of the goods were classified as luxury goods (ICTSD 2010b), which were vulnerable in the global economic downturn. The financial crisis had harmed US exports in general, which made the retaliation threat more effective.<sup>62</sup> I will discuss the power of the car lobby as it is an example of one of the strong lobbies that were threatened by Brazil's retaliation. I will also discuss some intellectual property industries, as these were threatened after Brazil released the second list.

The automotive lobby is a powerful US lobby (The Independent 2008 and OpenSecrets.org 2011f). If one compares the lobby spending of the car industry with the spending of the crop production and basic processing sector (which the cotton lobby is part of), one finds that the former has spent about three times as much in annual lobbying over the last years than the latter. The automotive lobby has spent about USD 60 million a year on lobbying since 2006 (OpenSecrets.org 2011f), while crop production and basic processing has varied from about

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<sup>62</sup> Discussed further under 4.3.5.

USD 14 million to almost USD 22 million a year in the same time span (OpenSecrets.org 2011g). And if one compares the automobile industry with the cotton lobby, which as mentioned above spent about USD 400 000 in annual lobbying, the latter becomes small in terms of contribution numbers. Birkland suggests that money and resources increase the power of interest groups. Following this, pressure from the automotive lobby on reaching an agreement in this case, is likely to have an impact, which can have helped push the US political leaders towards reaching an agreement with Brazil. Together with pressure from other lobbies that were threatened by cross-retaliation, this probably widened the US win-set, making US more willing to reach an agreement. I therefore see the power of the automotive lobby, and other industries, as a factor which is likely to have made US change their policies in order to avoid cross-retaliation. This can explain why US policies changed more favourably towards Brazil's wishes after the second report.

As noted in chapter 2, a few weeks after Brazil had released the list of goods that would be subject to retaliation, they released the list of intellectual property industries that could be subject to retaliation. Targeting intellectual property would hurt US much more than imposing duties on Brazilian imports of US goods (Financial Times 2009a). When submitting the list of products under which they could suspend copyrights, patents and royalties, Brazil's head of the Foreign Ministry's economic department, Carlos Marcio Cosendey, said: "These are temporary measures aimed to force a change in the US" (Bloomberg 2010a). This suggests that the Brazilian political leaders knew this was a serious threat to US industries. And indeed, representative of US chamber of commerce, Mark Esper, stated that the threat of suspending intellectual property rights was serious to the US economy: "Even a temporary measure that results in the undermining of any IP<sup>63</sup> rights – whether patents, trademarks or copyrights – will cause substantial harm to IP-based industries, workers, and consumers in both the U.S. and Brazil" (Wall Street Journal 2010a). This suggests that cross-retaliation strengthened Brazilian negotiating power.

Typical IP-based industries are the pharmaceutical industry and the computer industry. The pharmaceutical and health product industry is listed as one of the highest contributors to federal campaigns, a position which has been consistent over the last years (OpenSecrets.org 2011h). In 2010, it was listed as the ninth largest contributor to members of Congress (in 2008, the 17<sup>th</sup> largest, and in 2006, the 10<sup>th</sup> largest). The crop production and basic processing

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<sup>63</sup> *IP* is an abbreviation for intellectual property.



industry, in comparison, was the 23<sup>rd</sup> largest (OpenSecrets.org 2011i). And like the farm lobby, the division of contributions between Democrats and Republicans has shifted depending on the majority in Congress (OpenSecrets.org 2011j). The computer and internet industry is also larger than the farmers' lobby: it was the 21<sup>st</sup> largest contributor in 2010 and the 13<sup>th</sup> largest in 2008, and in 2006, the 18<sup>th</sup> largest. The contribution has traditionally been evenly split between the two main US parties. However, the last years there has been a Democratic bias (OpenSecrets.org 2010). Note also that for both these industries, the largest 2008 recipient was Barack Obama. The largest 2008 recipient for the crop production and basic processing industry was John McCain (OpenSecrets.org 2009). This is likely to be due to the presidential campaign running at that time. More importantly, it suggests that president Obama is likely to be responsive to the IP industry. This can have increased the IP industries' power relative to the farmers' lobby. Pressure from IP and pharmaceutical industry is likely to have narrowed the US win-set, which made it more urgent for US to strike a deal to avoid the retaliation. The power of these lobbies interplayed with the timing of the threat.<sup>64</sup>

After Brazil had released the first list of sanctions March 8<sup>th</sup> 2010, the representative of the Brazil-US Business Council also joined the debate. This is an organisation which promotes free trade and investment between Brazil and US, aiming to advocate the interests of businesses between the two countries. The organization urged US to do what they could to avoid the retaliation, and to comply with its WTO obligations (BBC 2010).

Following the Brazilian listing of goods, the political environment started moving as well. Congressmen Ron Kind (Democrat) and Jeff Flake (Republican), who had been working to reform US farm subsidies, sent a letter, also signed by Congressmen Barney Frank and Paul Ryan, to President Obama. It was sent after the first interim agreement between US and Brazil to postpone the retaliation (April 2010). In this letter, they argued that “the US cotton program is a barrier to trade and economic growth and must be reformed”, urging the president to work to reform the subsidies (Kind et al). They argued that the retaliation threat from Brazil occurred as a consequence of Congress' “inability to reform the subsidy program in the farm bill”, and also expressed fears that this could spill over to other disputes against other types of US subsidies, something which would have a strongly negative effect on US business and workers. They further argued that the deal to pay Brazilian agribusiness close to USD150 million a year was negative, arguing that this was fiscally irresponsible, distorting

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<sup>64</sup> See 4.2.5.

trade, and not a responsible use of US taxpayers' money. In addition to arguing in the interest of the taxpayer, they pointed to the "current fiscal situation". I interpret this as indicating that the US difficulties following the financial crisis, and the large US budget deficit, makes it unwise to continue with the current subsidies. They argued that the subsidies were illegal, and that there were significant amounts to save in annual federal budget spending. They estimated that changing the US cotton program into compliance with the WTO dispute settlement ruling, the government could save minimum USD1.8 billion a year. They also included a moral argument saying: "we cannot expect our trading partners to play by the rules if we are not willing to do the same" (Kind et al 2010).

