

EUROPEAN COMMUNITIES – EXPORT SUBSIDIES ON SUGAR

Implementation of DSB Recommendations and Rulings

Communication from Australia, Brazil and Thailand

The following communication, dated 15 September 2005, from the delegations of Australia, Brazil and Thailand to the Chairman of the Dispute Settlement Body, is circulated at the request of those delegations.

1. In accordance with the provisions of Article 21.6, second sentence of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Australia, Brazil and Thailand request the inclusion of the item "European Communities – Export Subsidies on Sugar (WT/DS265, WT/DS266, WT/DS283): Implementation of DSB recommendations and rulings" on the agenda for the scheduled meeting of the DSB on 27 September 2005. It is requested that this letter be circulated to the WTO membership.

2. Australia, Brazil and Thailand are making this request under the DSB surveillance provisions, following reports that the EC is contemplating action to declassify quota sugar to C sugar in the near future which would serve to increase its subsidised exports of sugar to a level of some 6 million tonnes *in excess of* the EC's WTO export subsidy commitments for sugar (i.e. the EC's subsidised exports of sugar would total approximately 7.2 million tonnes).

3. Such action by the EC, which could take effect as early as this October, would serve to increase its subsidised sugar exports, and would be undertaken in the clear knowledge that exports of sugar in excess of the EC's scheduled commitment levels constitute prohibited export subsidies under the *WTO Agreement on Agriculture*.

4. Consistent with the DSB recommendations and rulings in this dispute of 19 May 2005 – which found that all EC sugar exports are subsidised – the EC is required to take prompt steps to reduce its subsidised exports of sugar from an average of approximately 5 million tonnes a year to its scheduled commitment level of a maximum of 1.273 million tonnes. It is also required to reduce its budgetary outlays on export subsidies for sugar from an estimated €2 billion a year to its scheduled commitment level of a maximum of €499.1 million.

5. The EC's WTO implementation period commenced on 19 May 2005. The provisions of Article 21 of the DSU do not confer a waiver on a WTO Member to suspend the application and observance of WTO obligations during a dispute's implementation period. Arbitration under Article 21.3(c) of the DSU will establish the end-point of the implementation period, but the EC's obligation to implement is extant from day one of that period.

6. Any decision by the EC serving to increase exports during its WTO implementation period would be highly damaging to the functioning of the WTO dispute settlement system and is a matter requiring consideration by the DSB under the surveillance authority accorded to the DSB under Article 21.6 of the DSU.

7. It would also be harmful to the interests of other WTO sugar producing members, including many developing countries. It would also appear to be incompatible with the provisions of Article 21.2 of the DSU.

8. For the mentioned reasons, Australia, Brazil and Thailand strongly caution the EC against taking measures such as sugar declassification which would serve to undermine both the EC's WTO obligations and the effective functioning of the Dispute Settlement Body.

(signed)
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Permanent Representative of
Australia

(signed)
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Permanent Representative of
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(signed)
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