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The Cotton Dilemma

A case study on what proceedings less powerful Members use in order to carry out challenges and discuss their economic interests within the configuration of WTO

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ABSTRACT

Cotton has great importance to the global trade market, and could be a solution of economic improvement in developing countries. Although, African cotton is generally cheaper to produce, Benin, Burkina Faso, Chad, and Mali have experienced difficulties to maintain competitiveness on the market. The reason is cotton subsidies, which are stimulus of price settings, and therefore prejudicing for cotton production in smaller economies. Thus, the sector has caused economic issues due to distribution of subsidies, which has also resulted in a politic value of the crop. There are several studies that relate the institutional theory on institution structure, legislation and decision-making processes within the WTO, but not many are directly applied on the cotton dilemma. Still, the cotton issue is a case study that demonstrates something greater; being a very central issue on the WTO agenda - it is an example on WTO multinational structures, and demonstrates how less powerful Member countries put their interests on the WTO agenda.

The first formal complaint at the WTO on US cotton subsidies was carried out by Brazil in 2002, asserting that the US subsidies on cotton ignored the global trade agreements. Subsidies were declared to cause reduction in export profit and recession in price, which made it difficult for minor producers to be competitive on the global cotton market. In the end of April 2003, the C4 laid out a proposition on how to resolve the issues of cotton subsidies. However, the C4 proposition failed, with no outcome. In December 2013, C4 forwarded a second proposal for cotton during the WTO Ministerial Conference in Bali. It was grounded on developing countries progress and ability in the trade of cotton. The meeting agreed on implementation of the so-called Bali-package, where the C4 proposal was included. The WTO dispute mechanism purpose is to provide countries to solve disagreements through discussion rather than war. Cotton is currently very much a part on the WTO agenda, and the gradual change of attitude towards the cotton issue will hopefully give the Bali-package prospects and efficiency. However, it is difficult to evaluate legal aspects against political, and legal decision-making have to be implemented in order to make a difference.

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1. INTRODUCTION

Cotton is a natural fibre used daily around the world, and the possible areas of use are many. This makes cotton a significant cash crop, but has also developed economic issues in Least Developed Countries (LDC) throughout the years due to distribution of cotton subsidies (Oxfam 2002). Even if African cotton is generally cheaper to produce than American cotton, the US subsidy amount use to supply its farmers with a great advantage as they can sell their commodity to a low-price and competitive cost. The issue consequently developed a politic importance to the cotton market, and has been debated during several years within the World Trade Organisation (WTO) (Oxfam October 2004). The cotton issue is not a well know public issue, however, there are several studies and articles that bring up the dilemma. The earlier research that has been done agrees (more or less) that subsidies are stimulus of price settings and have had damaging effects on the global trade flow and competitiveness. Thus, cotton subsidies have had prejudicing effects for cotton farmers in smaller economies. The West African cotton producers Benin, Burkina Faso, Chad and Mali (known as the Cotton-4 or the C4), rely on cotton export revenues as they export the majority of the yield. Therefore, the cotton trade can be seen as a solution of economic improvement in developing countries (Oxfam 2002:1ff).

The first formal complaint on the US cotton subsidies was carried out by Brazil in 2002, asserting that the US cotton subsidies ignored the global trade agreements constituted of the WTO. The WTO panel declared that the US cotton subsidies where causing reduction in export profit and recession in cotton prices, which made it difficult for minor producers to be competitive on the global cotton market. However, WTO cannot enforce an agreement to be implemented, but can authorise counter-measures when regulations are ignored. Since the US ignored some implementation of decisions on cotton subsidies agreed upon during the dispute, the WTO authorised a cross-retaliation of approximately 900 million dollars to Brazil. Nevertheless, before these were effected US and Brazil came to a mutual agreement where US provided a 147,3 million dollar compensation to Brazil, leaving some agreements still not fully implemented (WTO, 2009).

The disputes are costly, time consuming and requiring a great deal of legal resources. This limits smaller economies, such as the C4, ability to argue their case within the WTO, having to seek other alternatives to do so. C4 have since the beginning of the first formal complaint been active in the debate on cotton subsidies, and forwarded proposals both during the Ministerial Conference in Cancún in 2003, and during the Ministerial Conference in Bali 2013. Both with various outcomes (Meagher, ACWL).

Furthermore, the issue of cotton subsidies have been brought up and decided upon in several WTO proposals since the first complaint in 2002. In 2004, an agreement of the July-Package was made that urged WTO Members to improve in cotton issues and trade (WTO, 2004). In 2005, during a Ministerial Conference in Hong Kong, focus was yet again applied upon issue of cotton. It recalled the July Package agreement, both addressing cotton issues linked trade policy and the importance of completing agreement implementations (WTO, 2005). The third decision made on cotton was in 2011 during a Geneva Minister Conference, focusing on damaging subsidies. Yet again underlining the importance to the follow up the agreements made on cotton 2004 and 2005 (WTO, 2011).

1:1 RESEARCH AIM

During a lengthy period of dispute on cotton subsidies, the C4 have been using numerous political instruments in order to forward their interest in the cotton industry. The thesis will research the case against US: Subsidies on Upland Cotton dispute, the proposal by C4 on elimination of Cotton subsidies in Cancún, and the proposals during the MC9 meeting in Bali. By studying the cases, the thesis will provide an understanding for the different proceedings less powerful countries (using the WTO group C4 as study object) in order to protect their interests in the WTO. Moreover, by using the theoretical frame of reference, the thesis will discuss how the cotton issue have developed though decision-making, implementation and debate. The question formulation on which the research aim will be based on is:

- Through what line of action does the C4 argue their economic cotton interests, and carry out challenges in the political configuration of the WTO?

1:2 OUTLINE OF RESEARCH

The research purpose is to understand by what means C4 argues their interests of the cotton industry within the WTO statute. In order to execute the research, the thesis will focus on cotton subsidy dispute within the WTO. The cases of interest are: the US: Subsidies on Upland Cotton dispute, as this is the starting signal cotton dispute; the first propositions forwarded 2003 in Cancún by C4; and the second proposal the C4 forwarded in Bali 2013. Furthermore, there will be a brief declaration on other decisions made on cotton. The geographical and spatial delimitation that will be dominating the thesis are the C4 countries, the statute of WTO, and to some extent the US.

The first step of the thesis empirical study will provide an economic geographical demonstration over the global cotton market and price. This will establish an understanding of Member states position, with focus on the selected geographical delimitation. A section on the cotton dilemma, displaying the issue and reason for dispute will follow. In order to appreciate the political and legal progress of the cotton issue, the second section will display the proceedings of the WTO as a dispute settlement mechanism in theory. The third section will clarify disputes, proposals and decisions made on cotton, all chosen through purposive sampling for the cotton issues current with the ongoing debate. Given the aim of research, the US: Subsidies on Upland Cotton dispute demonstrates a line of action the C4 takes in order to argue their case to the WTO. Brazil usually speaks for the developing countries (C4 included) (WTO interview) and a C4 country was acting as third party, which makes the dispute a valuable addition to the thesis. The study also includes the two different proposals forwarded by the C4 and supported by other developing countries. The cases demonstrate further proceedings and propositions that the C4 have used in order to forward interests and case. Other decisions that have been agreed on cotton within the configuration of WTO will also be noted in the thesis. As a decision has to be implemented in order to be effective and the study will therefore, also discuss the level of implementation, as well as how the issue developed through decision-making and debate. This will give further understanding of dispute progress and effectiveness through the different proceedings used.

2. THEORETICAL INTRODUCTION

This chapter will demonstrate the theoretical reference frame, which is applied on the conclusion in order to assign a meaning to the result. First section will elucidate the basic meaning of the institutional theory, whereas the last sections will define useful appellations and theoretical attitudes that will be applied on the thesis conclusion.

2:1 INSTITUTIONAL THEORY

Thorstein Veblen and John R. Commons, two economists, issued forth the attitudes in the neoclassical theory and established the Institutional theory during the twentieth century. The neoclassical approach believed that economic actors based decision-making on self-interest. Whereas, the institutional theory distinguish other attitudes where decision-making is based on several different facts rather than only economical effects. Furthermore, the institutional approach believes that economic perceptive has to be integrated with political and social aspects. The approach, therefore, acknowledge the non-economic factors within an economic activity, the governments and institutions that determine regulations and attitudes in the market (Hayter and Patchell 2011:xiv).

Doguglass C. North (1990:3f) begins the edition *Institutions, Institutional Change, and Economic Performance* with the sentence “*Institutions are rules of the game in a society or, more formally, are the humanly devise constraints that shape human interaction*” (North 1990:3). This outlines the influences and forms of organisations that occurs in relation to economic, governmental or public forums. North further asserts that institutions can influence economic development, and the different levels of accomplishment are influenced by institutional progress.

The institutional approach demonstrates that economic structures are shaped through institution - institution attitudes and performance are shaped and demonstrated through legal systems, agreements, set procedures, and regulation of management. This develops institution structures on different governmental levels (Hayter *et al*, 2011:xviii).

However, economic geographers sought to apply institutional notions on further study areas: **institutional space** and **institutional thickness**. The institutional space comprises

the geographical area in which the institutions are active and has efficacious accomplishment. Furthermore, Martin (2000:87) asserts the institutional space declares hierarchy through out different geographical levels of governance. Noting the supranational level act the part of international agreements on competitions, economic relations and trade. The notion and setting of institutional space further alters between geographical areas (ibid: 87). The other economic geographic concept of institutional theory is institutional thickness. The notion is demonstrated through high-level institutional commitment, and the study area also involves interaction networking between Members that develop understanding and congenial actions. Which for example can be noted in the groupings within the WTO, such as the C4. Institutional thickness further demonstrates the definable constructions authority, alignment, as well as delegated to the collective of Members, to diminish partiality and disputes. The last component of institutional thickness shows the comprehensiveness and organisation of institution, to emerge purpose and agenda, which can result to development. The components of institutional thickness state the level of reliability and transparency of institution (ibid: 88).

2:2 FORMAL AND INFORMAL INSTITUTIONS

Institutions can either be brought into existence or develop through time, and are categorised as either **formal** or **informal**. Formal institutions are connected with formulated policies such as regulations and law, agreements and committee mandates. They function within a rule system on various geographical levels, enforced by economic and non-economic institutions (North 1990:4). Stutz and Warf (2007:170) assert the importance of state and formation of legal structures, as moral principles usually are based through laws. Informal institutions are linked to values, human behaviour, trust and traditions. The institutional framework, therefore, comprise both formal regulations and informal "*codes of conduct*" (North 1990:4). The author further compares this with sports where players abide by the code due to informal attitude. However, when regulations and informal behaviour have been broken, retaliation or punishment will serve the formal institutional purpose. The difference of formal and informal institutions, therefore, displays a supplementation of each other - but could also need separate analysis. Trust is

an important notion within trade, which is emphasised and valued both in formal and informal institutions (North 1990:4).

2:3 INSTITUTIONAL CHANGE

Hayter *et al* (2011:xvf) emphasise the institutional approach to economic geography focus on markets and trade flows being important do to transactions within economies or multinational economic activity. The Institutional theory can be illustrated though three components. **Embeddedness**, defines the notion on integration of different economic elements, which for analytic reasons only can be comprehensible as an abstract relation to each other. The second component is **differentiation** that emphasises the varieties of political, economical, and natural environments and development. This is demonstrated in geographical perceptions of “*local models*” and “*world production*”, which shows geographic differences caused by institutional interactions (North 1990:6).

Evolution, the third component in institutional approach, asserts the changeability of markets and economies as a result location, natural and social environment, and institutional activities. The component is an essential part of the thesis as it demonstrates the development over time of formal and informal institution within the WTO, i.e. the progress of the cotton dilemma. There are two different forms of institutional change that need contemplation. (1) Institution of change in attitude, which define the institution structure and property. (2) Internal change is a development and progress of the institutional arrangement, which acknowledge the attitude structure. Thus, in order to get profound developments, the change of attitude is necessary (Peters 2000:7f) Furthermore, Peters (1999:144f) underlines a definition from Krasner on international regimes to be attitudes of rules, values and decision-making measures within a geographical space of international relations, in which the submission of different actors are united.

Peters (2000:16) declares the aspects that institutions are inevitably in constant change as an effect of Members conduct in combination of institution regulations. Institutions eliminate contingency in society by providing a substantial structure to political, economical, and social collaborations. However, it is inevitable that these collaborations

will be changing and with it, the institution. The development of institutional change is complex and usually done gradually, instead of being an abrupt and uneven process. An institutional change can be a result in alterations of regulation, which, however, can be limited through informal attitudes or vary in implementation effectiveness. Formal institution changes in forms of regulations and can change over night due to jurisdictions and decision-makings. Whereas, informal institutions demonstrate change through traditions and behaviour, codes of conduct, which North asserts is much more resistant to modifications and institution developments (North 1990:6). Any institutional change, therefore, is effected by attitudes and beliefs within the Member States, which will be mirrored in power play and position of Members (Cumbers, MacKinnon and McMaster 2003:327).