This letter combined an array of different arguments for reforming the US cotton program, representing several interests in the US economy. This indicates that this can be a case of group coalescence. This is supported by the above discussion of how non-agricultural lobby groups had interest in avoiding retaliation, and by the following: after US and Brazil had agreed on the Framework agreement in June 2010, Kind and Flake received a letter in which several organisations thanked them for their support in avoiding trade retaliation. Among the signatures were representatives of the medical, automotive, information technology and pharmaceutical industry, the Intellectual Property Owners Association and the US Chamber of Commerce (BRAZTAC 2010). Also, Secretary of Agriculture in US Tom Vilsack indicated how different groups' interests were raised in this case, as he said that he looked forward to reaching a solution that would meet "the needs of American farmers, workers and consumers" (USTR 2010b). This group coalescence significantly weakened the relative influence of the farmers' lobby, and thus the domestic coalition in US. It became costly for the US *not* to comply, due to that non-compliance would affect other strong parts of the US industry and economy. The US win-set was significantly widened, and the US agricultural lobby got weaker bargaining power. This is a central factor for why US accepted a deal which was more favourable towards Brazil's interests.

After the first preliminary agreement, note that Kind and Flake were negative to the payments to Brazilian farmers. However, the NCC, the US Trade Representative Ron Kirk, and Tom Vilsack, agricultural secretary, expressed satisfaction with the deal (New York Times 2010). Brazil also expressed satisfaction. However, US politicians who were critical to the US subsidy programmes were not satisfied. US pleased Brazil despite lack of full compliance,

partly by issuing side-payments<sup>65</sup> in the 2010 Framework Deal. These side-payments are likely to be due to the need to “buy out” Brazilian interests, and opposed the interest of US actors who wanted cuts in subsidies. This suggests that the US politicians opposing subsidies had little influence on the outcome of the case.

Others who could lose on the Brazilian retaliation on US goods are Brazilian consumers, for whom the US goods would become more expensive. This thus widened the Brazilian win-set slightly, as Brazilian consumers, who are an important part of the constituency, could oppose retaliation. However, the right to impose measures within TRIPS, on intellectual property, could also make products cheaper for Brazilian consumers (ICTSD 2010d). Thus the retaliation would be easier to bear for the Brazilian constituency. This made the win-set of Brazil smaller, bettering their bargaining position.

After Brazil’s threat to cross-retaliate, some Brazilian officials feared that this could have a negative effect on US investments in Brazil. A spokeswoman from USTR gave the same warning. Others feared that the USD2.5 billion trade privileges given Brazil from US under the Generalized System of Preferences could be suspended (ICTSD 2010b). This could then make the Brazilian win-set after the threats of retaliation larger, as it is an incentive against retaliation. This can have made the Brazilian win-set bigger, weakening their bargaining position. This can help explain why Brazil suspended retaliation, in stead of going through with them, despite that US did not eradicate their illegal subsidies.

#### 4.2.5 Public policy: timing

- *H5: A window of opportunity (Kingdom in Birkland) enhanced the effect of the Brazilian cross-retaliation.*

The situation after the 2008 report opened up a window of opportunity for Brazil, and this widened the US win-set. The financial crisis, the fiscal deficit and the rising lack of jobs made the US economy vulnerable, and weaker than earlier.

The financial crisis is discussed in chapter 2. As mentioned, several of the targeted goods were severely hit by the financial crisis, and US exports were hit particularly hard. The financial crisis strongly exacerbated the retaliation threat, particularly because Brazil threatened to reverberate against sectors which were severely hit by the crisis. The retaliation

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<sup>65</sup> See 4.3.

threatened US jobs and exports. In the first retaliation threat against goods (March 8<sup>th</sup> 2010), Brazil raised tariffs on cars with 50 percent (BBC 2010). By doing this, Brazil targeted the US economy one of the places that hurt the most, as the US car industry had been particularly hard hit in the aftermath of the global financial crisis (Financial Times 2009b; Financial Times 2009c).<sup>66</sup> The Brazilian intention was explicitly expressed by the head of economic affairs, Carlos Marcio Cozendey from the Brazilian foreign ministry, who said that “The idea was to distribute the retaliation broadly in order to maximize pressure” (BBC 2010). This suggests that the Brazilian leaders had considered the timing, and attempted to use the window of opportunity to make the most of their retaliation threat.

The retaliation threat from Brazil came more or less at the same time as President Barack Obama announced that he wanted US export to double over the coming five years, in an effort to fight the negative trade balance and help bettering the US economy (The Economist 2010a). The threat of Brazil to impose tariffs on important US goods was therefore badly timed for US as such tariffs would then be particularly painful. This made it more important for US to reach an agreement, which widened the US win-set, weakening their bargaining position.

The cross-retaliation threat was issued at the same time as the US Commerce Secretary visited Brasilia. The aim of the visit was to promote the US National Export Initiative. (Americas Society/Council of the Americas 2010) This suggests that Brazil timed the threat in order to create maximum effect, as the retaliation would work against the very aim of this initiative.

Paarlberg and Paarlberg (2000: 160) suggest that a budget surplus may cause Congress to keep high agricultural support. Following this, it should be possible to argue the opposite: that a budget deficit may be an incentive to cut government spending on farming support. As showed under section 2.2, US has struggled with a large budget deficit over the last years. This may create a more positive climate in the US towards reducing US subsidies. However, this is not exactly what happened in the outcome of this case. Despite there were some cuts in US subsidies, the vast amount of the cuts were promised to happen in the 2012 bill. Also, US actually ended up with subsidising Brazilian farmers, which suggests that the budget deficit was not a significant argument here. However, it is possible to imagine that the budget deficit made it seem more likely for Brazil that US will comply in the 2012 farm bill. As we

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<sup>66</sup> The car lobby is discussed under 4.2.4.

remember, the promise to do this was a part of the 2010 framework. Thus the budget deficit may have increased the credibility of the US promise to comply in 2012, which might be one factor explaining why Brazil accepted that US did not comply fully. However, I have not found statements or other indicators suggesting this directly.

All in all, I will argue that these factors connected to the timing – the financial crisis, the need for US to boost exports, the visit to Brasilia and the budget deficit, created a window of opportunity for Brazilian negotiators. This increased the effect of the Brazilian retaliation threat. This widened the US win-set, and can help explain why US went further in pleasing Brazilian interest after the retaliation threat.

