

EUROPEAN COMMUNITIES – EXPORT SUBSIDIES ON SUGAR

Notification of an Appeal by the European Communities
under paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 13 January 2005, from the Permanent Delegation of the European Commission, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the Working Procedures for Appellate review, the European Communities ("EC") hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the reports of the Panel established in response to the requests from Australia, Brazil and Thailand in the disputes *European Communities – Export Subsidies on Sugar* (WT/DS265/R, WT/DS266/R and WT/DS283/R).

The European Communities seeks review of:

- 1) The conclusion, and the related legal findings and interpretations, contained in paragraphs 7.12-7.16 and 7.24-7.37 of the Panel reports, that the alleged "payments" in the form of sales of C beet were within the terms of reference of the Panel.
- 2) The conclusion, and the related legal findings and interpretations set out in paragraphs 7.120 to 7.222, 7.235 to 7.238 and 8.1(a), (b) and (c) of the Panel reports that Footnote 1 to Section II, Part IV of the EC's Schedule has no legal effect and that, as a consequence, the EC's quantity commitment level for exports of sugar is 1,273,500 tonnes and the EC's budgetary outlay commitments is €499.1 million from marketing year 2000/2001.

This conclusion is based on the following erroneous findings:

- that Articles 3.3 and 8 of the *Agreement on Agriculture* require in all circumstances that a Member specify both budgetary and quantity commitments;
- that Footnote 1 to Section II, Part IV of the EC's Schedule is not a commitment limiting subsidisation, and does not cover exports equivalent to the volume of ACP/India sugar imported into the EC;

- that even if Footnote 1 to Section II, Part IV of the EC's Schedule is a commitment limiting subsidisation it would remain inconsistent with the *Agreement on Agriculture*; and
 - that the jurisprudence of *US – Sugar Headnote* applies to export subsidy commitments
- 3) The conclusion, and the related legal findings and interpretations, set out in paragraphs 7.251-7335 and 8.1(f) of the Panel reports, that exports of C sugar benefit from export subsidies falling within Article 9.1(c) of the *Agreement on Agriculture*.

This conclusion is based on the following erroneous findings:

- that so-called "cross-subsidization" constitutes a payment on the exports of C sugar, which provides an export subsidy within the meaning of Article 9.1(c);
 - that the supply of C beet is a payment on the exports of C sugar financed by virtue of Government action, which provides an export subsidy within the meaning of Article 9.1(c).
- 4) The overall conclusion, and the related legal findings and interpretations set out in paragraphs 7.336-7.340, 8.2 and 8.3 of the Panel reports, that the EC exported sugar in excess of its commitment levels in marketing year 2000/2001 and, therefore, has acted inconsistently with Articles 3.3 and 8 of the *Agreement on Agriculture*.

This conclusion is based on the erroneous conclusions mentioned above under 1), 2) and 3).

- 5) The conclusion, and the related legal findings and interpretations, set out in paragraphs 7.61-7.75 and 7.348-7.354 of the Panel reports, that, by claiming that exports of C sugar were in excess of the EC's commitment levels the Complainants did not act inconsistently with Article 3.10 DSU and the principle of good faith.
- 6) The conclusion, and the related legal findings and interpretations, set out in paragraphs 7.366-7.374 and 8.4 of the Panel Reports that the alleged violations resulting from the exports of C sugar nullify or impair benefits accrued to the Complainants under the *Agreement on Agriculture*.

The provisions of the covered agreements which the European Communities consider to have been erroneously interpreted or applied by the Panel include:

- Section II, Part IV of the EC's Schedule;
 - Articles 3.3, 8 and 9.1 of the *Agreement on Agriculture*;
 - Articles 3.7, 3.8, 3.10, 6.2, 7.1, 7.2, 9.2, 11 and 12.7 of the DSU.
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