Furthermore, institutional change is established through knowledge - how actors understand and respond to information (Peters 1999:78). North (1990:74) asserts that institutional actors and their knowledge of the political configuration within institutions is a great factor of how the framework is structured. Hence, the regulation will be reproduced and effected differently due to knowledge of the political game and organisation.

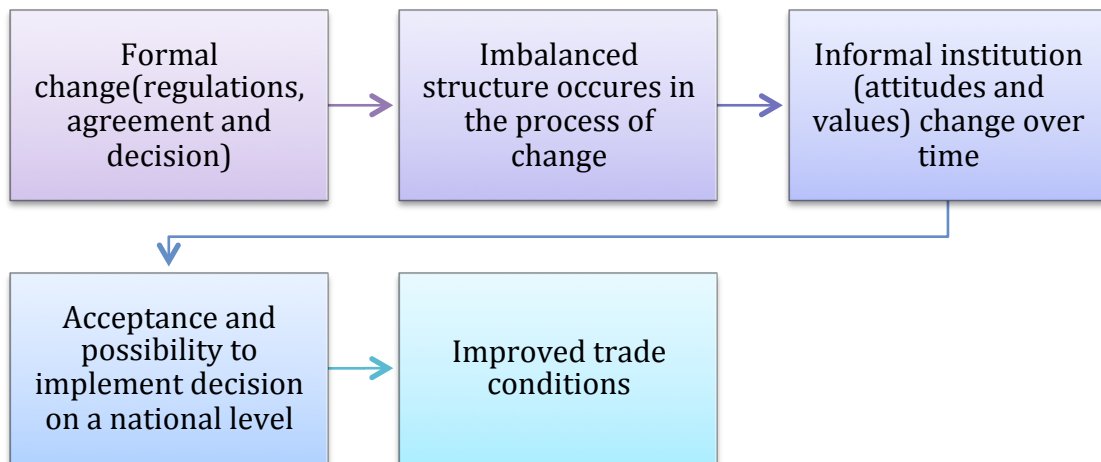
2:4 THEORETICAL PURPOSES

The theoretic purpose of the thesis is hereby to clarify the notion of institutional level of agency within the WTO and its Members. In order to understand the decision-power within the configuration the thesis foremost concentrates on formal and informal institution. This will provide an understanding for the effect different line of action and proceedings used in the WTO may have.

Change can define alterations of regulations, standards and authority, which the Members respond to. Stability within institution makes change over time and space achievable, and improves the understanding of structure and gradual change. A change of formal regulation will lead to an imbalanced structure; therefore, in order to achieve institutional change and balance there is a need of both informal and formal implementation and

acceptance (North 1990:83 and 87). For this reason, institutional change will be of importance to the study, to give further understanding to the case progress throughout the years. Figure 1 is based on the written clarification of institutional change above and provides the thesis with an example of how institutional change may appear over time within the WTO structure. The purpose is to use indications of formal and informal institutions in the WTO, in order to understand institutional change and progress of the cotton issue.

Figure 1: The process of institutional change – *Demonstrates the system that will be used in the thesis analysis. The figure is created by the author of this thesis, and based on the abovementioned theory material.*



3. PREVIOUS STUDIES

The chapter will illuminate former studies on cotton and the WTO statute. First section will clarify research that have been made on the cotton issue and been central in the debate. Furthermore, the last section will elucidate former studies that have been made both on the subject of the institutional theory and the WTO. This will simplify the analytical part and give further understanding on how to approach the issue, as well as future challenges for the cotton dilemma. Furthermore, a demonstration of former research emphasis the thesis social approach and notion, as well as what timeframe limitation intended to be cut out and studied.

3:1 PREVIOUS RESEARCH ON THE COTTON ISSUE

The debate on cotton subsidies issues was, without questioning, primarily led by Oxfam. In 2002, the organisation wrote *Cultivating Poverty – The Impact of US Cotton Subsidies on Africa*, which displayed the cotton world market crisis and raised the importance of Brazils complaint on the US within the WTO. The Oxfam briefing paper emphasised the damage the subsidies were doing, in particularly to the African countries, which put awareness to the global publicity (Oxfam 2002:1ff). In June 2004, Oxfam wrote a second paper on the matter titled *Dumping: the Beginning of the End*. The paper brought up the Panel findings in the US: Subsidies on Upland Cotton dispute and different cotton subsidies that the US was using. Furthermore, in the paper Oxfam gave notions on why implementations of WTO recommendations were essential (Oxfam June 2004:1ff). The paper, therefore, is of value to the thesis as it argues a central issue and disadvantage within the WTO structure when it comes to cotton subsidies. Furthermore, Oxfam followed up with *Finding the Moral Fiber, Why reform is urgently needed for a fair cotton trade*, a third briefing paper published in October the same year. The paper brought up the previous decisions made on cotton that had failed to be followed (Oxfam October 2004:1ff). In 2007, Alston, Sumner and Brunke, professors in the department of agricultural and resource economics at the University of California, published a paper supported by Oxfam America. The paper was titled *Impacts of Reductions in US Cotton Subsidies on West African Cotton Producers*, and displayed the impact US cotton

subsidies had on world market prices, and the effect a price increase would have on poor countries (Alston *et al* 2007:1ff). The briefing papers, which have been published by Oxfam, have highlighted the eminent issue of subsidies and are evidently a great impact of bringing the subject forward, both from the institution to the public.

In November 2010, the Fairtrade Foundation published a report on cotton dilemma titled “The Great Cotton Stich-Up”. The report displays that since the initiative of the WTO Doha Development Round in 2001, developed countries have had over 40 billion dollars provided to cotton production by supporting programs. Which have led to direct losses in income revenues for West African farmers. The report discusses the political plays that have been appearing after Brazil decided to withhold retaliations and accept US compensation. Furthermore, it underlines what the opportunity C4 has “to take US to court”. The Fairtrade report, therefore, brings up an issue that is central to the perception of this thesis. However, the report arguments are based on conceptions and outcome of the US: Subsidies on Upland Cotton dispute (Fairtrade Foundation 2010:5ff). Whereas, this thesis arguments differs as they are based on how and why the cotton issues have progressed and changed during the years – due to different decisions made and proposals declined within the configurations WTO.

In 2011, Baffes, senior economist at the World Bank, published *Cotton Subsidies, the WTO, and the ‘Cotton Problem’*. Baffes debates limitations like disorganisation and lack of technological development of the cotton industry in the West and Central African countries. The report further studies what effects the agreement between Brazil and the US has had, complexity of development and structural changes (Baffes 2011:1534ff).

The ongoing debate has been of value to the cotton issue, which has kept the debate on cotton subsidies and unfair trade conditions alive. Although, reports structures insistently somewhat differs due to underlying values and approaches, former researches more or less agrees that subsidies have had impairing effects on cotton trade and price.

3:2 PREVIOUS STUDIES ON THE INSTITUTION OF WTO

There are several studies that relate the institutional theory on institution structure, legislation and decision-making processes with the WTO, but not many are directly applied on the cotton dilemma. Still, the cotton issue is a case study that demonstrates something greater; being a very central issue on the WTO agenda it is an example on how the political structure appears within WTOs multinational institution. Thus, former researches on the cotton dilemma indirect demonstrate institutional approaches and attitudes within the WTO. Equally, researches on institutional structure within the WTO indirect displays possible progresses in the cotton cases.

In the article “ A Dynamic Institutional Theory of International Law”, Frischmann (2003:691f) argues that international agreements are a result of nations being economic and social “interdependent” to one another. For this reasons have national decisions and submission an impact on other nations trade and social-welfare. The international institution is very much implied on national regulations and structures, which is adopted in national industries and laws. Furthermore, trust is an important notion and emphasised both in formal and informal institutions. According to Hayter *et al* (2011:22) China is seen as a formal “*low-trust country*” due to the political instability, whereas, the US are treated as a “*trustworthy country*”. However, Hayter *et al* further stress that US often tend to work against development of permanent economic relations and decisions. Frischmann (2003:691f) asserts that even when countries decide not to comply with an international agreement, informal institution is still applied on how and to what extent the agreements are violated.

In *Remedies Under the WTO Legal System* Babu brings up the US: Subsidies on Upland Cotton dispute case. Like most briefing papers the arguments are established on outcomes and processes of the US: Subsidies on Upland Cotton dispute. It is obvious that processes of the US: Subsidies on Upland Cotton dispute case have been the most relevant case to analyse on the subject of cotton subsidies. However, the Bali-package is new in the process, and therefore of interest to examine further. In order to analyse decisions made on cotton and its processes, the thesis is using a broader spectrum of decisions and

proposals, both in the cotton dilemma and the rather contemporary institutional theory. The theory is relevant to apply on the WTO statute as it can consider both incorporation and nation-less integration between actors in a global structured framework. The reason for Babu study being of importance to the thesis is that the book observes relative perceptions of the gaps and shortcomings in the Dispute Settlement system in the WTO. It also provides a comparison to several different cases within the WTO. For example, Babu argues that former WTO disputes, like the EC Banana case, have founded an opinion amongst LDC Members that the Dispute Settlement Mechanism within the WTO is meaningless due to absence of compliance from developed countries when a decision has been made. The report indicates that a meaningful retaliation against the US would be impossible for a smaller economy (Babu 2012:424).

“ It was observed that “the question of little or no utilization of the WTO dispute settlement by developing and least-developed country Members has been linked to the inadequacies and structural rigidities of the remedies available to poor countries that successfully litigate a dispute before the dispute settlement”. For example, any retaliatory measures taken by Ecuador against EU goods or services, even if they could have captured the full amount of nullification or impairment suffered by Ecuador, would have offered no relief to Ecuador’s exporters of bananas. The damage these exporters suffered as a result of the EU’s regime had not been, and, under the WTO’s current system, could not be repaired...there are no remedy for lost trade opportunities during the period of dispute settlement and the implementation process” (Babu 2012:424).

Institution matter is a statement that has been given great awareness when it comes to understand economic growth and development structures. Busch, Raciborski and Reinhardt (2007:1ff) claims there is a common statement that institution matters if the more dominant states is supporting decisions made within institutions. However, the authors disagree with this statement and disputes that the institution of WTO contributes implementations of current trade agreements within a dispute settlement mechanism. They argue that even though the complainant cannot retaliate, an opposing decision by the dispute settlement body may informally injure the defendant e.g. in other disputes,

both as defendant and complainant, in the future. Peters (1999:151) asserts, “*international relations are usually seen as the domain of anarchy, rather than an area in which stable institutions operate*”. Nevertheless, he stresses organisations demonstrate the stability and liability, which is applied on the definition on institution. Hayter *et al* (2011:20f) claims that several international institutions have not been able to carry through all regulations due to the amount of submission from different Members that is needed on a global scale. Governments have the ability to influence industries and purchasers on all spatial levels. However, on the international market level authority and interactions are not as distinct.

4. METHODOLOGY FRAMEWORK

The chapter will clarify the selection of method, its significance and appliance, and feasibility of the thesis process as profoundly as possible.

4:1 METHODOLOGICAL APPROACH

In order to define necessary material for the case study, the thesis will be executed through an abductive reasoning of method. The method implements a capacity to assume which requirements that would elucidate a research conclusion. Moreover, the abductive approach provides the thesis with questions and increasing interest, resulting from collection of material on the WTO progresses on the issues of cotton subsidies. The material will raise further queries, which will develop more intellectual presumptions. Theory and case is interweaved with each other, which makes the abductive method a subject of change that constructs a more diverse and varied research - created and effected around determined material. The subject is based on facts to gain an unbiased setting, which in a later stage are conformed to the theory approach. The method, therefore, provides the thesis narrative a broad approach (Gren and Hallin, 2003:2, 219).

4:2 SECONDARY SOURCES

The thesis will be based on documents and literature from governmental and non-governmental institutions. WTO documents are foremost going to be used as a secondary source in order to illuminate the progress that the cotton issue have made from the first dispute to the last decision. In order to understand the reason for the dispute, it is of importance to include the aspects of the dilemma. Non-governmental documents from Oxfam and other authors will provide a more analytical view and explanation of the issue, which will give integrity to the thesis. The use of secondary sources provides an appreciation of proceedings and issues, which gives the different historical standpoints from studies and proceedings in the WTO. Therefore, it significant to get a broad understanding for the industry and production, which makes sources like the International Cotton Advisory Committee (ICAC), United States Department of Agriculture (USDA) and Index webpages important. The material will provide a historical background and

give understanding of the industry and the varied production levels through out the dispute years. The secondary material is used in order to provide understanding and comprehensive background information. Hence, this will effectuate the analysis and work as a foundation for the interview result. Therefore, it is of importance that each source is evaluated with serious examination and assessment, before included in the thesis. The dissertation method aim is based on literature study from documents and early research, with complementary interviews.