#### 4.2.6 The use of synergistic linkage<sup>67</sup>

I have not found that US or Brazil used synergistic linkage as a tool in this case. Thus it does not have seemed to affect the win-set. This corresponds with Evans's (1993) suggestion that synergistic linkage is unlikely to be a decisive factor.

However, I note here that this might change with the discussion on the 2012 Farm bill which lies ahead. As mentioned, Congressmen Kind and Flake have argued that US farm policy ought to change due to that it is inconsistent with US' WTO obligations. If this argument reaches through, we might see a case of synergistic linkage.

### 4.3 The international level

- *H6: The change in bilateral power relations between the two countries enhanced Brazil's bargaining position. This was a factor for the change in US policy.*

A central starting point when analysing the processes in this case at the international level (level 1 in two-level games) is that the bilateral power relations between US and Brazil, if measured in economic (or in military) terms, are asymmetrical, as demonstrated in the discussion about the two countries' economies above. As showed in 2.2.1, Brazil is far more dependent on trading with US than US is on trading with Brazil. This illustrates how the political asymmetry is in US's favour. Thus in terms of classical realism, and neo-realist theories, the idea of Brazil inducing change in US policies can be a puzzle. Note however that

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<sup>67</sup> *Synergistic linkage*: using an international agreement to get policies through at the domestic level

this would not be a puzzle if the change in US policies was not costly for the political leaders. But, as I have shown when discussing the power of the farmers' lobbies in US politics, it would be politically costly for the US negotiators to comply with the DSB reports of 2005 and 2008. In this essay and in this internationally focused part of the analysis in particular, I will analyse the possible explanatory factors as to why a significantly less powerful country can induce change in the world's most powerful country. As Brazilian Agricultural Minister Reinhold Stephanes said in 2007, when commenting on the possibility of Brazilian retaliation: "It's very, very difficult to adopt measures against the United States (...). It is a big power and a big trading partner" (Bloomberg 2007). This illustrates how challenging it was for Brazil to induce change in US politics.

However, the data on the bilateral relationship between US and Brazil (2.2.1) suggests that Brazil was less dependent on exporting goods to the US after the second than after the first DSB report. This suggests a bilateral power structure that is changing relatively between the two, possibly making Brazil's win-set smaller after the second compared to after the first report, increasing Brazil's bargaining power. This can help explain the change in US reactions to the DSB reports. Nevertheless, US is still a significant import and export partner for Brazil, so one should be careful to overestimate the effect this change can have had on the Brazilian win-set in the negotiations.

The data also suggests that the US dependency on Brazil as a market for their goods has increased. This narrows the US win-set, as several US exporters have increasing interests in exporting to Brazil. In particular, this enhances the effect of the Brazilian post-2008 retaliation threat, adding to the expansion of the US win-set this led to (see discussion about the Brazilian threat above and below). Nevertheless, US is still much more important as a trading partner for Brazil than Brazil is for US, and the power relation between them is still very much asymmetrical in favour of US. Thus, in terms of how dependent the two countries are on each other, Brazil's bargaining position is relatively weaker.

I will now discuss what Brazil and US have done in order to make their own win-set smaller and not least, to make the opponent's win-set bigger. The last part of this discussion will use compliance theory and a discussion on the credibility and severity of the Brazilian threat – a discussion which has been touched upon already. This part will also discuss the possible relevance of Bachrach and Baratz's theory. But first I will discuss how parties have attempted

to influence their own win-sets, particularly through demonstrating a strong standing on the case.

### 4.3.1 Making your own win-set smaller

#### Influencing own win-set

- *H7: Throughout the process, both parties used statements and “window-dressing” to demonstrate commitment to the case (Putnam), thus narrowing their win-sets.*

A negotiator can influence its own win-set by demonstrating a strong stance on a case and rallying support at home. I will first discuss the Brazilian, then the US’s, stance throughout the case. I will first show that Brazil had a continuously firm stance in the process, except perhaps towards the very end of the process leading up to the June 2010 Framework.

Following Putnam’s logic suggesting that commitment to the case can narrow the win-set, I argue that the strong Brazilian stance can have contributed to giving Brazil a strong bargaining position.

Brazil has repeatedly and officially “denounced unfair trading practices abroad”, which according to Putnam is a typical way of narrowing your win-set. In 2006, Brazilian president Lula wrote about the need to eradicate agricultural subsidies, and US subsidies in particular, in the New York Times, arguing that they were “not only immoral, but also illegal.” With a clear reference to the case of US cotton subsidies, Lula further argued that “decisions taken by the World Trade Organization in the last few years – many in response to complaints brought by Brazil – have endorsed the view that subsidies profoundly distort international trade” (daSilva 2006). And in March 2010, when Brazil announced the goods it would retaliate against, Lula said: “We want to show the US that it doesn’t matter if you’re big or small, or how much money you have as a nation (...) We all want to be respected and to be treated fairly” (Bloomberg 2010b). This demonstrates President Lula’s commitment to the case.

Rodrigues, the Agricultural Minister of Brazil, also stated early that he expected US to comply with the WTO ruling (Bloomberg 2005). The first Brazilian request to retaliate in 2005 early demonstrated Brazil’s commitment to the case, despite the fact that it did not lead to actual threat of retaliation (ICTSD 2005a; ICTSD 2005b).

Also, Brazilian officials have repeatedly referred to the case of West African cotton farmers, arguing that they suffered severely under the US subsidy scheme (BBC 2008). When referring to a case outside their own, Brazil seems to attempt to include moral arguments in the rhetoric, underlining their commitment to their case, and thus narrowing their win-set.

After Brazil got the right to cross-retaliate in 2009, Foreign Minister Celso Amorim stated that they were “going to choose the sectors that least affect us and most affect the US” (ICTSD 2009a). This was a repetition of the strong Brazilian stance on the case, and showed an intention to actually go through with the retaliation threat. This also pointed to that Brazil targeted vulnerable US goods, as discussed under 4.2. The credibility of the threat was increased by this.<sup>68</sup> In March 2010, after having released the first list of goods that would be subject to retaliation, Carlos Marcio Cozendey, head of economic affairs at Itamaraty (the Brazilian ministry of foreign affairs) repeated the strong stance: “US farm subsidies are condemned worldwide. This archaic practice must stop” (BBC 2010).

