

**EUROPEAN COMMUNITIES – EXPORT SUBSIDIES ON SUGAR**

Notification of an Other Appeal by Brazil  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU),  
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 25 January 2005, from the Delegation of Brazil, is being circulated to Members.

Pursuant to Articles 16.4 and 17.4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (“DSU”) and Rule 23 of the Working Procedures for Appellate Review, Brazil appeals certain issues of law and legal interpretation in the Panel Report in *European Communities – Export Subsidies on Sugar* (WT/DS266/R).

1. Brazil claims that the Panel committed legal error in the exercise of the principle of judicial economy, in paragraph 7.387 of the Panel Report, by declining to examine Brazil’s claim that the regimes for A, B and C sugar, and for ACP/India equivalent sugar, involve the provision of export subsidies prohibited by Articles 3.1(a) and 3.2 of the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”).
2. The Panel’s finding is based on an erroneous interpretation and application of Article 4.7 of the *SCM Agreement* and Article 19.1 of the *DSU*. The Panel erred in deciding to exercise judicial economy on the basis of the implementation obligations in Article 19.1 of the *DSU*. These obligations would not apply if Brazil’s claims under Article 3 of the *SCM Agreement* were upheld. Instead, in that event, the recommendations and rulings of the DSB would be determined pursuant to Article 4.7 of the *SCM Agreement*.
3. As a result of these errors, the Panel also erred in its interpretation and application of Article 19.2 of the *DSU* by nullifying the right of Brazil to resolve a dispute concerning prohibited export subsidies in terms of the implementation obligations available under Article 4.7 of the *SCM Agreement*. The Panel has also erred under Article 19.2 of the *DSU* by nullifying Brazil’s right, in the event of a failure by the European Communities to comply with the recommendations and rulings of the DSB in this dispute, to avail itself of the remedies and procedures foreseen by Article 4.10 of the *SCM Agreement*.
4. Brazil claims, therefore, that the Panel erred in the exercise of the principle of judicial economy and also in the interpretation and application of Article 4.7 of the *SCM Agreement* and Articles 19.1 and 19.2 of the *DSU*. Brazil intends to argue that the Panel’s findings in, *inter alia*, paragraphs 7.383 – 7.387 of the Panel Report contains these errors.

5. In the event that Appellate Body reverses the Panel's exercise of judicial economy, Brazil requests that the Appellate Body complete the legal analysis by examining Brazil's claims under Articles 3.1(a) and 3.2 of the *SCM Agreement* on the basis of Panel's factual findings and the uncontested facts of record.
-