4:3 INTERVIEWS

The thesis is foremost constituted on data obtained from literature; an addition of facts based on profound interviews would gain a more up-to-date understanding of the effect of rather lengthy debates. The case study will therefore include qualitative interview data that will be based on profound interviews with governmental institutions and organisations that withhold a relationship to WTO and the cotton industry.

4:3:1 SELECTION CRITERIA

Governmental institutions of interest are Kommerskollegium, WTO and the Mission Ambassador of Benin, Burkina Faso, Mali, and Chad, based in Geneva. Organisations that are of interest are the ICAC, Advisory Centre on WTO Law (ACWL) and Oxfam. Furthermore, the interviews will either be via phone, email or vis-à-vis, depending on relevance, and the time limitation might not allow personal meetings with all institutions of interest. The broadness and interconnectedness of the different interviews will produce a larger prospective of advantages and disadvantages the WTO and its Members have. The qualitative method, therefore, provides a comprehensive understanding of the case, additional to the collected material.

The interviewees were:

- Martin Magnusson and Isabelle Ahlström, representing the WTO unit at Kommerskollegium;
- WTO source (who wanted to stay anonymous) from the Agriculture and Commodities Division;
- Andrei Guitchounts, Director of trade analyses of the ICAC;
- Niall Meagher, Executive Director ACWL.

The interviewees were picked to gain knowledge on procedures and power diversion within the WTO. Furthermore, the interviewees will provide knowledge on both formal and informal institutional progresses that appears in WTO, as well as institutional change.

4:3:2 SURVEY

The research method will obtain semi-structured interviews with several main questions that will give room for discussion and further question depending on the expertise of the interview subject.

After studying the report of the US: Subsidies on Upland Cotton dispute, it was evident that the accused country (in this case the US) does not always comply with the recommendations given. **Following questions were asked:**

- 1) How would you describe the extent of legal power the WTO holds when it comes to the cotton dispute and its outcome?
- 2) What advantages and disadvantages does the WTO have as a dispute settlement mechanism for the C4 and the cotton issues?

3) How have the level of implementation effected the C4?

The questions will provide understanding to why the level of implementation is rather low in relations to agreed recommendations on cotton. Also gives hypothetical standpoints and power play within the WTO. Furthermore, the second question was asked in order to display the possibilities or inferiors the C4 has in a dispute or proposal settlement. The third question was referring to the informal attitudes of the WTO. If a decision was made they have to be effectuated amongst the Members – formal institution being affected of informal attitudes. Furthermore, **ACWL was also asked:**

4) What role did ACWL have as assistant in the US dispute proceeding for Chad as a third party?

5) For what reasons does LDCs need the legal help ACWL can provide?

The ACWL questions were asked to demonstrate C4s position within the WTO, and what proceedings enables the group to carry through a dispute in the institution. Furthermore, it demonstrates the advantages and disadvantages C4 has within the institution and by what means they are able to forward their opinions.

The dispute between the US and Brazil ended in a *Memorandum of Understanding and the Framework Agreement*, where the two countries have agreed upon meeting four times a year to develop a mutual decision of the cotton dispute. This resulted in retaliations against US were being withheld by Brazil, and instead compensation of approximately 147 million dollars were given to Brazilian farmers. Following questions were asked to elucidate the affect this has on the C4, and in what way the subject considers such resolution. Furthermore, this demonstrates the level of participation that C4 have had in the dispute. Question eight was asked in order to see level of implementations and therefore the informal attitude on decisions along with different instrument in WTO power play amongst Members. The discussion generally resulted in further questions if

this might an alternative way for C4 to enter a dispute and implementation level on decision-making within the institution.

- 6) What consequences have the cross-boarder subsidies, given to the Brazilian cotton production, had on the C4 farmers and the global cotton trade?
- 7) What can the countries with interest in this negotiation, such as the C4, do to precipitate a decision-making?
- 8) How have the situation changed today since the dispute began in 2002?

C4 have forwarded two proposals on cotton issues to the WTO, Cancún 2003 and this year for the upcoming MC9 meeting in Bali. Question nine was asked before the meeting was executed. Independent of the outcome of the proposal, as it forces the respondent to discuss the political structure in the WTO, and thereby understand C4s position further. Furthermore, the question will demonstrate the possibility for C4 to carry through proposals within the WTO. Whereas, question ten was asked after the MC9 meeting had been settled. To relate and recognise what level of impact the undertaking of the decision has on C4 as well as level of implementation that is expected in the future compared to the lack of implementation that has been dominating decisions on cotton before. Furthermore, this demonstrates both the formal and informal changes within the institution. Question thirteen was asked in order to understand the power play within the WTO statue and how this shows in the importance of this type of cartel formation. It will give further understanding to this type of institutional thickness and its advantages. The last question can demonstrate future development of the cotton issue, and how this will occur in an institution change.

- 9) What do you believe the prospects are for the upcoming discussion and conclusion of the cotton proposal during MC9 in Bali?
- 10) For what reasons did the C4 proposal 2003 in Cancún, not carry though?

- 11) For what reasons have C4 “only” forwarded proposals to the WTO, and not initiate a dispute like Brazil?
- 12) What provisions for C4 cotton production and export do you believe will be improved after the MC9 meeting in Bali? How does this affect cotton sector in the Least Developed countries?
- 13) How does the political grouping between C4 help the West African cotton producers, than if they were forwarded a proposal separately?
- 14) How would you describe the future outlook for the C4 cotton production and trade?

4:3:3 INTERVIEWS EFFECTS

First of all, the process of finding interviewees is time consuming and due to elected interview types it will not always be approachable. Secondly, the problematic part of this type of interviews is the analysis, the ability to understand and analyse non-standardised, profound answers. Thus, one can argue it to be a question of interpretation based on the collected material from interviews.

The interviewees from Kommerskollegium sat in the same room. This did lead to a more profound discussion between us, however, the interviewees might have affected each other to some extent and thereby the result. Furthermore, the interview with WTO was executed through the phone, and on request of the interviewee the call was not to be recorded. This might have affected the amount of information that could be obtained from the interview.

5. EMPIRICAL STUDY

The chapter will be executed in three different parts: a clarification of the cotton market, price and cotton dilemma; a description of the WTO dispute settlement procedure; and finally a profound elucidation of the decision made or proposed on cotton in the WTO settlement mechanism.

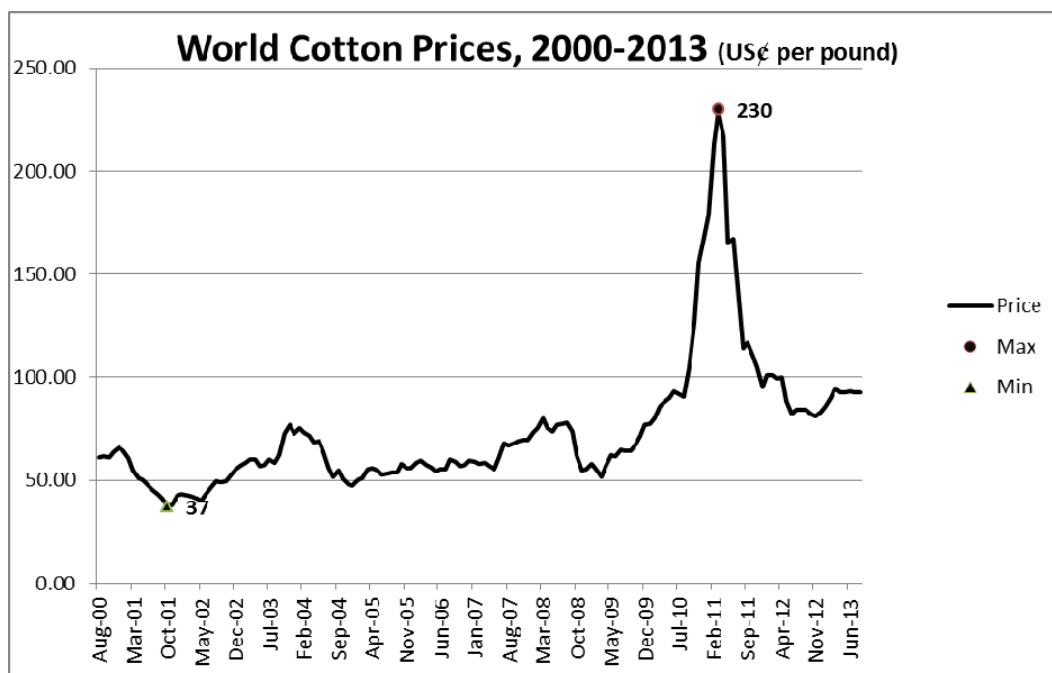
5:1 INTRODUCTION TO THE COTTON MARKET

Cotton constitutes about 35 percent of global fibre appliance, which makes it one of the utmost significant cash crops in the world (USDA, March 2013). The trade flow between geographical territories is vast, and the fibre gets exported and imported several times before the refined product reaches its final destination. The industry withholds employments for 250 million people, a majority being part of populations in different levels of developing countries (WTO October 2013). Furthermore, about 80 countries are estimated to produce cotton. The largest producers are China, India, and the US, which accounts for two-thirds of the production (USDA, 2012). The US, who has had a rather steady production rate for several decades (Index Mundi, *United States* 2012), is the world-leading exporter of cotton (USDA March 2013).

In 2012, Terry Townsend, Executive Director of ICAC, denoted that the prices of cotton had varied between \$0.50 and \$0.90 per pound between 2007 and 2010, a price variation between these ratios have been relatively constant. However, Townsend further emphasises that cotton season 2010/2011 had an unusually high price increase and at the same time a high inconsistency. The value-chain of cotton was not prepared to respond to the growing demand from consumers. The cotton prices consequently rose above 2 dollars per pound in March 2011 reaching its record price, but Townsend stressed that the prices was estimated to decrease. As a reaction to the price growth, planted areas of cotton increased. The 2011/2012 season was, however, more stable with little fluctuation of the price (WTO, 2012:7f). The market of cotton is influenced by several variables (subsidies being one of them). During season 2012/2013 the cotton price was 0.88 US dollars, as estimated a decrease from previous crop year. Furthermore, it is estimated that

the global stock volume will influence the price in the future, descending price pressure. Therefore it is of importance to manage the stock to avert a global price reduction (WTO, *sixth periodic report* 2013:5). Table 1 demonstrates a graph over the World cotton price between 2000 and 2013.

Table 1: World Cotton Price - *The World cotton price variation from 2000 to 2013*



Source: WTO (2013), *sixth periodic report*, p. 7

5:1:1 CURRENT COTTON MARKET

The market has been readapting to the rising prices production rate and yields and cultivated areas of cotton. The developments and cotton-related economic growth in LDC cotton-producing countries are worthy of note. Especially from the African regions where production were accountable for 6 percent of world cotton output during 2012/2013, and 14 percent of cotton cultivated areas in the world. Furthermore, the export rate improved by 30 percent during the same production period, which mainly is due to increasing export from Francophone countries, where C4 is included (WTO, *sixth periodic report* 2013:2f).

In 2012, a WTO Sub-Committee of Cotton meeting was discussing developing aspects of cotton; Members and experts on the subject of cotton were present. Townsend elucidated the different changes and challenges the cotton production had been facing. The African cotton producers accounted for 7 percent of the world production in 2004/2005, a record year for Africa. However, the African output got reduced by half when market prices dropped during the recession, making the African cotton production global share decrease to 4 percent. The production levels in the African cotton regions has been increasing lately, and during 2011/2012 Africa accounted for 5 percent of global cotton production. The degree of production was, among other reasons, related to the increased areal of land for cotton production. Thus, the yield was not improved per hectare. Due to the increase of cultivated cotton land, the kilo per hectare dropped in 2011 with approximately 25 kilograms per hectare (WTO 2012:7ff). According to a WTO report have the latter cotton price fall driven some farmers into changing to other crop alternatives with higher rate return, which therefore led to 6 percent decrease of the worlds cultivated cotton land. As a result of a reduction of cultivated cotton land, the global production decreased with 5 percent during last season. In countries such as China, Brazil, India and Australia the commodity production is reported to have decreased; however in some African countries and the US, the production rates have risen (WTO, *sixth periodic report* 2013:5f).

Townsend asserts that the degree of production is also related to how areal of land is used for production. The African region had an output of approximately 400 kilograms per hectare in 2011. Due to an increase of cultivated cotton land, the kilo per hectare dropped in with approximately 25 kilograms per hectare. Townsend further stresses that the ICAC had studied the potential from African farmers (*country by country*) to increase their yield per hectare. The valuation was that with economic investments an increase on an average of 500 kilograms per hectare in Africa was expected in the future. Other world producers estimated to produce about 800 kilograms per hectare, an increasing number induced by improvements of bio-technological amongst other purposes. Therefore, Townsend stated that one of the greatest challenges for African producers at the moment is to increase the output per hectare in order to improve the competitiveness in the region (WTO 2012:7ff).

