

EC – EXPORT SUBSIDIES ON SUGAR¹

(DS265, 266, 283)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	Australia Brazil, Thailand	AA Arts 3, 8 and 9.1	Establishment of Panel	29 August 2003
			Circulation of Panel Report	15 October 2004
Respondent	European Communities		Circulation of AB Report	28 April 2005
			Adoption	19 May 2005

1. MEASURE AND INDUSTRY AT ISSUE

- Measure at issue: EC measures relating to subsidization of the sugar industry, namely, a Common Organization for Sugar (CMO) (set out in Council Regulation (EC) No. 1260/2001): two categories of production quotas – "A sugar" and "B sugar" – were established under the Regulation. Further, sugar produced in excess of A and B quota levels is called C sugar, which is not eligible for domestic price support or direct export subsidies and must be exported.
- Industry at Issue: Sugar industry.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- EC export subsidy commitment levels for sugar: The Appellate Body upheld the Panel's finding that footnote 1 in the EC Schedule relating to preferential imports from certain ACP countries and India did not have the legal effect of enlarging or otherwise modifying the European Communities' quantity commitment level contained in Section II, Part IV of its Schedule.
- AA Arts. 9.1(c), 3.3 and 8 (export subsidies – exports of C sugar): The Appellate Body upheld the Panel's finding that the European Communities violated Arts. 3.3 and 8 of the AA by exporting C sugar because export subsidies in the form of payments on the export financed by virtue of government action within the meaning of Art. 9.1(c) were provided in excess of the European Communities' commitment level. In this regard, the European Communities provided two types of "payments" within the meaning of Art. 9.1(c) for C sugar producers, i.e. (i) sales of C beet below the total costs of production to C sugar producers; and (ii) transfers of financial resources, through cross-subsidization resulting from the operation of the EC sugar regime. Further, the Panel concluded that the European Communities had not demonstrated, pursuant to AA Art. 10.3, that exports of C sugar that exceeded the European Communities' commitment levels since 1995 had not been subsidized.
- AA Arts. 9.1(a), 3 and 8 (export subsidies – export of ACP/India equivalent sugar): The Panel found that the European Communities acted inconsistently with AA Arts. 3 and 8 since the evidence indicated that European Communities' exports of ACP/India equivalent sugar received export subsidies within the meaning of Art. 9.1(a) and the European Communities had not proved otherwise.

3. OTHER ISSUES

- Judicial economy (export subsidies under ASCM and AA): The Appellate Body found that the Panel's exercise of judicial economy in respect of the complainant's claims under ASCM Art. 3 (after having found a violation by the European Communities of AA Arts. 3.3 and 8) was false, as different and more rapid remedies were available to the complainant respectively under ASCM (Art. 4.7) and AA (through DSU Art. 19.1).
- Reversal of burden of proof (AA Art. 10.3): The Panel explained that AA Art. 10.3 reverses the usual rule of burden of proof such that once the complainant has proved that the respondent is exporting a certain commodity in quantities exceeding its commitment levels, then the respondent must prove that such an excessive amount of exports is not subsidized.

¹ *European Communities – Export Subsidies on Sugar*

² Other issues addressed in this case: DSU Art. 9.2 (separate panel reports), Art. 10.2 (enhanced third party rights); notification of third parties' interest in participating; confidential information; timing of objection to the panel's jurisdiction; terms of reference (DSU Art. 6.2); *estoppel* from pursuing the dispute; *amicus curiae* (confidentiality); consideration of new arguments (AB); extension of time for appeal and circulation of report (AB, DSU Art. 16.4, 17.5); private counsel (AB); good faith (DSU, Art. 3.10, 7.2, 11); sufficiency of notice of appeal (Working Procedures for Appellate Review, Rule (20)(d)).