

Original: English

EUROPEAN COMMUNITIES – EXPORT SUBSIDIES ON SUGAR

Request for Consultations by Brazil

The following communication, dated 27 September 2002, from the Permanent Mission of Brazil to the Permanent Delegation of the European Commission and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Upon instruction from my authorities, I hereby wish to convey the request of the Government of Brazil for 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 4.1, and 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) with respect to the export subsidies provided by the EC to the sugar sector.

Brazil specifically wishes to consult with regard to Council Regulation (EC) No. 1260/2001 of 19 June 2001 on the European Communities' common organization of the markets in the sugar sector, published in the Official Journal of the European Communities on 30 June 2001 (L 178/1-45), and all other legislation, regulations, administrative policies and other instruments relating to the EC regime for sugar and sugar containing products including the rules adopted pursuant to the procedure referred to in Article 42(2) of Council Regulation (EC) No. 1260/2001 of 19 June 2001, and any other provision related thereto.

The EC provides, in accordance with Council Regulation (EC) No. 1260/2001 of 19 June 2001, export subsidies for sugar and sugar containing products (including cane or beet sugar and chemically pure sucrose in solid form, molasses resulting from the extraction or refining of sugar, isoglucose, insulin syrup, and other products also listed in Article 1 of Council Regulation (EC) No. 1260/2001) above its reduction commitment levels specified in Section II of Part IV of its Schedule of Concessions.

The EC intervention price system for sugar guarantees a high price for the sugar that is produced within certain production quotas (A and B quotas). Sugar produced in excess of these quotas (so-called C sugar) cannot be sold internally in the year in which it is produced: it must be exported or carried over to fulfill the following year's production quotas. By virtue of the EC's common organization of the sugar market and its regulatory framework, exporters of C sugar are able to export C sugar at prices below its total cost of production. Brazil is of the view, therefore, that the EC intervention price system is providing export subsidies for sugar that exceed the reduction commitment levels for sugar specified in the EC's Schedule.

In addition, according to the EC's Schedule for sugar and the agricultural notifications submitted by the EC to the WTO for marketing years 1995/1996 through 2000/2001, the EC provides

export subsidies in excess of its commitments to approximately 1.6 million tons of sugar per year. The export subsidies provided by the EC (referred to in the EC Council Regulation (EC) No. 1260/2001 as "export refunds") cover the difference between the world market price and the high prices in the Community for the products in question, thus enabling those products to be exported.

Brazil also believes that the EC sugar regime accords less favorable treatment to imported sugar and is thus in violation of Article III:4 of the GATT 1994, since imported sugar, as opposed to EC quota sugar, is not eligible to benefit from the high intervention price guaranteed by that regulation.

Brazil considers that the extent and manner in which the EC subsidizes the exports of sugar violate the obligations of the EC under the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures, and GATT 1994. In particular, by providing export subsidies for sugar in excess of its reduction commitment levels specified in Section II of Part IV of its Schedule of Concessions (Schedule CXL-European Communities), the EC is acting in a manner inconsistent with at least the requirements of:

- Article 3.3 of the Agreement on Agriculture
- Article 8 of the Agreement on Agriculture
- Article 9.1 (a) and (c) of the Agreement on Agriculture
- Article 10.1 of the Agreement on Agriculture
- Article 3.1(a) and 3.2 of the SCM Agreement
- Article III:4 of GATT 1994
- Article XVI of GATT 1994

In respect of the claims based on Article 3 of the SCM Agreement, because the export subsidies provided by the EC on sugar do not conform fully to the provisions of Part V of the Agreement on Agriculture, those export subsidies are not exempt from challenge by virtue of Article 13(c)(ii) of the Agreement on Agriculture.

Pursuant to Article 4.2 of the SCM Agreement, Brazil offers as evidence of the existence and nature of the subsidy in question the regulations, documents and statistical information listed in the Annex to the present request for consultations.

Brazil reserves the right to raise other claims and address additional legal and factual issues during the course of the consultations.

My authorities look forward to receiving in due course the reply of the European Communities to this request. Brazil is ready to consider with the European Communities a mutually convenient date to hold consultations in Geneva.

ANNEX

Statement of Available Evidence
in Accordance with Article 4.2 of the SCM Agreement

- Section II of Part IV of Schedule CXL-European Communities;
 - Council Regulation (EC) No. 1260/2001 of 19 June 2001 on the European Communities' common organization of the markets in the sugar sector, published in the Official Journal of the European Communities on 30 June 2001 (L 178/1-45);
 - Commission Regulations adopted pursuant to Council Regulation (EC) No. 1260/2001 of 19 June 2001;
 - Agricultural notifications concerning export subsidy commitments (ES:1 to ES:3) submitted by the EC to the WTO for marketing years 1995/1996 through 2000/2001: G/AG/N/EEC/5, 11, 20, 23, 32 and 36;
 - Agricultural notifications concerning domestic support commitments (DS:1 to DS:1 and supporting tables) submitted by the EC to the WTO for marketing years 1995/1996 through 1998/1999: G/AG/N/EEC/12, 16, 26 and 30;
 - EC Court of Auditors, Special Report No 20/2000, concerning the management of the common organisation of the market for sugar, together with the Commission's replies.
-