EXPORT

Cotton is an important cash crop; produced in about 37 African countries, 30 of them being exporters of the commodity (International Trade Center, 6th of December 2013). For C4 the cotton industry is central as it contributes to economic development being large quote of regional employment, and both an agricultural and foreign exchange income source. The commodity is the foremost significant export product for C4. From 2004 to 2007 the commodity export value were higher than the joint export revenue from bean, sugar, tea, cashew nuts and cocoa. During the same period cotton total percentage of the agricultural export were:

Burkina Faso – 80 percent
Mali – 74 percent
Benin – 59 percent
Chad – 51 percent

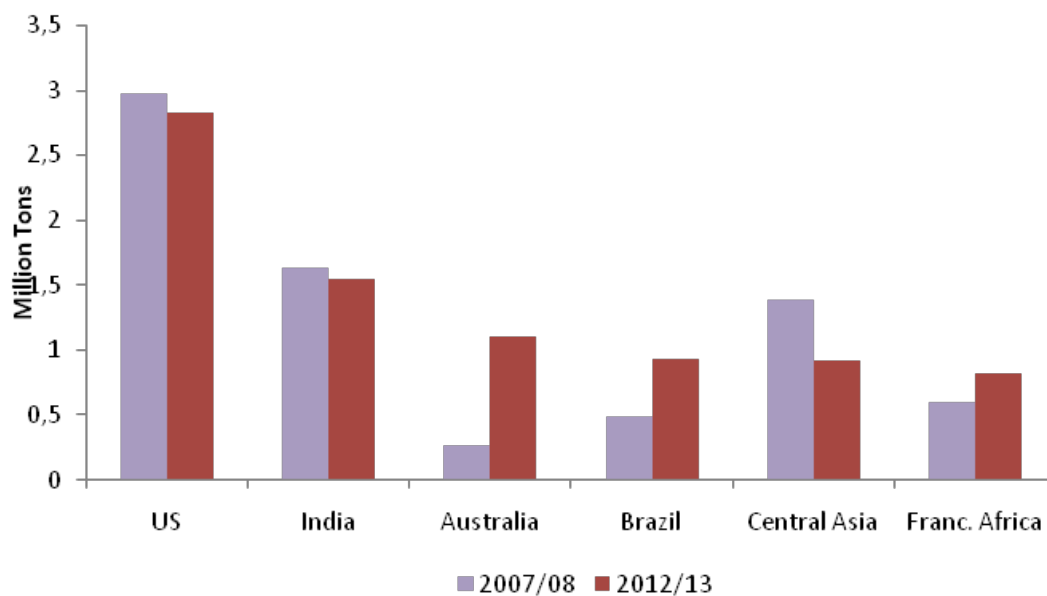
(Jales, 2010:1). The ICAC asserts import was earlier dominated by Europe, which gave African countries advantages in accessibility. However, destination of cotton has changed, and imports are now led by Asia, China being the main importer of African cotton (ICAC May 2013:3). Since the national price setting in Africa being lower than average international price setting African famers export the majority of the yield (WTO interviewee) about 95 to 98 percent of the production amount. Therefore, the African farmers have an impact on the global cotton market even if they are not major global producers (Adams, Boyd, Huffman 2013:69f). Furthermore, the exports of cotton have risen in the Francophone African (30 percent), and the US (15 percent) during the last cotton season. The African continent has been unevenly successful in its cotton export during season 2012/2013. In North Africa the cotton export have decreased, whereas countries in East and South Africa have experienced an export increase of 18 percent and the Francophone African countries by 30 percent (WTO, *sixth periodic report* 2013:5f). Table 2 displays the top ten cotton exporters in Africa during season 2012/2013. Figure 2 displays the differences between major exporters of cotton between season 2007/2008 and 2012/2013.

Table 2: Top ten African Exporters of Cotton - *season 2012/2013*

Country	Export volume (Thousand tons)
Burkina Faso	240
Mali	198
Côte D'ivoire	171
Zimbabwe	136
Benin	105
Zambia	87
Cameroon	86
Egypt	76
Tanzania	67
Mozambique	53

Source: WTO (2013), *sixth periodic report*, p. 6

Figure 2: The major exporters of cotton - *demonstrating the differences between season 2007/2008 and 2012/2013*

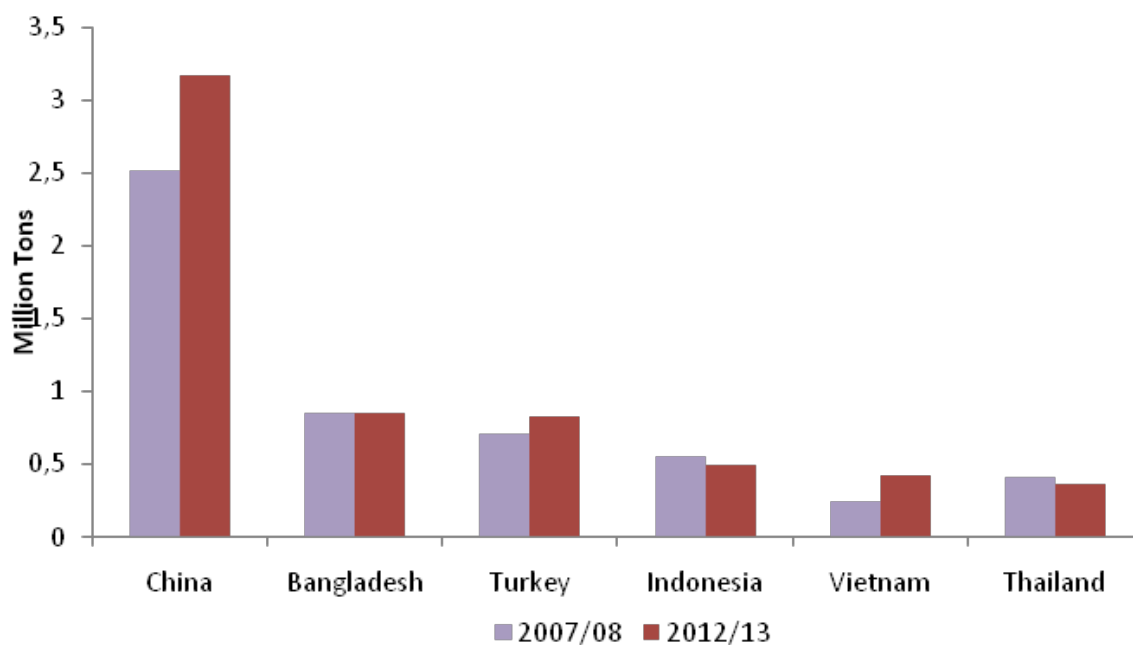


Source: ICAC (May 2013), p. 4

IMPORT

China is the world's major cotton importer, but during 2012/2013 season the country cotton import rate was reduced from 55 percent the previous season to 43 percent of the global import total of cotton. It is reported that the cotton import rate by China is estimated continuingly to fall during next season. Compared to other countries such as Turkey, Bangladesh, Pakistan and Vietnam where the import rates had increased (WTO, October 2013:5). Figure 3 demonstrates the major importers of cotton displaying the differences between season 2007/2008 and 2012/2013.

Figure 3: The major importers of cotton - *demonstrating the differences between season 2007/2008 and 2012/2013*



Source: ICAC (May 2013), p. 3

5:1:2 THE C4 COTTON INDUSTRY

Several of Member countries have established alliance groups within the WTO, that often communicate by having one spokesperson or team to see that work within the group goes according to its standpoints. C4 have created such alliance, which four members also are active in other alliances (WTO, 2014). Figure four displays a map over the African continent, where the geographic position of the C4 countries can be noted on the west coast and central parts of Africa.

Although, the US farmers does provide an efficient and more sophisticated production, the African cotton is cheaper to produce in terms of farm sizes, and the quality of cotton is usually better being picked by hand. In Benin the production cost per pound is 0.30 dollars, while the American cost about 0.68 to produce per pound of cotton. However, the subsidies provided to US farmers gives them the advantage and opportunity to sell their cotton for a much more competitive price. Hence, it is generally believed that cotton subsidies are stimulus of the price settings and are therefore prejudicing for cotton production in smaller economies. (Oxfam October 2004:6 and Woodward 2007:173).

“Cotton farmers in the area have become donkeys who work without earning anything” - quote from cotton farmer in Kotokpa, Benin (Oxfam October 2004:7)

The commodity, on its own, accounts for 2 to 5 percent of the national GDP in the C4 countries. In relation to American farmers, where the cotton industry accounts for 0.0004 percent for US GDP (Woodward 2007:173). Benin is the most reliant of cotton in the C4 (Gergely 2009: 11f, V), where 50 percent of the population are dependent on production revenue of cotton (Woodward 2007:171ff). An imbalanced trade does, therefore, affect the C4 farmers notably and demonstrates how the commodity sector of cotton could be an implement for economic growth and social improvement in more rural parts of the world.

Figure 4: Map of Africa – *the C4 countries geographic position can be observed on the below.*



Source: Maps & Media – Political Geography (January 2014)

5:1:3 THE US COTTON INDUSTRY

Cotton is cultivated in foremost in the Southeast and west, and the Mid-South and west, the area is called *the Cotton Belt* (Cotton Council International, 2009). The chain of American cotton production brings forth roughly 200.000 jobs, and every year it revenues over 25 billion dollars. About 97 percent of the cotton crop, Americas most produced cotton, is *American upland cotton*, mainly produced in the Cotton belt area. In 2000 the country areas of cotton had increased to about 14,5 million acres of cultivated cotton land.

The development towards more sophisticated production instruments, such as technological equipment, pest management and irrigation, resulted in a higher cotton output in the US cotton production. In year 2006, the number of farms in the US had begun to decrease; still, sizes of farms that continued to exist were getting larger. In 2007, standard farms in America were about 564 acres (USDA 2012). However, the level of production increased concurrently with decreasing cultivated cotton land, a development that would not have been possible if it was not for the governmental support. The Environmental Working Group asserted US cotton subsidies totalled 32.9 billion dollars between 1995 and 2012 (EWG Farm Subsidies 2007-2012). Between 1998 and 2002, the US cotton farmers received 21.6 billion dollars in cotton revenues; all the same, the US government allocated 14.8 billion dollars to the cotton production during the same time period (Oxfam October 2004:14).

“The guy you’re talking about in Africa – I see this is the guy my dad was. I don’t know if my dad could have competed in the same situation. It’s a hard business. And I don’t think that, without subsidies, we here today could compete with the American farms of the 1950’s” A quote from a Texas cotton farmer (Oxfam October 2004:7)

5:2 THE COTTON DILEMMA

During the past decades United States and Europe has subsidies their agricultural sectors, such as cotton. United States began to subsidize through *price support programs* in 1930, during the Great Depression. Europe started subsidies in connection with the formation of European Community, after the Second World War. The Programs are developed in order to protect the sector and the domestic market (Schuh 2002:435). To encourage economic growth and reduce economic undertakings, governmental institutions distribute subsidies to the cotton industry. Countries such as the US, China and the European Union (EU) have been, and still are, the major providers of cotton agriculture subsidies (Gillson, Poulton, Balcombe and Page, 2004:15). If the subsidies encourage a production increase, it will have an impact on the competition structures and the price rates. However, it also depends on the size of the undertaken subsidy and how great the production is. Thus, the

influence differs from trade and product (Kommerskollegium 29th of October 2013). In the cotton industry subsidies have had such impact on competitiveness, and claimed to be a large indicator of a price reduction on cotton creating an imbalanced trade environment (Oxfam 2002:1ff). Hence, the prices on cotton are not only determined through supply and demand, but also the level of subsidies given to cotton producers and exporters. The subsidy amount allocated to the farmers in developed countries each year contributes to an unfair trade and a negative development effect for smaller economies that produce cotton (Baffes, 2011:1534ff).

Furthermore, an Oxfam research asserts that elimination of cotton subsidies would increase market prices with 6-14 percent, which would result in increasing export revenue for C4 farmers (Alston *et al*, 2007). During the US: Subsidies on Upland Cotton dispute, Brazil stressed that elimination of impairing US exports subsidies would increase market prices on cotton with 12,6 percent. The Food and Agriculture Organization of the United Nations (FAO) claimed, together with International Monetary Fund (IMF), that market price would have an increase of 2 percent if cotton subsidies were removed (Woodward 2007:176f). Nevertheless, one can argue that an elimination of certain impairing subsidy levels on the cotton market would result in an increase of price.

