Commission appeals against WTO sugar ruling

Today, the World Trade Organization (WTO) has circulated and made public the panel reports in the dispute brought by Australia, Brazil and Thailand against the EU sugar regime. In response, the Commission announced that it would appeal the ruling. The panel comes to the conclusion that the EU has been exporting more sugar with export subsidies than it is permitted to do under the WTO Agreement. The panel finds that a footnote in the EU’s WTO schedule regarding export of African, Caribbean and Pacific (ACP) and India equivalent sugar with export subsidies has no legal effect. It further considers that exports of EU sugar produced outside the quotas (“C sugar”) benefit from export subsidies. The African, Caribbean and Pacific (ACP) countries’ strong intervention against this challenge indicates that the case also threatens the value of the current preferential access arrangements which the EU has had in place for decades.

EU Agricultural Commissioner Franz Fischler stated: “We are dissatisfied with this ruling and will appeal it. But the EU’s appeal will not prevent the EU to plough on with a radical overhaul of its sugar regime. This reform is necessary for internal reasons. It will make the EU sugar sector more competitive and trade friendly.”

EU Trade Commissioner Pascal Lamy added: “The WTO decision calls into question the texts and commitments unanimously agreed upon by all WTO Members during the Uruguay Round. The EU will abide by its international obligations. But at the same time we will defend the legitimate interests of EU sugar producers and the preferential access enjoyed by developing countries into the EU.”

The EU has always made clear that Australia, Brazil and Thailand are calling into question the texts and commitments negotiated and agreed upon by all WTO Members during the Uruguay Round. The EU has also drawn attention to inconsistencies between the complainants’ claims and the structure of their own past and present sugar regimes.

In this dispute, Australia, Brazil and Thailand are challenging two types of EU exports of sugar as being allegedly subsidised contrary to the WTO Agreement.

The first claim relates to the export of so-called “C sugar”. The complainants have alleged that these exports benefit from export subsidies by being cross-subsidised with revenues from production under A and B quotas.

The second point relates to export refunds on 1.6 million tonnes of sugar which are equivalent to preferential EU imports from ACP countries and India. The complainants have alleged that, as a result, the EU exceeds its export subsidy reduction commitments and is in breach of the WTO Agreement.
The EU’s position has been that exports of “C sugar” do not benefit from export subsidies, among other things because this claim is based on an erroneous interpretation of the WTO provisions on agricultural export subsidies and inconsistent with the obligation of good faith. The EU also insists that exports of ACP/India equivalent sugar are in full conformity with the EU’s schedule of commitments and WTO provisions regarding agricultural export subsidies.

For more information on the Commission’s sugar reform proposal and the EU sugar market see IP/04/915 and MEMO/04/177.

Background

The main conclusions of the panel are that:

Since 1995, the EU’s total exports of sugar exceed its final quantity commitment level for export subsidies, which is 1,273.500 tonnes per year, because Footnote 1 to the respective part of the WTO schedule (on exports equivalent to ACP/Indian imports of sugar) is without legal effect.

There is prima facie evidence that, since 1995, the EC has been providing export subsidies on exports of “ACP/India equivalent sugar” as well as on exports of C sugar and that this is inconsistent with the EU’s obligations under the Agreement on Agriculture.

The panel recommends that the EC brings its sugar regime into conformity with its obligations under the Agreement on Agriculture

The appellate review of the panel reports must start before their adoption in the WTO Dispute Settlement Body, for which there is a deadline of 60 days from today. The duration of the appellate procedure is 90 days, after which the (modified) panel reports and the Appellate Body’s report must be adopted within 30 days.