Further, Brazil released the list of proposed intellectual property sanctions (21 in total) earlier than they had said they would. The list was released on 15<sup>th</sup> of March 2010, which was more than one week before they had announced (ICTSD 2010d). This suggests that Brazil wanted to signal a firm standing in the case, and that Brazil was serious in its intentions to retaliate. This could have made the Brazilian win-set smaller.

However, after the threat of cross-retaliation, the Brazilian rhetoric changed, which I argue widened the Brazilian win-set. Right after Brazil released the IP sanctions list, the Brazilian Foreign Trade Chamber Secretary Lytha Spíndola signalled that they would be willing to cancel the retaliation on certain conditions. The conditions were that they wanted compensation to Brazilian cotton farmers based on their losses resulting from US subsidies, and a commitment to eliminate the illegal subsidies in the next farm bill (ICTSD 2010d). Interestingly, this is more or less identical to some of the key elements of the June 2010 Framework. This strongly suggests that by opening up for the possibility of accepting US side-payments, Brazil widened its win-set in order to reach a deal.

Also, a paper released from the Brazilian CAMEX (the Brazilian Chamber of Commerce) on April 5<sup>th</sup> 2010, after the retaliation was postponed for the first time (in the first provisional agreement), included the following statement: “The Brazilian Government understands that

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<sup>68</sup> Will be discussed under 4.3.2.



ongoing bilateral discussions and the resulting provisional agreement may establish the basis for a future and final mutually satisfactory solution for the dispute.” (Itamaraty 2010b) And when the final deal of the Framework Agreement was reached between US and Brazil, Brazil’s Foreign Minister Celso Amorim expressed satisfaction with the negotiation results, stating he believed that they would reach a mutual understanding (Itamaraty 2010c). This suggested that Brazil was more welcoming towards a possible compromise. This may have helped widen the win-set of Brazil and thus make an agreement between the parties easier. This can help explain why an agreement was reached.

However, the Brazilians nevertheless expressed a clear expectation that US would eventually comply with the DSB recommendations in the 2012 US farm bill (Itamaraty 2010d). Brazil’s WTO ambassador also expressed that they were expecting change in the farm bill: “This is not a final solution, but it lays out elements that will allow for consultations and reforms to the farm bill that will take place by the end of 2012” (Robert Azevedo in Financial Times 2010). Notably, he also underlined that Brazil still had the possibility to retaliate: “Brazil doesn’t rule out taking countermeasures at any moment” (Financial Times 2010). This was a reminder that Brazil still had the power to retaliate, narrowing their win-set.

US had a relatively firm position throughout the case, repeatedly denying being in non-compliance, and arguing that the measures taken to comply have been sufficient. After the 2005 report, Brazil as well as African countries and NGO Oxfam urged US to comply immediately with the report’s findings. However, the response of the US representative was measured, repeating a longstanding US position saying that “the Bush administration was considering all options, and that negotiation, not litigation, was the most effective way to address the issue of subsidies in the WTO” (ICTSD 2005c). This was supported when US officials said on March 15<sup>th</sup> 2005 that they preferred resolving the cotton case through trade negotiations in the Doha round rather than in a settlement with Brazil (Schnepf 2010a: 15). By this, US stated quite clear opposition to the finding of the panel. Further, US agricultural secretary Mike Johanns stated in July 2007 that the government would “work very, very hard” to uphold the cotton subsidies. And in the passing of the US 2008 farm bill, the Congress confirmed the strong stance on subsidies (ICTSD 2008b). I argue that this US stance after the 2005 report, contributed to making the US win-set smaller.

US kept their strong stance also after the second part of the dispute. When appealing the findings of the compliance panel, the USTR spokeswoman Gretchen Hamel argued that “the

changes made by the United States have brought its programs into full compliance with the WTO's recommendations and rulings in the original Cotton case. (...) The appeal challenges the [DSB compliance panel's] erroneous findings on both U.S. support payments and export credit guarantees" (USTR 2008).<sup>69</sup> Thus the USTR firmly opposed the compliance panel's findings, as well as Brazil's arguments of US non-compliance. As US demonstrated this strong stance also when the second part of the process (the compliance panel process) had started, this showed no indication of increased willingness to meet Brazil's demands, and thus no widening of the US win-set from the point of view of the US trade representative.

However, after Brazil was authorised retaliation rights, the tone changed somewhat from the USTR spokesperson: "While we remain disappointed with the outcome of this dispute, we are pleased that the Arbitrators awarded Brazil far below the amount of countermeasures it asked for" (USTR 2011). One reason for the change of tone might be that USTR indeed was more pleased with the WTO-authorized retaliation measure. However, it can also suggest US opened up for changing US cotton policies.

To sum up: both US and Brazil seem to have changed the tone in official statements after the Brazilian cross-retaliation threat, which can have contributed to a wider win-set for both parties, opening up for an agreement. However, I will argue this change of tone also can be due to other factors that have influenced the case. For example, it is likely that the Brazilian retaliation threat affected the diplomatic communication between the countries, which again can have affected the official statements referred to here. Thus I will not overstate the importance of this change, as it may be a spurious, intermediate variable, due to an effect which is accounted for by other factors discussed in this thesis.

### **Making your own win-set seem smaller than it is**

*H 7.1: The parties attempted to make their own win-set seem smaller than they were, in order to better their bargaining position.*

In 2005, after having missed the deadline of changing the Step 2 subsidy program, the US trade representative Bob Portman said that the delay was partly due to the Katarina Hurricane (Bloomberg 2005). By this statement, Portman suggested that it was extra difficult for US to

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<sup>69</sup> As demonstrated in the Background chapter DSB upheld its criticism of US's cotton subsidies in the AB report.

comply at this particular point in time. This can have been an attempt to make the US win-set seem smaller than it was. However, I have not found data suggesting that Portman's claim was untrue. Neither have I found data suggesting that this particular statement had significant effect on the process.

After Brazil released the list of US goods on which higher import duties would be imposed, the Itamaraty released a statement which creates an impression that Brazil sees the retaliation threat as being absolutely necessary.

“The Brazilian Government regrets having to take these measures, since it believes that trade retaliation does not constitute the most appropriate means to attain international trade on a fairer basis. However, after almost 8 years of litigation and over 4 years of continuing non-compliance with the rulings of the Dispute Settlement Body on the part of the United States, and in absence of the offering of concrete and realistic options that could allow for the negotiation of a satisfactory solution to the dispute, it remains for Brazil to exercise its right, as authorised by the WTO” (Itamaraty 2010).