5:2:1 SUBSIDY DAMAGE

The US cotton farms have decreased in numbers; however, the survival ability of the farms differs. Farms that are considered to be smaller plantation in the US (below 100 acre) have dropped in numbers; whereas, larger plantation farms with areas above 1000 acre, have increase during the same period of time (USDA 2012). Still, not all US cotton farmers are entitled to support; it is just about 40 percent of the farmers in the US receiving subsidies. In 2004, 73 percent of cotton subsidies were distributed to 10 percent of the US cotton farmers. Being a major producer and exporter on the cotton market, the US formal institution of decision-makings unhesitatingly has large global influence on the cotton sector. The US has been using several ways to give domestic support to their cotton producers via the *US Cotton Program* In the US these programs are termed as the Farm Bills. The 2008 Farm Bill has been extended to 2014 (USDA *Policy*, 2012).

In 2002, the US contributed with 1.88 billion dollars to sub-Saharan Africa in order to improve health care, reduce poverty and social development in the area. Although economic aid is vital for several developing countries, the Oxfam (October 2004:10f) briefing paper demonstrated how the US aid in some cases were less than the economical damages the cotton producers experienced in relations with subsidies. Table three and four demonstrate the losses the C4 experienced as a result of the high US subsidy levels between cotton season 2001/2002 and 2002/2003 when the dispute started.

Table 3: Losses for the C4 due to US subsidies - season 2001/2002

Country	Actual cotton export earnings in 2001/02, in \$m	Export earnings with the withdrawal of US subsidies, in \$m*	Value lost as a result of US subsidies, in \$m
Benin	124	157	33
Burkina Faso	105	133	28
Chad	63	79	16
Mali	161	204	43
Total:	453	573	120

Source: Oxfam (2002), p. 18

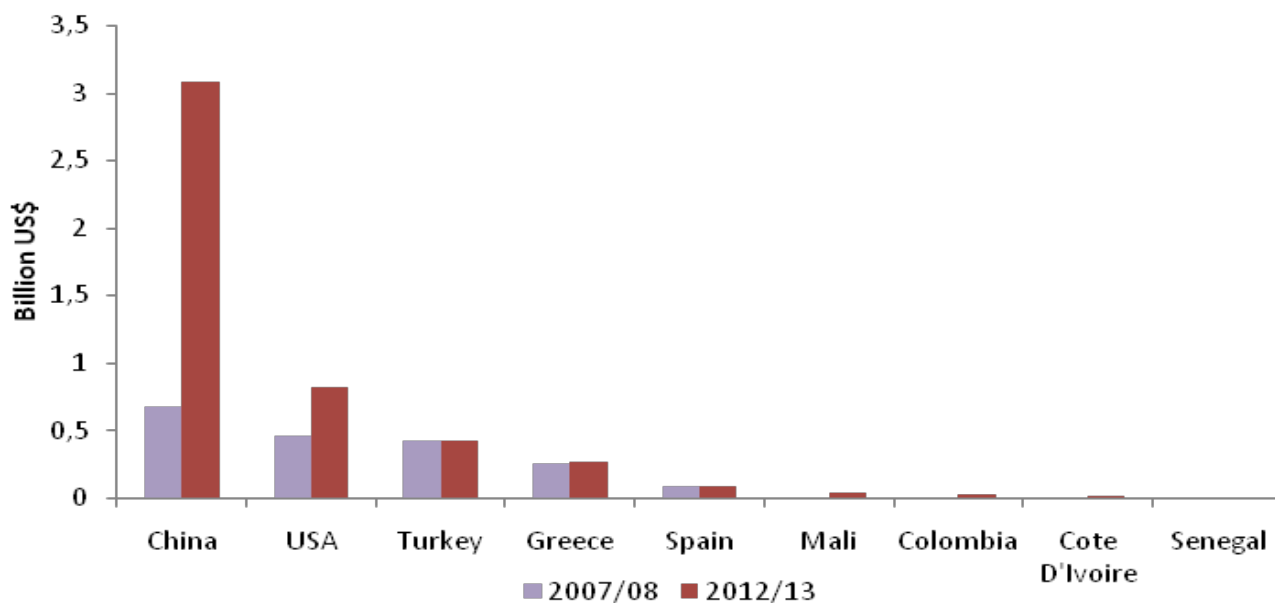
Table 4: Estimated economic losses due to US subsidies – season 2002/2003

Country	Estimated value of cotton exports 2002/03* (\$m)	Estimated 2002/03 export value with the withdrawal of US subsidies** (\$m)	Estimated value lost as a result of US subsidies in 2002/03 (\$m)
Benin	199	213	14.3
Burkina Faso	190	204	13.7
Chad	79	85	5.7
Mali	205	220	14.7
Total	673	722	48.4

Source: Oxfam (October 2004), p. 9

The subsidy structure have however changed, Townsend presented that the major provider in 2012/2013 was no longer the US but China. The country distributed over 3 billion dollars in cotton support, whereas US subsidy level had decreased to 820 million dollars (ICAC May 2013:4). Figure five demonstrates Chinas vastly increasing levels of cotton support and the decreased level of US support, and the change of structure on the global market. During the period 2011/2012 and 2012/2013 West African countries subsidised their cotton inputs, primarily for fertilizers and seeds for planting. (ICAC September 2013:5).

Figure 5: Cotton subsidies - season 2007/2008 (purple staple) and 2012/2013 (red staple), demonstrates the support to cotton production, and the change of structure over the years.



Source: ICAC (May 2013), p. 5.

5:3 WTO DISPUTE SETTLEMENT PROCEDURE

The section will elucidate the WTO dispute settlement procedure in theory by a short description of the procedure and time period. The purpose is to clarify for the theoretical structure of the formal institution, to enable analytic study of the structure in praxis through the cases. Furthermore, the demonstration of the dispute settlement procedure also allows the thesis to specify the difference of formal and informal institutional structures. Such further understanding will later facilitate the analysis of the result.

5:3:1 THE FUNDAMENTAL DISPUTE SETTLEMENT PROCEDURE

The multilateral statute of the WTO is used as an organ of dispute settlement between members. If it is concluded that one or several members are not abiding by the constitution, actions can be taken in forms of a complaint. Furthermore, there is a possibility for a Third-Party to proclaim their interest in the matter. A judgment cannot be prevented except if there is a consensus from all the other WTO members that the dispute ought to be rejected. This is an agreement settlement procedure that differs from the old GATT system, changed according to the Uruguay Round agreement (WTO, 29th of October 2013).

The liability for a settlement is the Dispute Settlement Body (DSB) i.e. elected Members of the WTO. The DSB is in charge of instituting a Panel of experts to examine the case, as well as, admit or discard conclusions or counterarguments from the Appellant Body. After jurisdiction of a dispute, the DSB supervise fulfilment of ruling and recommendation (ibid 2013).

During the first phase of settlement the countries have 60 days to discuss if there is a possibility to settle the challenge, *without taking legal actions* within the WTO. There is a possibility for the WTO Director-General to mediate if this is proven unsuccessfully. However, if the meeting between the complainant and the respondent does not come to a conclusion a Panel needs to be established. The second phase includes an establishment of such a Panel, and the procedure can take up to 45 days. The panel is assigned to help the DSB to develop rulings and recommendations based on agreements cited. The panel

within a dispute settlement are equivalent to a tribunal/court of law, and consist of three to five experts on the disputed subject, from various countries. The jurisdiction by the Panel can only be overruled by a consensus in the DSB, which consequently makes the result presented almost impossible to nullify. If the accused country disagrees to the Panel appointed, they are allowed to block once and a new Panel can be reformed. The second Panel can, however, only be blocked if there is unified agreement in the DSB (ibid 2013).

Before the first hearing the dispute parties distribute the Panel with a written presentation of the issue. Both sides of the dispute and the Third-Party that declared an interest, presents their dispute instance. On the second hearing, the involved countries are able to propose opinions, both written and verbally, to the Panel. After the hearings both dispute parties is provided a first draft of the report arguments (excluding decision), on which they have up to two weeks to comment. Both dispute parties are after that provided a temporary report (including decision), which they have one week to ask for a review. The Panel can offer further meetings with both dispute parties during the review period that can last for two weeks. The report is given to dispute parties within six months, a time period that can be changed to three months if there is a sense of emergency. Three weeks later, the final panel report given to WTO members. If the Panel rule in favour to the challenging country the report has to include recommendations and procedures that follows WTO rules. Moreover, the Panel may also give implementation strategy. The report becomes a ruling or a recommendation within 60 days, if there is not a consensus overruling it, or there is an appeal. Both disputes parties have the power to authorise an appeal against the report. However, without an appeal, the settlement procedure within the WTO should have the total time period of a year (ibid 2013).

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The report from the Appellate Body has to be presented within 60 or 90 days. Such report has to be based on legal grounds, early assessments of evidence remains, and it is not allowed to bring forth new evidence. The DSB can only reject the Appellate Body report by consensus. However, if the DSB adopts the report, it has to do so within 30 days. If the ruling decides that the country has violated an agreement they ought to correct their error

promptly. With an appeal the procedure should take an additional three months (ibid 2013).

The DSB state the importance of a rapid implementation of dispute recommendations and ruling, as that certifies a successful multilateral organisation of trade and formal institution. However, it is of significance to let the respondent implement the recommended policy and rulings accordingly. The respondent country has 30 days to implement rulings of the report. Nonetheless, if the implementation is unrealistic and shows difficulties to fulfil, the country is given a different, more sensible implementation period. If the agreement continues is to be disregarded, the accused country would have to submit compensation or be punished accordingly with retaliation, i.e. sanctions. The compensation will be determined though negotiations. If the agreement on compensation is not completed within 20 days the DSB have, on request by the complainant, the authority to distribute retaliation within the disputed area to the respondent. The DSB then have 30 days to allow such authorisation, a decision that can be rejected by consensus. If it is complicated and impractical to impose and there are further complications with the implementation of retaliation, it can be forced in another trade sector (ibid 2013).

5:4 WTO AND THE COTTON ISSUE

The last section in this chapter will highlight the disputes and proposals, which has been forwarded within the WTO to illuminate the cotton subsidy issue. The first part will elucidate three cotton subsidy decisions that already have been agreed on, however, actions have not yet been taken. The second part will clarify the processes of the US: Subsidies on Upland Cotton dispute and the two different proposals forwarded by C4. The cases are central in the thesis in order to elucidate less powerful Members capability to carry through decisions within the WTO. The decisions made but not yet followed will demonstrate the importance on how decisions are received and followed by Members.

“Cotton is the only commodity that has selected, single focus within agriculture negotiation. That validates the importance in cotton decision-making” - WTO interview (10th of December 2013)

5:4:1 DECISIONS MADE BUT NOT YET FOLLOWED

In August 2004, an agreement of the July-Package was made during the General Council meeting. The package implies that WTO Members ought to improve in issues that are connected with cotton. It emphasised the significance of on cotton initiative, as well as, measures of development linked to cotton trade. Furthermore, the Council emphasised the significance of the Cotton Initiative and its further development. The Council stressed further development and institutional involvement on international level (WTO, 2004).

In 2005, during the sixth Ministerial Conference in Hong Kong further focus was applied upon problematic issue of cotton. The conference recollected the mandates that were agreed during the July Package, and highlighting the importance to address cotton issues that are linked to negotiations on agriculture trade policy. Issues influencing the cotton industries three standpoints on **Market Access, Domestic Support and Export Competition**, stated both in the Doha Round and the 2004 July-package The Hong Kong document, assumed by the Sub-Committee Cotton, and the propositions forwarded in relations to cotton issues, reassert the obligation to cotton and provide the sector with selected focus within agriculture negotiations, including actions taken by the DSB (WTO, 2005).

1. *“All forms of export subsidies for cotton will be eliminated by developed countries in 2006;*
2. *On market access, developed countries will give duty and quota free access for cotton exports from least-developed countries (LDCs) from the commencement of the implementation period;*
3. *Members agree that the objective is that, as an outcome for the negotiations, trade distorting domestic subsidies for cotton production be reduced more ambitiously than under whatever general formula is agreed and that it should be implemented over a shorter period of time than generally applicable. We commit ourselves to give priority in the negotiations to reach such an outcome” (WTO 2005) .*

The Hong Kong Ministerial conference also suggested instituting *bilateral donors, multilateral and regional institutions* in order to increase and develop the level of consistency, management and improved execution of recommendations. Further suggested was an institution to handle diminution in the industry of cotton before subsidy levels are removed. The conferences also decided on initiating domestic reforms efforts by African farmers to improve and further develop the region production technic and proficiency (WTO, 2005).

During the 2011 Ministerial Conference in Geneva the focus was on subsidies and high import liabilities that is impairing the market. Yet again a separate focus were applied on the cotton sector. The conference was encouraging efforts to improve the cotton trade, and also a progress for LDCs production. Furthermore, the Ministerial Conference demanded WTO Members to step up and reduce impairing agricultural subsidies, underlining the importance this being done in the cotton sector. The conference also stressed the importance to the follow up of aforementioned mandates agreed in 2004 and 2005. It denoted the importance of focus on LDC cotton - to help raise the cotton issue further C4 and other Members had bilateral discussions (WTO, 2011).

