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## EU-25

### Trade Policy Monitoring

## EU loses appeal in WTO EU Sugar Export Subsidies Panel

### 2005

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**Report Highlights:**

The EU has lost its appeal on the WTO Sugar Panel, with the Appellate Body upholding that both C sugar exports (over quota production) and ACP re-exports should be counted against the EU's WTO export subsidy limits. The WTO panel report finding against the EU sugar regime is likely to have little immediate or even mid term impact on the level of EU exports as a compliance timetable has yet to be negotiated. The appeal results will also put further political pressure on the EU Commission who are due to publish proposals for the reform of the EU sugar regime before the summer. Initial proposals published in the summer of 2004 do not likely go far enough in reducing the EU's sugar exports.

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The EU has lost its appeal on the WTO Sugar Panel, with the Appellate Body upholding that both C sugar exports (over quota production) and ACP re-exports should be counted against the EU's WTO export subsidy limits. The WTO panel report finding against the EU sugar regime is likely to have little immediate or even mid term impact on the level of EU exports as a compliance timetable has yet to be negotiated. However, over the next five years or so, EU total supplies may fall between 3 and 5 million tons causing the EU to become a small net exporter or possibly trade neutral or even a small net importer, compared to its current position of being a major exporter on world markets.

The appeal results will also put further political pressure on the EU Commission who are due to publish proposals for the reform of the EU sugar regime before the summer. Initial proposals published in the summer of 2004 do not likely go far enough in reducing the EU's sugar exports.

The appeal also upheld the Panel's ruling that the EU was not in breach of the Subsidies and Countervail Measures Agreement (SCM) – this would have required the EU to bring its export subsidy policy into line with the WTO ruling immediately. The EU had not been widely expected to lose this aspect of the appeal.

It is important to remember that contracting parties (CP) to the WTO are not mandated to conform to a panel's decision. A CP has three basic options, 1) comply with the panel report, 2) negotiate a settlement with the grieving CP, and 3) accept retaliatory measures. The EU is likely to negotiate with Brazil, Australia and Thailand to reach a compliance agreement a process that can take up to 15 months. This timetable would also lead to June 2006 when the current EU sugar regime runs out. The Commission is in the process of formulating a new reformed sugar regime likely to see price cuts of around one third as well as quota cuts partially compensated by direct payments.

## Reaction

From the EU's agriculture spokesman: "We are already planning a far reaching reform of our sugar regime, changes that needed to be made because of the ruling would be written into the reform proposal before it is released on June 22".

British aid group Oxfam said that the ruling confirmed that the EU had been breaking international trade law and harming developing countries' economies. The writing has been on the wall for ages, but the EU has been refusing to read it," said Oxfam's Phil Bloomer according to press reports.

The Australian government called on the EU to respect its WTO export subsidy commitments as well as encouraging the EU to bring itself into compliance with the Panel's finding as quickly as possible.

From the Brazilian Ambassador to the WTO, Luiz Felipe de Seixas de Correa: "This results today means an important victory for us, This sugar decision is a historical decision, that certainly is going to help to inclusion of agriculture in the multilateral trade system."

## Background

In September 2004, a [WTO Panel](#) requested by Brazil, Australia and Thailand concerning EU export subsidies for sugar found against the EU<sup>1</sup>. The Panel focused on two issues – ACP/India re-exports and C sugar. The WTO Panel found that the 1.6 MMT of ACP sugar that

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<sup>1</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/265r\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/265r_e.pdf)

the EU imports per year and exports a corresponding level with subsidies should be counted against its export subsidy commitments. On C sugar, the Panel found that this benefits from a cross subsidization from A and B quota sugar, so that it is effectively a form of export subsidy. This argument draws on the precedent created by the WTO Canada Dairy case.

The European Commission appealed against the panel's findings. The Panel does not set out how the EU should bring itself into compliance with WTO rules. This remains to either be negotiated with the complainants or could require a WTO compliance panel.

The one aspect of the Panel which did not go against the EU's interests was that no ruling was made as to whether the EU was in breach of the Subsidies and Countervailing Measures (SCM) Agreement. If the Panel had found the EU to be in breach of this, then it would have required the EU to bring itself into compliance in a short timeframe. This was cross-appealed by the complainants during the appeal process.

Under the current sugar regime, all EU sugar exports would be counted against the EU's WTO export subsidy volume limitations of 1.273 MMT (white sugar equivalent) and €499 million. However, the EU currently exports up to 1.6 MMT of ACP/India equivalent sugar, up to 1.2 MMT of sugar with export subsidies and 2 to 3 MMT of C sugar, totaling 4.8 MMT to 5.8 MMT. Clearly, the EU will have to significantly reduce the quantities of sugar it exports to bring itself into line with its WTO commitments<sup>2</sup>.

The complainants argued that C - sugar (over quota sugar production that must be exported without subsidy) effectively benefits from a cross subsidization from A and B quota sugar, so that benefit in excess profits allows EU sugar producers to subsidize their exports and is effectively a form of export subsidy resulting from government intervention. The EU Court of Auditors calculated that this hidden subsidy was worth €1.49 billion.

The second argument concerns the status of the 1.6 million tons of ACP sugar that the EU imports per year and re-exports with the aid of a corresponding level with subsidies. The complaints argue that the EU does not reduce its export subsidy commitments, nor does it include these export subsidies in its WTO notifications of export subsidies. In so doing, the Panel found that the EU is inconsistent with its obligations under various Articles of the Agreement on Agriculture and various Articles under the Agreement on Subsidies and Countervailing Duties.

### Further Reading

FAS/HTTP in collaboration with FAS/USEU published a report in October 2004 on "[Sugar and the European Union: Implication of WTO Findings, and Reform](#)"<sup>3</sup>

Links to further reports on EU sugar, including the Commission's background preparation for sugar reform are available from the USEU website: <http://www.useu.be/AGRI/sugar.html>

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<sup>2</sup> For example, the EU exported 1.05 million tons of sugar in 2001/02 according to its notification to the WTO.

<sup>3</sup>

<http://www.fas.usda.gov/http/sugar/2004/internet%20article%20on%20wto%20and%20reform%20rev1.pdf>

**Related reports from USEU Brussels and other EU Posts:**

<b>Report No.</b>	<b>Title</b>	<b>Date Released</b>
E35080	EU Sugar Annual	April 2004
E35032	<a href="#">EU sugar intervention used for first time in 20 years</a>	February 2005
GM5010	<a href="#">German Position on EU Reform Proposal for Sugar Market Regime</a>	February 2005
E34087	<a href="#">EU Sugar Semi-Annual</a>	November 2004

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