Brazil created an impression of the retaliation threat to be inevitable, and thus confirmed that they intended to go forward with the threat if US did not comply. This decreased their win-set, and perhaps enhanced the credibility of their threat, as Brazil clearly expressed that the threat is exercised as the least among evils. However, it is uncertain whether Brazil had actually carried through with the retaliation in the case of a non-agreement. If Brazil had not carried the sanctions through, the impression given by the above statement that retaliation was more or less inevitable, was false. If this was the case, Brazil here understated the size of its win-set. Perhaps more important, this statement contributed to the credibility of the threat, discussed below.

In order to create an impression that your win-set is smaller than it is, it is a condition that the opponent has imperfect knowledge about your win-set. However, I have not found data which allows me to argue that US abused Brazilian lack of knowledge, or opposite. This weakens the possibility that the tactic of making your win-set look smaller than it is was an important factor for the outcome of this case.

I argue that both US and Brazil attempted to make their win-sets seem “kinky”. In other words, an agreement is likely, but not if it is altered too much in the favour of the opponent. Both parties have had a firm stance in the case. US has been negative to the panel's findings, arguing that their subsidies have been legal. They have also referred to the need to go through

domestic procedures, and in particular the process of the farm bill.<sup>70</sup> Brazil created an image that they would not yield from the case almost no matter what, and repeatedly stating that they were willing to retaliate, despite the costs. On the other hand, both parties appeared more reconciliatory when the deal was about to be closed. This can suggest that the parties made their respective win-sets just about large enough to reach a deal, thus attempting the strategy of “kinky” win-sets.

### 4.3.2 Expanding the opponents’ win-set

#### Use of side payments

- *H8: Side-payments in the form of retaliation expanded US’s win-set, which was a decisive factor for change*

Both the Brazilian threat of retaliation and the US payment to Brazilian farmers constitute side payments. Through the latter, US made the Brazilian win-set bigger. Through the former, Brazil made it less attractive for Americans not to set a deal on the dispute with Brazil – thus they made the US win-set of an agreement relatively bigger. I will use compliance theory to expand on this point.

#### The management school

- *H8.1: Reputation and international norms (the management school) were not decisive factors for the change in US policy.*

If the assumptions of the management school are right, one could expect US to comply with WTO rules even before Brazil issued a case in 2002. The fact that US didn’t comply at this point suggests that reputation costs or norms were not enough to induce compliance in this case, and that enforcement mechanisms was needed. However, ambiguity in the agreement could be a possible explanation for non-compliance. In that case, however, one would expect US to comply right after the 2005 DSB recommendations. The fact that US was found to not be in compliance even after the 2005 report and DSB recommendations, suggests further that reputational costs or norms were insufficient to make US comply in this case.

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<sup>70</sup> See 4.2.

It must be noted, however, that US did make some changes after the 2005 report<sup>71</sup>. This indicates that reputation and the legal texts and norms in themselves may have had some impact on US behaviour. However, I have not found data suggesting that reputation was the reason for this changed. And as Brazil chose to take the case further in the DSB process, and as the change was not found to bring US into compliance, this suggests that these factors did not suffice.

The Brazilian agricultural minister Roberto Rodrigues seemed to try to influence the US stance by arguing with possible negative consequences for the US reputation after the 2005 report: “How are we going to discuss the future of world commerce, including agriculture, if an important member doesn’t comply with a recent WTO decision?” (Bloomberg 2005) In this way Rodrigues linked compliance in this case to United States’ credibility in the ongoing Doha trade talks. However, Doha was already experiencing a stalemate at this point (The Economist 2006). US, under the leadership of the Bush administration, had already managed to build up a bad reputation in the Doha round (Financial Times 2006). Thus it may be likely that US did not see that they had much to lose in worsening their reputation in WTO.

I argue that norms and reputation were insufficient to induce compliance in this case. I will now discuss if enforcement mechanisms were sufficient to induce compliance, and whether the enforcement mechanisms were credible and severe enough to induce change in US. I will argue that the threats scored highly on both credibility and that they were sufficiently severe.

### **The compliance school**

- *H8.2: Brazil’s retaliation threats were credible and efficient (the compliance school), which widened the US win-set.*

The compliance school suggests that enforcement is necessary when it is costly for a state to comply. The fact that US did not comply with the ruling before Brazil initiated the DSB case, suggests that this was the case in the US-Brazil bargain on cotton subsidies. The enforcement mechanism should be sufficiently severe. I will now discuss whether Brazil’s threats were sufficiently severe and credible.

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<sup>71</sup> See Chapter 2 Background

After the 2005 report, Brazil did not threaten to sanction against US. Brazil did *threaten with requesting sanctions*, but struck a deal with US before they got the permission. Brazil's motivation for this might have been that they hoped sanctions would not be necessary. Other motivations may have been that they wanted the case to go through a compliance panel, or, that they hoped for significant change in the 2008 farm bill. Independent of the motivation, however, enforcement was not in play after the 2005 report.

After the 2008 report enforcement was a factor. It is this period which will be discussed in detail here. If Brazil's 2010 threat to retaliate induced change in the US, it is undoubtedly a case of a country expanding a win-set in another country through trade sanctions. After Brazil had issued a list of retaliation on goods, economist Gary Hufbauer said the following, indicating that Brazil attempted to change the US domestic coalition: "Brazil has decided that the only way to shift *congressional* [my italics] opinion is through retaliation" (The Economist 2010b).

So, how decisive was the Brazilian threat of cross-retaliation as a factor for change in US? Based on compliance school theory, I assume that if Brazil's threats were viewed as credible and effective by US, it is likely that the threats affected US policies. I will start with discussing the credibility of the threat, and then discuss its efficiency.

The retaliation is here controlled by the regime –WTO – and the offended country – Brazil. Brazil is not dependent on cooperation from US to complete the sanctions, as it can sanction regardless of what US does. Both these elements enhance the credibility of the threat, according to the compliance school. Also, as the retaliation method and amount is settled by the WTO Arbitrator, this minimizes the political influence, so that neither Brazil nor US decided how the retaliation should be. This enhances credibility. Also, as Brazil was less dependent on trade with US than earlier, the credibility of the threat increased.