5:4:2 BRAZIL CHALLENGES

In 2002 Brazil raised the issue and carried out the first official complaint towards the United States, claiming that the subsidies given to the American farmers contributed to an injustice cotton market, whilst American cotton enhanced further worldwide. On the 27 of September in 2002, Brazil filed a formal complaint against US agricultural subsidies on upland cotton. Claiming the subsidies measures provided to the US upland cotton producers, consumers and exports were not consistent with WTO agreements. Brazil argued that the subsidies were regulating the low price rates, with subsidy measures on an unacceptable level. Which, resulted in an uneven competitiveness on the world market, and other countries found it difficult gain a profit from their cotton production (WTO 2009).

The WTO peace clause protects countries from being questioned of using domestic support, as long as it remained below the agreed 1992 levels. However, Brazil asserted that US cotton subsidies were not pursuant to the peace clause as their level had increased and doubled since 1992. The complaint towards US cotton subsidies were foremost direct payments distributed between 1996 and 2002, the 2002 Farm Bill which framework were influencing farmers on a global level, and *payments under emergency supplemental appropriation bills*. The US claimed that the cotton subsidies did not have a impair affect on the trade as they were decoupled, i.e. unrelated to production. The second claim were against following payments: Production Flexibility Contract that was distributed under the 1996 Farm Bill, and Direct Payments distributed through 2002 Farm Bill. Brazil asserted these payments were not decoupled payments, exceeding the Peace Clause allowed domestic level. Thus, disregarded laws and rules of the formal institutional rules of Agreement on Agriculture (AoA). The third claim discussed the US program Step 2 levels, compensation to exporters or American mills that is buying domestic upland cotton to a high price. The Step 2 subsidies were distributed through the Farm Bill as export subsidies. However, as it is attached to domestic support program it ought to be under the *amber box*. Therefore, Brazil claimed the US Step 2 program too disregarded regulations, this time under the Subsidies and Countervailing Measures (SCM) Agreement. The fourth claim had an effected not only on cotton but on other commodities. It implied that US Export Credit Guarantee programs and Supplier Credit Guarantee Program was violating agreements in AoA and SCM. The fifth claim stressed that US cotton subsidies had triggered Serious Prejudice, which were producing an unjust market, impairing Brazilian exporters and its economy. Emphasising that between 1999 and 2002 injury was vast due to the large subsidy distributions through US cotton programs. The sixth claim argued that the US government removal of tax duties for exporters of US upland cotton was violating the obligations for export subsidies of cotton. However, US stated that Brazil was lacking provision as they could not specify a case on the sixth claim, and therefore, not being able to form an appropriate argument, this was an assertion on which the Panel agreed with the US. (Schnepf 2008:31ff).

In the beginning of October 2002, India, Zimbabwe, Argentina and Canada requested to

be included in the consultation meetings. The United States granted India and Argentina wish to take part. However, as the countries were not able to come to an agreement Brazil demanded to form a panel in February 2003. The DSB postponed, granting the wish after Brazils second application. A panel was formed the 19th of March in 2003. In this meeting, India, Pakistan, Venezuela and the European Communities reserved their Third-Party right. **Benin** reserved its Third-Party rights on the 24th of March, followed by **Chad** Australia, Paraguay and New Zealand (WTO, 2009). The ACWL assisted Chad in formulating its proposals, and during partaking of Panel and Appellate Body hearings (Meagher, ACWL). A report were published to members on the 8th of September 2004, where it was established that:

- “Agricultural export credit guarantees are subjected to WTO export subsidy disciplines and three United States export credit guarantee programmes are prohibited export subsidies which have no Peace Clause protection and are in violation of those disciplines;
- The United States also grants several other prohibited subsidies in respect of cotton;
- United States’ domestic support programmes in respect of cotton are not protected by the Peace Clause, and certain of these programmes result in serious prejudice to Brazil’s interests in the form of the price suppression in the world market” (WTO 2009).

APPEAL

Brazil’s case against US subsidies prevailed, which resulted in an appeal from the US 40 days after the report were published; the US reported the desire to appeal the arguments issued in the report quoted above. A report, by the Appellate Body was established, and on the 3rd of March in 2005 presented to Members. The Body’s counterargument concerning the Panel’s founding on the **Peace Clause** constituted the disputed measures of Production Flexibility Contract and Direct Payment, and asserted that the measures where not applicable to green box measures as they are interconnected to the production that started after the declared period. Furthermore, the US Appellant Body considered the Peace Clause to not conform to domestic support on upland cotton. In regards to the Panel’s challenges on **serious prejudice** the Appellant Body supported the conclusions of the subsidy programs influence and assertion to be a result to a price

deduction. However, the Body stressed that the link between the programs and price deduction is not evident; and, therefore, Brazil would not be able to prove that this was reason for serious prejudice to their cotton sector. Moreover, the Appellate Body supported that the **user marketing (Step 2) payments** for upland cotton were forbidden export subsidies that violated SCM agreements. The Appellate Body also supported the arguments stressing that US **export credit guarantee programs** were equivalent with export subsidies agreements in the SCM. Hence, the US exports subsidy obligations was violating agreements (ibid 2009).

SETTLEMENT

The most debated and criticised cotton support has been the Step 2 program, which directs national tax income to cotton mills and exporter to enable national cotton to be sold below production costs. In 2004, about 264 million dollars of US tax income was directed via the Step 2 program, which results in a direct contribution to equalities on the cotton market (Woodward 2007:4). The recommendations concluded that the US Exports Credit Guarantees and Step 2 programs were to be removed within a six-month time-period as the subsidies was illegalised. The subsidies that were adjudicated to produce Serious Prejudice were recommended to; either take action to remove the effects, or eliminate the support (WTO 2009).

In July 2005, the arguments were discussed further, and Brazil notified it had plans to take countermeasures, involving withdrawal of tariff reduction in regions that is of importance to the complainant such as; further custom duties on listed imports from the US (ibid 2009). In 2006, the WTO established the fact that the US had not sufficiently improved its support programs in order to fulfil the recommendations (Oxfam, 2009). This resulted in an authorisation that permitted Brazil to inflict penalising trade measures appreciated to approximately 900 million dollars against the US (WTO interview). Hence, the US had to reform its cotton support program or consequently receive retaliation from Brazil. The retaliation not only implied an abnormal import tariff rate, but also a so called *cross-retaliation*. Giving Brazil permission to lift so-called patent protections on large range of US goods such as drugs, Hollywood films and US music.

This makes cross-retaliation prevailing, allowing the complainant to target profound economic areas in the US economy. Only two countries have been granted this form of retaliation before Brazil, however, no one has been forced to use it so far (The Guardian 2012).

In June 2008 the DSB admitted and modified the Panel report and the Appellant Body report. The dispute between Brazil and the US continued for over seven years. In 2010, it was announced that an annual funding of 147,3 million dollars was to be settled by the US government, providing Brazilian farmers with compensation for the damage American subsidies has caused to the Brazilian cotton sector. Furthermore, both the US and Brazilian Representative reported that a *Framework for a Mutually Agreed Solution to the Cotton Dispute* had been decided upon. Both representatives emphasised the framework not being a joint settlement, but be used as guidelines for finding a resolution to Domestic Support programs for US Upland cotton and Export Credit Guarantees. The countries agreeing on having meetings approximately four times a year. As a result, Brazil decided to postpone the authorised retaliations towards American import duties, on conditions that the US continued the meetings, and attempted to solve the cotton dispute (WTO 2009).

5:4:3 THE C4 CACÚN PROPOSAL

The Doha Round has the ambition to improve the market structure, to construct a good, enhanced agricultural sector globally. The case was, therefore, presented with purpose to elucidate and remove the impairment of LDC cotton production, caused by cotton subsidies (WTO, 2003). In May 2003 a joint proposition were laid out by the C4, for cotton to be presented at the Cancún meeting in September 2003. Thirteen other West and Central African countries asserted that their single concern of the Doha Round was the removal of subsidies all together, and therefore supported the proposition (Gillson *et al* 2004:20). Entitled *Poverty Reduction: Sectorial Initiative in Favour of Cotton*, and presented to the WTO's Trade Negotiation Committee, it occasioned to implement an appliance that would eliminate subsidies for cotton production. The motivation for the proposal was based on the fact that a removal of the support programs was a necessity if

the production were to grow and develop to its full potential - a removal would contribute to reduction of poverty level in the LDCs cotton countries. Furthermore, the supporters of the proposal emphasise awareness of the complication of remove the subsidies directly, thus suggested phasing out the support programs. The supporters found that a phase-out-period of three years (2004-2006) were reasonable and would imply a cotton subsidy decrease of 33.3 percent per year. This indicated a complete removal of cotton subsidies by the end of 2006, and an international free-market of cotton would consequently be re-established. Furthermore, the C4 additionally presented a proposition to conduct a compensation structure for LDCs annually economic losses in export incomes. The compensation period would depend on the phase-out-period and have to be distributed before the cotton subsidies been completely removed. The compensation is declared in four phases, the first the compensation for the period 1999-2002. A study declare that cotton producers in West and Central Africa had *direct* losses of about 250 million dollars annually during this period, due to the subsidies distributed to other cotton producers. Emphasising that if the *indirect* losses would be incorporated in the calculation, the amount would be quadrupled – 1 billion dollars each year. During the second compensation phase the proposal reduces the compensation amount with one third. During the third phase the compensation would be based on the ICACs measurement on global cotton subsidy amount (WTO, 2003).

The objective of the proposals combination of phasing out subsidies and compensation is to achieve a complete removal of subsidies and a free cotton market. The supporters of the proposal highlights that the compensation program ought to only be a temporary answer to the economic losses, and emphasis the advantages of a free-market. Furthermore, the supporters assured a transparent compensation transaction to the LDC cotton farmers would take place. The C4 also found it important that they had a direct part of the elimination process, as this will develop their competence and knowledge of the WTO. The C4 proposition failed, with no repercussion, during the meeting in Cancún (ibid 2003).

5:4:4 THE C4 PROPOSAL ON THE NINTH MINISTERIAL CONFERENCE

WTO meetings on cotton issues have been held repeatedly since 2004, under a program named *Director General's Consultative Framework Mechanism on Cotton*. The meeting clarify the reports as *aid for cotton*, and issues as improvements and developments on discussions and cotton market environments are central (WTO October 2013).

“The global trading system depends on countries obeying rules and submitting to orderly dispute resolution. Thus far, the US has ignored the ruling of the WTO adjudication and continues large subsidies for cotton production. If the US continues this way, the integrity of the multilateral trade system is at stake.” – (Oxfam 2009)

During the first week of December 2013 a WTO conference took place in Bali. C4 brought forward a proposal on cotton to be discussed during the meeting in October the same year. The C4 highlighted the importance that a provisional agreement had to be agreed upon during the meeting in Bali. There were four proposals carried through by LDCs countries afore the Ninth WTO Ministerial Conference (MC9), cotton being one of them. The C4 proposal had support from India, the G-20 group (founded by developing countries due to the US and Brazil dispute), China, Pakistan, Australia, Uganda, and Mozambique. A provisional agreement would be of importance to able a long-term cotton discussion. Even though the proposal was presented rather late, there were a number of Members that took it upon themselves to investigate the achievable areas of the proposal before the meeting (WTO October 2013).

The C4 proposal was grounded on the development of LDCs ability to trade with cotton, and suggested incorporation of duty-free, quota-free **Market Access** in both LDCs and developed countries. Furthermore, it suggested an urgent removal of **Export Competition** in developed countries, and demanded a conclusion on how to reduce cotton **Domestic Support**. The time-period on executed implementation and decision-making was suggested by end of 2014/2015 (ibid 2013).

SETTLEMENT

The meeting was successful and the Members agreed upon the *Bali-Package*. The package is part of the long time negotiated Doha Round, with objective to address inequalities in relations to the Uruguay Round. During the Ministerial meeting it was further emphasised that the afore decisions adopted on cotton during the General Council in 2004, the Hong Kong Ministerial Conference in 2005, and obligations stated during the Geneva Ministerial Conference in 2011 have not yet been undertaken. The Ministerial, therefore, concurred on the importance to following through the decisions that has been made. Furthermore, it was agreed to assume that cotton trade from now on was to be treated with transparency and careful observation. Furthermore, meetings twice a year will be carried out with the Committee on Agriculture in Special Session in order to discuss the cotton trade in relation to the three proposals C4 forwarded – Market Access, Domestic Support and Export Competition. The meetings will elucidate issues on every type of exports subsidies, as well as export measures that have comparable results to export subsidies. The discussions will also contain issues on tariff measures and non-tariff measures effected cotton exported from LDCs, i.e. domestic support. Furthermore, the Bali declaration highlights the significance for both Members and Multilateral organisations to become more efficient with support to LDC. A Director-General's Consultative Framework Mechanism on Cotton has been decided upon, with objective to improve cotton production and trade assisting factors in LDCs – for example infrastructure. Cotton related needs shall therefore be identified and given on different geographical levels. The declaration also urge the newly appointed WTO Director General, Robert Azevêdo, to report on the improvement on assistance in the cotton sector and on the implementing progress of the 2005 Hong Kong Ministerial Declarations trade related approaches. The document from the Bali meeting (2013) also emphasise the progress and development that have happened within the African cotton sector. (WTO, Bali 2013:1f).

