

**EUROPEAN COMMUNITIES – EXPORT SUBSIDIES ON SUGAR**

Request for the Establishment of a Panel by Australia

The following communication, dated 9 July 2003, from the Permanent Mission of Australia to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have requested me to submit the following request for the establishment of a panel on behalf of Australia.

On 27 September 2002 Australia requested consultations with the European Communities (EC) pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 19 of the Agreement on Agriculture and Articles 4 and 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) with respect to the EC's Common Organization of the Markets in sugar and its application and implementation. The request was circulated to Members on 1 October 2002 in document number WT/DS265/1. Consultations were held on 21 and 22 November 2002 but unfortunately did not result in resolution of the dispute.

Consequently, Australia requests that a Panel be established pursuant to Article 4.7 and Article 6 of the DSU, Article XXIII:2 of GATT 1994, Article 19 of the Agreement on Agriculture and Article 4.4 and Article 30 of the SCM Agreement.

The measures that are the subject of this request are the subsidies provided by the EC in excess of its reduction commitment levels on sugar and sugar containing products including sugar cane and sugar beet, processed and unprocessed cane and beet sugar and chemically pure sucrose in solid form, molasses resulting from the extraction of refining of sugar, isoglucose, inulin syrup and the other products listed in Article 1 of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the European Communities' Common Organization of the markets in sugar sector (Official Journal of the European Communities, 30 June 2001, L178/1-45).

The above-mentioned subsidies are accorded through the EC sugar regime, which is contained in a number of EC regulations including Council Regulation No 1260/2001 and related EC regulations, administrative policies, rules, decisions and other instruments including instruments pre-dating the above regulation, and their implementation. These various instruments will be referred to as "the EC sugar regime".

In addition to setting down the conditions attaching to imports of sugar, the EC sugar regime provides conditions attached to the production, supply and exports of sugar, including domestic support and export subsidies. Sugar is classified into quota and non-quota sugar. Non-quota sugar is known as C sugar. The sugar regime provides for the reclassification from quota to C sugar and from C sugar to quota sugar. Sugar classified as C sugar cannot be disposed of in the EC market.

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Australia is particularly concerned at the subsidies provided by the EC for "C sugar" exports under the EC sugar regime. Under the regime, producers of C sugar are able to sell C sugar on the world market at below the total average cost of production through cross-subsidisation of C sugar from quota sugar profits. By financing payments on the export of C sugar, the EC exceeds its export subsidy reduction commitments under the WTO Agreement on Agriculture.

Australia is also particularly concerned at the provisions of the EC sugar regime which accord direct subsidies contingent on export performance for quantities of approximately 1.6 million tonnes of sugar which are additional to the budgetary outlays and quantities of subsidised exports notified by the EC to the Committee on Agriculture under the provisions of Article 18.2 of the Agreement on Agriculture. In the application of those provisions, the EC significantly exceeds its budgetary outlays and quantity commitments for export subsidies on sugar under the Agreement on Agriculture.

By granting export subsidies within the meaning of Articles 1.1(a)(1)(i), 1.1(a)(1)(iv), 1.1(a)(2) and 1.1(b) of the SCM Agreement that are not permitted by the Agreement on Agriculture, the EC also acts inconsistently with its obligations under Articles 3.1(a) and 3.2 of the SCM Agreement.

Australia considers that the provision of the above subsidies and the relevant elements of the EC sugar regime are inconsistent with the EC's obligations under the following provisions:

- Articles 3.3, 8, 9.1(a), 9.1(c), and alternatively, 10.1 of the Agreement on Agriculture;
- Articles 3.1(a) and 3.2 of the Agreement on Subsidies and Countervailing Measures.

Australia therefore requests the establishment of a Panel in accordance with Article 7 of the DSU.

I would be grateful if you would place this item on the agenda for the next DSB meeting scheduled for 21 July 2003.

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