Ideally, the country imposing the retaliation should not be hurt by the sanctions. This is not the case here, as Brazilian consumers get more expensive US consumer goods and thus are hurt. On the other hand, the WTO arbitrator opened up for the possibility of parallel imports on certain products under TRIPS.<sup>72</sup> This gains Brazilian consumers again, which increases the credibility of the threat. Also, imposing duties on US goods may boost the market of competing Brazilian goods within the same sector.

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<sup>72</sup> See discussion on this in section 4.2.

And indeed, Brazil was given the right to cross-retaliate only because retaliation on goods could harm Brazilian consumers and the Brazilian economy (ICTSD 2009a). The retaliation would then not be effective, and probably not credible, as US may doubt that Brazil would risk the damages on their economy. Cross-retaliation, on the other hand, “does not trigger some of the adverse effects such as increased consumer prices caused by higher tariffs or greater costs for domestic producers who may be obliged to switch to other suppliers” (ICTSD 2009a). Cross-retaliation can make weaker countries less hurt by introducing retaliatory measures and thus increasing the likelihood that they indeed will implement the sanctions, and thus the credibility of the threat. That Brazil was allowed to retaliate under TRIPS enhanced this credibility, as e.g. pharmaceuticals became cheaper for Brazilian consumers, by allowing Brazilian companies to produce copies of US products (pharmaceuticals), products that normally were protected by US patents. It also enhanced the efficiency of the threat, as argued below. Here we see how level 2-elements, the domestic Brazilian economy, affect the credibility of the Brazilian threat. The authorisation from WTO to cross-retaliate contributed significantly to the power of the Brazilian threat. In this way also institutional factors played in: The possibility in the WTO rules to authorise this tool balanced the asymmetrical power between the two parties.

One thing that enhances the credibility of trade retaliation compared to enforcement within other agreements (e.g. climate mitigation) is that it can be in the enforcing country’s interest to retaliate. This is indeed the case here – Brazil retaliates in the interest of its own economy, through the interest of the cotton exporters.

The punishment is not automatic, which would have made the retaliation even more credible. Neither is it pareto-optimal<sup>73</sup>. The reason for this is that the global economy in sum suffers from increased duties. This slightly weakens the credibility of the threat. However, taken together, I argue that these factors suggest that sanctions in this case score high on credibility. The reactions within US industry, like the car industry, and from the politicians suggest that the threat indeed seemed credible.

Was the threat effective? A first criterion is that non-compliance should be identified quickly. It is difficult to argue that this was the case here. The case was initiated in 2002 and the

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<sup>73</sup> *Pareto-optimal* is defined as a situation in which nobody can be better off without making others worse off (Lockwood)

compliance panel's appellate body report came in 2008. Thus it took as much as six years until the final recommendations were adopted by the DSB.

However, perhaps more relevant for efficiency is what happens after identification of non-compliant behaviour. So, after retaliation is allowed by WTO: how effective is then the system? This is the perhaps most important point of efficiency: Punitive consequences should be sufficiently severe. It should not be profitable to be in non-compliance. The fact that Brazil was allowed to cross-retaliate, made retaliation affect more sectors, making the consequences more severe, and more expensive for US.<sup>74</sup>

And through this cross-retaliation threat, the international and domestic levels of two-level games interacted. "By lifting patent and trademark protection on pharmaceutical products and software – rather than simply raising tariffs on imported goods – Brazil could spur US domestic interests to pressure Washington to comply with the original ruling" (ICTSD Sep 9 2009a). This sentence illustrates how the domestic US level interplayed with the Brazilian retaliation, and more precisely, it illustrates how Brazil used the cross-retaliation/side-payments to influence the US domestic coalition.<sup>75</sup> This made the threatened sanctions more severe and therefore contributed significantly to the efficiency of the threat.

The interplay with the financial crisis is highly relevant here. For more discussion on this, see 4.2.5. Here it should suffice to say that several economic factors increased the efficiency of the threat.

That the cross-retaliation tool, and particularly expanding it to intellectual property, increases the severity of the retaliation threat, is confirmed by professor of international trade and finance at Harvard Kennedy school, Robert Z. Lawrence: "Traditionally, retaliation in trade has been the preserve of the largest developed countries, which have market power (...). But this mechanism – suspending intellectual property protection – gives smaller, developing countries a way to enforce their rights under trade rules" (New York Times 2010). This illustrates how this mechanism, aided by the international body WTO, can increase the relative severity of retaliation and then increase the power of a nation. The way this changed the win-sets of Brazil and US in Brazil's advantage, is, one of the key explanatory factors for the change in US policy.

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<sup>74</sup> See 4.2.

<sup>75</sup> See 4.2.



A part of the Framework deal of June 2010 was that Brazil did not yield its rights to impose sanctions on US goods. Brazil can, if unsatisfied with the negotiations/US actions, break out of the Framework deal and then, retreat to sanctions (WTO 2010c). Thus there is a constant threat of Brazilian sanctions, worthy of more than USD 800 million. And it has been argued that this ongoing retaliation threat strengthened the Brazilian negotiating position (ICTSD 2010c). Notably, already in the April 6<sup>th</sup> 2010 preliminary agreement US gave in on important points. And the fact that Brazil can resume the threat whenever, gives Brazil a strong card in the negotiations, increasing their potential of a narrower the win-set. Thus the sanctions “in theory, at least – remain[s] a viable threat” (ICTSD 2010a). This ongoing retaliation threat can be important for Brazil, and it can explain why Brazil accepted the US promise of change in the 2012 Farm Bill, in stead of insisting on immediate compliance.

## **Reverberation**

- *H8.3: Reverberation (Putnam) was used to widen the win-set*

I have here chosen to understand reverberation as not including side-payments and retaliation, which has been thoroughly discussed in the above paragraphs. I believe that both Brazil and US attempted reverberation, however, with mixed effect.

Brazil distributed the publications of the lists of retaliation measures over time. The first list, over goods, was issued March 8<sup>th</sup> 2010. In the statement following this, the Itamaraty announced that the next list would be released March 23<sup>rd</sup>, and this would be a list of retaliation measures “related to intellectual property and other rights” (Itamaraty 2010). In the same statement Brazil announced that the sanctions on goods would enter into effect 30 days after the list was announced (Itamaraty 2010). Brazil indicated by this that they had more, and stronger, cards to play. This can have made the threat seem more severe than it was, and may have created insecurity among US producers. By this, it seems like Brazil attempted to expand the opponents’ win-set. This suggests that Brazil attempted to expand the opponent’s win-set through reverberation. I do not have data suggesting that this was crucial in influencing US, however, it may have added to the effect of the retaliation threat, and the resulting widening of the US win-set.