6. RESULT

The result will declare the interview results, and also refer to already establish facts in former studies. Furthermore, the result will estimate the future outcome within the cotton dilemma and whether the new agreement on the Bali-package is estimated to give result.

Before the Ministerial Conference in Bali, between the 3rd and 6th of December 2013, ICAC presented the current leaders of cotton production as China (27 percent of the world production) and India (32 percent of the world production). Townsend stresses, that the cotton market adopts behaviour and influences through various trade disturbances. And there have been changes and developments in the sector lately. Hence, ICAC foresees that China and the US production of cotton will decline with reason of resource limitations. The US is expected to experience a production decrease already during the season 2013/2014. The expected increase of production and export were from Brazil and the Francophone African countries (C4 included) (Townsend, 2013:16, 18). The ICAC states that in 2011/2012 about 10 countries were distributing subsidies to their industry. Furthermore, several cotton producing countries would want to see a re-regulation on American cotton subsidy programs, Farm Bill. Aisha Moriani, economic consultant for the Pakistan mission to the WTO in Geneva believes that the majority of countries that are producing cotton have gained from the US: Subsidies on Upland Cotton dispute. *"We would very much like that no one would subsidize cotton, because we don't have the money to subsidize cotton ... If prices fall, everyone should feel the pressure the same way"* Moriani stresses (The Guardian 2013). The subsidy structure has however changed, Townsend presented that the major provider was no longer the US but China, who distributed over 3 billion dollars in cotton support in 2012/2013, whereas American subsidy level had decreased to 820 million dollars (ICAC May 2013:4). Figure five presented in the empiric study above give an account of change through a graph. Furthermore, during the period 2011/2012 and 2012/2013 West African countries subsidised their cotton inputs, primarily for fertilizers and seeds for planting. (ICAC September 2013:5).

6:1 US: SUBSIDIES ON UPLAND COTTON DISPUTE

In 2011, Roberto Azevêdo, the Permanent Representative of Brazil to the WTO, (recently appointed WTO Director General), visited Washington DC to discuss the Farm Bill and solution on the US: Subsidies on Upland Cotton dispute with Congressman Collin Peterson. In a formal letter Azevêdo later wrote that consequently to the lack of compliance with WTO recommendations in US cotton support programs, Brazil had no choice but to retaliate. However, Azevêdo stressed that withholding realisation of counter-measures have given the opportunity to *temporary agreement* between both states – involving compensation and US agreed to find a short-term resolution to the GSM-102 program (Exports Credit Guarantee program), until a more long-term resolution could be realised through the upcoming Farm Bill (Robert Azevêdo 2012:1f and WTO interview). The 2008 US Farm Bill was supposed to terminate in 2012, but as the US had failed to present a replacing bill, they prolonged the bill to 20013/2014 (WTO 2009). Nevertheless. Brazil stated in 2013 that it wanted to continue the *Memorandum of Understanding and the Framework Agreement* and did not intend to offset any other actions considering that the US still had not reformed the country subsidy programs. "*The deal is exactly this one. So we are going for the deal. If we preferred to retaliate, we would have done that before,*" – said the Brazilian Foreign Minister Luiz Alberto Figueiredo on December the 5th 2013 (World Trade Online, 2013). A statement that demonstrates the Memodrandum is yet to come to an agreement. However, Brazil has no plans to speed things up by retaliation. An other argument is that "*the US came to the agreement to prevent domestic political collateral damage*" (Baffes 2011:1539) Niall Meagher, Executive Director of the Advisory Centre on WTO Law (ACWL), stresses:

"...as noted, the WTO dispute settlement system gives WTO Members, including the C4 countries, an opportunity to enforce their rights under the WTO agreements. This is important especially since as noted the defending Member implements in the vast majority of cases. However, it must be noted that the primary remedy provided by the system is that the defending Member complies going forward with its obligations. There is no redistributive remedy for prior injury and no guarantee of future commercial performance – merely the market access contained in the defending Member's WTO

commitments will be respected in the future...to some extent this is the price paid for Members' consent to a binding system of dispute settlement. If the WTO had greater coercive power to "enforce its judgments", it is possible that Members would not be willing to participate in a binding system of dispute settlement" (Meagher, ACWL).

Furthermore, Isabelle Ahlström from Kommerskollegium WTO unit asserts, that compensation rather than retaliation is an unusual turn in a WTO decision-making process. Although, it does not necessarily have to be a negative one - a dispute is meant to be resolved between the dispute parties; therefore, if the US and Brazil are content with the resolution, the dispute is solved. The resolution could also avoid a cross-retaliation which is preferable – both according to Martin Magnusson (2013-11-25), and the WTO source. *"The objective is to minimize the chances of actions spilling over into unrelated sectors while at the same time allowing the actions to be effective"* (WTO 29th of October 2013). According to the WTO cross-boarder subsidies are not illegal. If this was not the case, Magnusson stresses, you might see a problem with the subsidy compensation to the Brazilian farmers. However, the importance is trade, and how that can be an implement to lift inhabitants of LDC out of poverty. A further decision-making would contribute to that. *"...It usually is Brazil that speaks for the developing countries and minding their interests, thus, one can argue that this type of resolution is somewhat a taint on the WTO sky"* (Magnusson, 2013-11-25). According to both the WTO source, and Andrei Guitchounts, director of trade analyses of the ICAC, the dispute has resulted in the elimination of Step 2 subsidy programs and GSM-102 *"there has been an elimination of market distorting export subsidies, which will have a positive effect on the world cotton trade"* (Guitchounts). However, Niall Meagher asserts: *"the accommodation reached between the US and Brazil did not directly include the C4 countries because they were not complainants in the dispute (had they been, they would have had greater bargaining power to be involved in the settlement)"*(Meagher, ACWL). Furthermore, Meagher believes that the C4 countries feel that they would gain more by joining Brazil as co-complainants in the dispute. *"That would have been possible for them with the assistance of the ACWL"* (Meagher, ACWL). However, Meagher further stresses, the C4 countries

still did benefit from the US: Subsidies on Upland Cotton dispute as it has contributed to the cotton issue being “*very much a part of the WTO agenda*” (Meagher, ACWL)

6:2 ADVANTAGES AND DIFFICULTIES

Isabelle Ahlström asserts that the time period of the dispute process can be dragged out; which is a disadvantage of the WTO as a dispute settlement device. The main problem, which has been emphasised by a majority of the interviewees, is the fact that WTO process of dispute settlement is very time consuming. The Members are aware of the time lapse that exists, which results in countries gambling more since it takes such a long time between when being accused of violating an undertaking – to being sentenced in the WTO – to when the actual execution of implementation take place. Thus, it is a disadvantage that there are times when countries knowingly violate regulation within the constitution of the WTO (Magnusson, 2013-11-25).

It is an advantage that a dispute mechanism exists - to solve through discussion rather than a dispute leads to war between countries. However, it is difficult to evaluate legal aspects against political. Countries have to undertake a legalisation, which the countries generally do commit to (Magnusson, 2013-11-25). Gary N. Horlick (2002:636f) asserts that although the new WTO system of dispute settlement (which was demonstrated in section five) is composed to be more transparent and efficient. There have been numerous cases that have shown such difficulties within the institution structure. Without transparency and efficiency there is a possibility for countries to challenge and undercut fundamental responsibilities that are established in the WTO agreements. Furthermore, Horlick states that structural difficulties can be revealed in the “*lack of incentives for swift compliance, a lack of viable alternatives to trade sanctions, and a lack of consideration for the impact of the remedies on private actors*” (Horlick, 2002:637).

Being a small country it is difficult to retaliate against a larger country. To be competitive on the market it is equally important to import, as it is to export. If a Member country were to retaliate (like Brazil was authorised to), it would have to be equivalent to the amount of import during the certain time-lapse disputed. Magnusson declares this to be an

issue for LDC Members, and the reason for them principally not being able to retaliate if they did win a case within the WTO. They might not have the economic influence needed to make a point in retaliation (Magnusson, 2013-11-25). Baffes (2011:1534) note the fact that an agreement been made demonstrates less powerful Members ability to argue their interests within the statue of the WTO. The World Bank economist further argues the deal to establish the issue of the countries not being able to retaliate: *“Unless the ‘injured’ party has enough trade leverage with the ‘guilty’ party, authorization of countermeasures – the typical WTO stimulus to encourage compliance – is of limited use (and is costly to the imposing country and does not assist cotton producers...)”* (Baffes 2011:1534) An argument also noted by Magnusson during the interview.

6:3 C4: s INFERIOR OR GOOD LEVELLED POSITION WITHIN THE WTO

The reason for the negative approach towards the Cancún proposal 2003, a withdrawal of subsidies at the time, was *inter alia* the US interest in the industry, and their reassurance that other countries will not continue the subsidy distributions. China is for example not as transparent with the subsidy amount given. Therefore, such a proposition becomes somewhat irrelevant. The US wants to have control, and it was, therefore, too uncertain to be agreeing with the 2003 proposal (Ahlström, 2013-11-25). The WTO source further argues that this proposal was forwarded in an early stage in the addressing of cotton subsidies. The proposal inclined a strong call for subsidy cut that was difficult to carry through at the time, and, therefore, resulted in little or no appliance of the proposal. Niall Meagher from ACWL, asserts that reasons for C4 forwarding proposals rather than a complaint might be due to *“(i) lacked familiarity with the process; (ii) been concerned about the cost; (iii) lacked the internal decision making structures to decide to proceed with a dispute; (iv) been concerned about possible political consequences of initiating a dispute”* (Meagher, ACWL).

Both WTO source and Kommerskollegium note the possibility of C4 being concerned of costs, and lack to comprehend the legal system. In a discussion paper composed by ActionAid *et al* (2014:2) the issue of cost is brought up, developing countries are not able to argue in defence of interest, as it is too costly to maintain representatives in Geneva.

Compared to US approximately 250 delegates, developing countries are not always able to keep representatives in all meetings. Developing countries have, therefore, been stating a concern on *transparency and democracy* when it comes to conferences and meetings (ibid, 2014.01.16:2f). ACWL note that legal advice from private counsel is vastly expensive, but the settlement process within the WTO is also complex and technical. Developing countries, especially LDCs do not possess the legal competence other Members, such as the US and the EU, have. Magnusson asserts, ACWL being an important legal unit, which allows LDC countries to stress legal issues, they otherwise might avoid, within the configuration of WTO. Meagher clarifies that ACWL helps balancing out the legal field of WTO dispute settlement. Allowing less legally powerful countries to participate fully within the WTO legal system, and to benefit and improve from their WTO Memberships.

7. ANALYSIS

The Cotton Dilemma is a case study that demonstrates something bigger; it is an example on how the political play within WTOs multinational institution appears. In order to comprehend thesis standpoints and main question, by what means less political powerful countries (such as C4) carry through decisions, the conclusion will highlight analytical thoughts based on the result and theoretical instance. Thus, it will illuminate the main results of thesis and its future challenges. Due to earlier decision made but not yet followed, the conclusion underlines the problem further, where the process of implementation is vital if a proposal or a dispute is to take the required effect on a national level. For what is a decision without action?

7:1 GRADUAL INSTITUTIONAL CHANGE

Frischmann argues that international agreements are a result of nations being economic and social *interdependent* to one and other. For this reasons have national decisions and purpose an impact on other nations trade and social-welfare. Evidently, this has been proven in several articles and reports on the cotton issue. Since development of institutional change is complex and done gradually, one can argue that the decision-making on cotton, therefore, gradually been happening since the beginning of the first dispute in 2002. Cotton market adopts behaviour though various trade disturbances, and the different cases are phases of a gradual institutional change. Furthermore, the notion of a gradual change is also noted in the Cancún proposal where supporters found a phase-out-period of three years being reasonable. Thus, an approach on how to administrate both decision-making and implementation was in some way set in the 2003 proposal. However, several institutional limitations and difficulties have been part of the cotton dilemma, which made the process longer than the three-year phase-out-period suggested by C4.