US also seems to have attempted reverberation. In 4.2.4 it was mentioned that the USTR warned that a possible retaliation from Brazil could deter US investment in the country. This

can have been an attempt to influence the Brazilian constituency to withdraw their support of Brazil's retaliation. However, analysts argued that these measures would not be exercised by the US as US was not keen on losing its influence in the region (ICTSD 2010b). This was particularly the case as China had surpassed US as Brazil's largest trading partner. Thus the international power structures changed. US was dependent on Brazil as a partner, particularly when it lost influence relative to competitors on the global scene. This made the US win-set smaller in terms of how drastic measures US would wish to oppose on Brazil. This weakened the US attempt to retaliate. It does not seem that the US retaliation attempt was decisive for the outcome.

### **Decisions and non-decisions**

- *H9: Authority (Bachrach and Baratz) was a factor in the change in US policy*

From the analysis above, I conclude that the retaliation threat had an impact. However, can some of the factors besides power, suggested by Bachrach and Baratz, have had an impact?

First: to what extent were the conditions of A (here: Brazil) to have power over B (US) met in this case? First: I assume that US knew what Brazil expected them to do both after the 2005 report and after the 2008 report. This assumption is based on the fact that WTO DSB had issued recommendations, which was given to both parties and issued officially. What Brazil has pressured for throughout the case, is compliance with these recommendations. Second: the retaliation threatened by Brazil was indeed viewed by US as deprivation, as it included severe duties on important US industries. This is argued above. Power is also dependent on that value of sanctions is larger than the value of non-compliance, and that the threat is credible. As argued above, both these conditions are met in this case. I thus argue that Brazil had power over US.

However, authority might have been at play. If that was the case, US did not comply only due to threat, but because it recognised the reasoning behind Brazil's (or, WTO's) order. Here the abovementioned change from the Bush to the Obama administration's responsiveness to international principles may have had an impact: With the Obama administration, the reasoning behind the case, might have had more impact on US policy, thus widening the US win-set. However, as argued above, I do not see the change in administration as likely to have been decisive for the outcome, as the main change came after Brazil's retaliation threat, and

not after the change in administration. Also, I have not found data explicitly suggesting that authority was a factor in the change in US policy.

### **The relevance of the case in a broader context**

Already in 2004, after the very first report<sup>76</sup>, this case was regarded as having wide possible impacts. One is that it would strengthen the case for reducing subsidies of the developed countries in general. This again, can have repercussions for the Doha round, as the subsidies are one of the crucial issues stalling the talks – it was in 2004, and it still is a compelling issue. Also, the possible repercussions for other cotton producers – in particular, the four West African countries that were third party in the case – were of the development organisation Oxfam viewed as adding to the impacts of the case (ICTSD 2004). The West-African cotton-exporting nations Benin, Burkina Faso, Chad and Mali have been third parties in the case as a possible reduction in US cotton subsidies could have consequences for their cotton export (OECD 2006). Thus the broader issues have been lying underneath throughout the process, which might have given the case enhanced weight in terms of authority and moral argument. However, these wider repercussions do not seem to have changed from after the 2005 report to after the 2008 report, and I can therefore not see that it constitutes a decisive factor for answering my research question. And also, Brazil accepting the US side-payments suggested that they did not weigh in the situation of other cotton-exporters as a significant factor.

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<sup>76</sup> Which was, as later reports, viewed as a victory for Brazil

## 5 Conclusion

Based on my analysis, I will now conclude, answering the research question:

*What can explain the change in US policy vis-à-vis Brazil in the WTO case on cotton subsidies?*

I argue that I have found support for my main hypothesis: *The Brazilian threat of cross-retaliation was a necessary, but not sufficient factor to explain the change in US policies as asked for in the research question. It acted together with other factors.*

The Brazilian threat of cross-retaliation was indeed decisive for the change in US policies in this case. Through the possibility of issuing cross-retaliation, the WTO could authorise Brazil a method of enhancing its relative power vis-à-vis a stronger opponent. The threat was also credible and effective. However, the effect of cross-retaliation was dependent on several other factors.

I argue that US changed their policies more positively towards Brazilian interests due to that the Brazilian threats were strengthened by a window of opportunity in which economic factors, like the financial crisis, played in. Brazil targeted industries strategically, in order to hit where it hurt the most. Group coalescence between different US interest groups, and the power balance between agricultural groups and non-agricultural groups, strengthened the Brazilian threat. I have, however, not found support for the hypothesis that change in the US domestic coalition was an important factor in the case.

I also argue that there were factors that explain why US did not comply fully, why US issued side-payments to Brazil, and why Brazil accepted this. First and foremost, I argue this was due to the US domestic ratification procedure and US policy-making rules, the farm bill procedure in particular. There were factors suggesting that the US promise to change its policies were relatively credible. This was supported by the fact that Brazil kept its rights to retaliate. And not last, Brazilian cotton farmers had incentives to welcome the side-payments from US, which can explain why Brazil accepted these side-payments.

I will now explain these factors more systematically and in more detail, as I will conclude on each of the hypotheses listed in 3.5.3.

I argue that the Brazilian cross-retaliation threat changed the importance of the case in US, as argued in H1. This factor explains how the threat affected US policies. After the first report, the possible losses for US of a non-agreement were not that large. Thus the win-set of US was smaller, and they had more bargaining strength. But after the second report, the Brazilian retaliation threat made it important for US politicians and a significant part of the constituency to reach a deal. This significantly widened the US win-set, and weakened the US bargaining position.

I have not found data supporting H2: that a change between internationalists and nationalists in US was a factor in explaining the change in US policy. This was despite the change in US administration from after the first to after the second DSB report and the change in the US presidency in particular.

I do argue that the US policy-making rules was a significant factor throughout the process, as suggested in H3.1. After the first report, Brazilian negotiators hoped for significant change in the 2008 farm bill, which widened the Brazilian win-set. This can help explain why US did not comply more with the first report. After the second report, the Brazilian acceptance of the US domestic procedures again widened the Brazilian win-set. This helps answer the research question, and in particular, the fact that Brazilians accepted side payments instead of immediate compliance.

However, the electoral system and other institutional factors can not explain the change in US policy. Institutional factors can explain the close ties between farmers' groups and politicians in US. However, there are no incentives that there has been a change in these close ties. This is as expected in H3.2.

My analysis has not found support for H4.1., which suggests that the domestic political coalition had an effect on the US win-set. This factor does not seem to have had any decisive effect on the US win-set, and thus the change in US policy.

My analysis supports the statement in H4.2: The involvement of new interest groups after the cross-retaliation threat significantly contributed to increasing the US win-set. This can explain why US policies changed in the interest of Brazil. However, the power of the interest groups

in Brazil can also explain why Brazil accepted the side-payments, as these were issued to Brazilian cotton farmers.

By the cross-retaliation threat, Brazil contributed to group coalescence in US. The interests of several interest groups in US were raised, and suddenly a broad array of groups had stakes in US cotton policy. Through this, the US win-set widened, and Brazil's bargaining position became better, as suggested in H4.3.

The Brazilian threat was also enhanced by a window of opportunity, as suggested in H5. The financial crisis, increased US export interests, the fiscal deficit in US and increased unemployment were economic factors that contributed to this, and together widened the US win-set.

Despite that US is still a far larger economy than Brazil, the change in the bilateral economic power relations between the two, and the fact that US got competition from other countries, bettered Brazil's bargaining position. This supports the statement in H6. This contributed to widening the US win-set and can explain why US went further in meeting Brazil's wishes.

I argue that the parties, through statements and window-dressing, demonstrated commitment to the case, and by this, narrowed the win-set, as suggested in H7. However, I have also found that this changed after the Brazilian cross-retaliation threat. I argue that this was a factor in widening the win-sets of both countries slightly, opening up for an agreement. I also argue that the parties may have attempted to make their win-sets seem smaller than they were, as suggested in H7.1. However, I have not found data supporting that this had significant effect on the process.

I have not found data suggesting that reputation and international norms were decisive factors for the change in US policy. This supports the notion expressed in H8.1.

I argue that the threats from Brazil were both credible and efficient, which widened the US win-set, as suggested in H8.2. An important reason for this was that WTO authorised cross-retaliation, not only "regular" retaliation. The authorisation from WTO to cross-retaliate contributed significantly to the power of the Brazilian threat, and made Brazil significantly stronger. In this way also institutional factors played in: WTO had the power to issue Brazil a tool which strengthened them, and which it would not otherwise have been possible for Brazil

to use. Together with the other factors mentioned here, this was essential in widening the US win-set enough to reach an agreement which was more along the lines of Brazilian interests.

I argue that reverberation was attempted to use. However, I have not found data supporting the notion expressed in H8.3 that this widened the win-set significantly.

Authority may have been present in this case. However, I have not found data supporting H9 in that this was a factor in changing US policy.

### **Implications and future research**

The Brazil-US dispute over US cotton subsidies has been followed closely by other countries, the West African cotton-exporters in particular. During the process of the case, Brazil referred to the interests of C4 in order to support the argument that this case was about more than Brazil. However, when it came down to signing an agreement with US, the analysis here suggests that the Brazilian domestic interests were decisive for the outcome, as the Brazilian cotton industry now receives significant side-payments. This led to a situation in which the C4 are almost worse off than earlier: Now US is not only subsidising US farmers, but Brazilians too! We can expect C4 to continue to follow this case closely.

However, the case is interesting for other smaller and developing countries as well: Is it possible for a developing country to challenge the world's largest economy in the WTO?

This paper suggests that it is indeed possible, albeit given certain conditions. Despite strong resistance among powerful interests in the US, Brazil has through challenging the US cotton subsidies in the WTO DSB managed to induce some change in the US cotton subsidy programme. This happened despite the fact that Brazil is a far smaller economy than US. The outcome of the case suggests that cross-retaliation can have the intended effect – to help retaliation to work when relatively weaker countries challenge relatively stronger ones – however given certain conditions.

If I am to suggest a hypothesis for future research, for other developing countries challenging stronger countries in WTO, I suggest the following:

*Cross-retaliation is an instrument which can be an essential factor for strengthening the relative power of developing countries in the WTO DSB. However, how well the instrument works, is dependent on several factors besides the authorisation to cross-retaliate.*

A question for future research is therefore: What factors are needed in order make cross-retaliation work in the WTO DSB for countries who wish to change politics in stronger countries?

This case suggests what some of the factors can be. First, it helps to have an important strategic position like Brazil has for US in Latin-America. Second, a strengthened economic position relative to the target country contributes to a better bargaining position. Third, the timing of the retaliation is essential, in terms of what economic situation the opposing country is in. It helps if the target country is in an economically weak position. Fourth, targeting weak industries exacerbates the threat. Fifth, the balance between different interest groups in the target country plays in.

As a finishing point, it is interesting to note the role of agricultural subsidies in the recent (April 2011) debate about the long-term cuts in the US budget. April 13<sup>th</sup> 2011, US President Barack Obama gave a speech laying out his plans for reducing the US budget deficit. A total of USD 4 trillion was proposed cut over 12 years (The Economist 2011). Obama's deficit commission called for a USD 10 billion cut in farm subsidies. Earlier this year, Republican Paul Ryan's deficit-reducing plan included a USD30 billion cut in farm subsidies (LJWorld 2011).

While both cuts are likely to stir opposition and debate, this can suggest that a future reduction in US farm subsidies indeed may happen. Then, perhaps, the cuts will be due to the need to reduce the US budget deficit more than anything else. However, in the case of cotton subsidy reduction in the Brazil-US dispute, we have seen that several other factors have been relevant. Factors at different levels work together in international trade negotiations, and are likely to do so in the future. For cotton exporting countries, it will be exciting to follow the future budget processes, and the farm bill process scheduled to happen in 2012.

This recent statement by a US agricultural economist suggests that the Brazilian cotton subsidies case might become important for the farm bill: "The major issue in resolving the WTO case is for the US to bring its policy into compliance in the 2012 farm bill" (American



Agriculturalist 2010). This suggests that the case is important to US, and not least, that the framework agreement does include reliable commitment for change in subsidies from the side of US. It will be interesting to see if Brazil will experience full US compliance with its WTO commitments in 2012.

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