Members are aware of the time-lapse that exists between being accused of violating an undertaking, to when the implementation actually have to be effectuated. This has formed an informal institution of behaviour that allows countries to gamble during settlement

procedures time-period. In the sense of international institutions being “*seen as the domain of anarchy, rather than an area in which stable institutions operate*” (Peters 1999:151) - one can argue that Members attitude have developed conscious violation of settlements and regulation within the constitution of the WTO when it comes to cotton. Although, formal institution changes (decision-makings) can happen over night, the informal attitudes on cotton decisions have halted the implementation process. The US case resulted in retaliation, which led to compensation, in which all settlement recommendations still not have been effectuated. Thus, such attitudes can inflict damage on exporters, especially in developing countries where the export base might not be so varied. This is a disadvantage in the formal institution of the WTO settlement mechanism, where attitudes towards change in the cotton sector have resulted in formal limitations. The direct formal institution influences the formal structure and legislation of the institution. Whereas, informal institutions demonstrate change through traditions and behaviour, codes of conduct, which North asserts are more reluctant to change. Change, therefore, need to come from both links. In theory, WTO appears to have a well-developed timeframe, however, the reality depicts circumstances that are rather different.

The Brazil and US case also demonstrates how decision-making has been effectuated in the illegalisation on Step 2 and GSM-102 subsidy. Thus, the implementation of market distorting exports subsidies will have a positive effect on the world cotton trade; and therefore a positive influence on C4 farmers. Furthermore, Brazil has been given authority to cross-retaliate against the US. One can dispute, that the statement on how institutional space demonstrates a definition of hierarchy trough the different levels of governance - also displays the difference in level of implementation and methods to carry out a discontent within the institution. The broad countermeasures of a cross-retaliation, provide smaller economies with the power to initiate a powerful country, such as the US, to comply with recommendations given. This ought to result as a block of such a large loophole, that otherwise could give powerful countries margin to “gamble” and disregard implementation before they will be forced to effectuate. The retaliation has not been affected, which reflex on an informal approach strategy that instead result in lack of implementation.

7:2 C4s POSITION WITHIN THE CONFIGURATION OF WTO

There are many ways for the C4 to proceed in a dispute. Although, ACWL would, as expressed by the interviewee, be able to provide C4 with help as for example a co-complaint. A proposal is probably the best way to go forward in the absent of capital and recourses. Babu expressed that the impairment exporters already have experienced cannot be redeemed in the current WTO system. There is no compensation during an implementation period. For a farmer in a developing county the time consuming structure within the institution are at the moment the greatest threat to their development. Although, the C4 also can go forward as a Third-Party, were ACWL also have been helpful during the US: Upland cotton subsidy dispute, there is a point in Meagher assessment that the C4 countries would have gain more by joining Brazil as co-complainants in the dispute. A cross-retaliation should provide smaller economies with the power to initiate a powerful country to implement the ruling. However, as several researchers and Magnusson states, there are difficulties for LDC countries, such as C4, to enforce retaliation (even cross-retaliation) that would hurt the economy for a country like the US. This also confirm Babus statement that LDC Members within the WTO can find it meaningless to forward a costly complaint, when the implementation level from developed country is expected to be low even before the decision been made. If the LDC after that cannot provide a powerful retaliation, it is understandable that there is a lack of trust in the international WTO institution as a dispute settling mechanism. One can claim that the compensation, that C4 proposed 2003 in Cancún, during the suggested phase-out-period was due to the consideration of the time consuming-structure. C4 knew the implementation and phasing-out-period might extend the time its been given. Compensation, therefore, minded the damage the farmers are exposed to during this period – and even an incentive to speed things up.

Although, the C4 Cancún proposal failed, the dispute settlement between Brazil and the US was a milestone for Brazil as a developing country. As a speaker for developing countries, (including C4) the result demonstrates the ability for less powerful countries to carry through a dispute within the WTO. However, LDC countries like C4 are still

somewhat limited within the WTO, which reflects in the decisions on carrying out cotton issues through proposals and not complaints. Several of the interviewees noted C4s limitations in capital. Furthermore, institutional thickness should demonstrate a comprehensiveness and institution structure, in order to develop purpose and agenda. The lacking knowledge and understanding in such legally complicated and technical institution, is a further limitation for the C4. This kind of restriction was raised in the 2003 proposal in Cancún, where the supporting countries asked to have a direct part of the elimination process, in order to develop their competence and knowledge of the WTO. A suggestion, one can claim, ought to be regarded in the Bali-package. ACWL allows LDC countries to stress legal issues within the configuration of WTO, and therefore help the balance of the legal field of WTO dispute settlement. The institution not only helps LDCs to take advantage of the membership, but also improve understanding of the WTO through participation. It could therefore be reasonable to conclude that ACWL contributes to an institutional thickness and development within the WTO.

Evidently, the lack of decision-making has affected the C4 farmers negatively. The negative approach during the 2003 proposal was due to the informal attitude and valuation of the notion was not prepared for a change - as the proposal was forwarded in an early stage in the cotton subsidies debate. Several interviewees and Hayter *et al* mentioned that US was not reassured that other countries will not continue the subsidy distributions. China is for example not as transparent with the subsidy amount given. This is yet again a question of lack in informal institution. Trust is an important notion within all levels of institution. Therefore, the new emphasis on transparency in the Bali-package is of great importance and would move the improvement of cotton trade further if it was implemented. Furthermore, developing countries have been stressing the lack of transparency when it comes to conferences and meetings. Therefore it is of great importance that the Bali-package requests that, at each WTO Ministerial Conference, the Director General reports the progress on the cotton issue and implementation elements of the 2005 Hong Kong Ministerial Declaration. The institution is trying to adjust prejudice subsidy legally, however, institutional differences and attitudes in an international

institution like WTO brings on limitations. This demonstrates how an institutional space of such a multinational institution is less distinct, which also contributes to the attitude change happening gradually – and the fact that the cotton issue is being such an important part of the WTO agenda is significant for future development.

The Bali-Package is an historical agreement. The massive necessity of cotton trade in the C4 countries could contribute to a development of living standard for C4 farmers, and make competitiveness on the cotton market essential. This marks the Bali-package as an important milestone for the cotton dilemma and LDC within the WTO. Not only because a decision is made on the Doha-Round, but also because it include a proposal forwarded by the C4.

Moreover, it is reasonable to argue the importance of earlier decisions adopted on cotton in 2004, 2005, and 2011 being emphasised as not undertaken in the Bali document. The argument on the importance of implementing decisions that already have been made is significant, as this further emphasis the issue of lack of implementation as well as violation of agreements. The ICAC reported an expecting increase on production and export levels in the C4 countries. Although, the agreement does not replace prior prejudice, and there is no security of future performances. However, the gradual change within the institution attitude towards the cotton issue, and it being a central part of the WTO agenda, hopefully gives the Bali-package good prospects and efficiency.

Babu presents an interesting aspect on an informal attitude rooted within the legal structure of WTO, which results in a difficulty to uphold a fair play. In consideration to progress in the WTO to become an institution which can provide development, it is necessary that LDC and developing countries participating in proposals and presenting reasons in development and change in order to effectuate and improve WTO structure. Hence, the initiative from the C4 have been positive effect on both the cotton issue and possibly even on the informal structure of the WTO.

7:3 CONCLUSION

The lack of full implementation is a great concern and so is the time-consuming dispute settlement structure, which Members take advantage of. The fact that there is no compensation during the implementation period can be devastating for a farmer in a developing country - the time consuming structures have an impairing effect. One can argue that a compensation system during the implementation period, similar to the one C4 suggested in their 2003 proposal, might be of use. The system would be based on the time period over argued economic damage and might be a resolution to overcome the time consuming dispute settlement structure. Furthermore, the compensation might also result in a change of informal attitude and decrease the level of violation of agreements. However, Meagher asserted in the interview that *“if WTO had greater coercive power to enforce its judgments”, it is possible that Members would not be willing to participate in a binding system of dispute settlement”* (Meagher, ACWL) - compensate during implementation period can be seen as such coercive power of enforcement.

Studying Brazil's dispute case and C4's proposal during the Bali meeting; it is evident that less powerful Members are able to argue their cases in the WTO. However, the means of accomplishment are different to larger economies. Organisations such as the ACWL are, therefore, central in order of pushing issues of development purposes for LDCs. Change and development needs to come from both formal and informal attitudes. The C4 proposals have had not only changed the formal institution of cotton issue, but also contribute to a progressive informal change of the Member attitude on the matter. The formal institutional changes within the WTO cotton sector may result in (and already have to some extent) a change of trade and production. Furthermore, it is vital for future productions in both developing and developed countries that change of regulations will be carried out. Trust is an important notion and, therefore, the Bali-Package agreement on transparency is of great importance to impose development in the cotton sector. Nevertheless, without implementation the issues caused by cotton subsidy will go on. Therefore, the request in the Bali-package that at each WTO Ministerial Conference, the Director General report the progress on the cotton issue and implementation elements of the 2005 Hong Kong Ministerial Declaration is central in order to improve and pushing

through developments of the issue further. Furthermore, it allows the LDC countries to participate in the institution, which provides the understanding and institution knowledge they are lacking and might balance out the legal field of WTO dispute settlement. Knowledge can affect political structures; transparency and C4 participant might challenge those set structures within the WTO.

Moreover, taken into consideration the increase of subsidies in China, future decisions and effectuation should not only concentrate on the US Farm Bill, but also embrace emerging economies. Since China is the major importer of C4 cotton, a focus on emerging economies is of great importance if the C4 is to precede and develop its cotton sector.

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TABLES

Table 1 “World Cotton Price”

Source: WTO, (October 2013) “Development Assistance Aspects of Cotton Sixth Periodic Report by the Director-General” Document code: WT/GC/154 WT/CFMC/DG/6 WT/MIN(13)/3

Table 2 “Top ten African Exporters of Cotton”

Source: WTO, (October 2013) “Development Assistance Aspects of Cotton Sixth Periodic Report by the Director-General” Document code: WT/GC/154 WT/CFMC/DG/6 WT/MIN(13)/3

Table 3 “Losses for the C4 due to US subsidies”

Source: Oxfam, (2002). *Cultivating Poverty - The Impact of US Cotton Subsidies on Africa*. Oxfam International, Make Trade Fair p. 36

Table 4 “Estimated losses due to US subsidies”

Source: Oxfam (2004). *Finding the Moral Fiber, Why reform is urgently needed for fair cotton trade*. Oxfam International, Make Trade Fair p. 48

FIGURES

Figure 1: “The process of institutional change”.

Source: created by the author of the thesis based on the material in the theory demonstration

Figure 2: “The major exporters of cotton”

Source: ICAC, (May 2013) “Cotton: Trends in Global Production, Trade and Policy” Found the 5th December 2013, ICTSD Programme on Agriculture Trade and Sustainable Development. Available on Internet: <http://ictsd.org/downloads/2013/06/cotton-trends-in-global-production-trade-and-policy.pdf>

Figure 3: “The major importers of cotton”

Source: ICAC, (May 2013) “Cotton: Trends in Global Production, Trade and Policy” Found the 5th December 2013, ICTSD Programme on Agriculture Trade and Sustainable Development. Available on Internet: <http://ictsd.org/downloads/2013/06/cotton-trends-in-global-production-trade-and-policy.pdf>

Figure 4: “Map of Africa”

Source: Concordia University-Wisconsin Department of History – “Geographies of Africa” *Maps & Media – Political Geography*. Found the 7th of January 2014. Available on Internet: <http://cuwhist.wordpress.com/modern-africa-hist-243/geographies-of-africa/>

Figure 5: “Cotton subsidies”

Source: ICAC, (May 2013) “Cotton: Trends in Global Production, Trade and Policy” Found the 5th December 2013, ICTSD Programme on Agriculture Trade and Sustainable Development. Available on Internet: <http://ictsd.org/downloads/2013/06/cotton-trends-in-global-production-trade-and-policy.pdf>

ATTACHMENTS

Robert Azevêdo (2012) - Letter to Collin Peterson, House Committee on Agriculture, from Robert Azevêdo, Permanent Representative of Brazil to the World Trade Organization and other Economic Organization in Geneva.

INTERVIEWEES

Martin Magnusson, WTO unit at Kommerskollegium –*pertaining to commercial policy instruments – anti-dumping legislations, levelling procedures and protecting measures, of EU and third countries negotiations of legal acts within the WTO – Subsidy issues.*

Interview 25th of November 2013

Isabelle Ahlström, WTO unit at Kommerskollegium –*pertaining to commercial policy instruments – anti-dumping legislations, levelling procedures and protecting measures, of EU and third countries negotiations of legal acts within the WTO – Subsidy issues.*

Interview 25th of November 2013

WTO anonymous source, Agriculture and Commodities Division, telephone interview on the 10th of December 2013

Andrei Guitchounts, Director of trade analyses of the ICAC, Interview via survey

Niall Meagher, Executive Director ACWL, Interview via survey

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