

The WTO Appellate Body confirmed that the EU had applied antidumping duties to biodiesel originating in Argentina in a manner that was inconsistent with its international obligations.



On October 6th, 2016, the WTO Appellate Body upheld the WTO's Dispute Settlement Body decision issued on March 29, 2016

in the case "European Union – Anti Dumping Measures on Biodiesel from Argentina" stating that the EU had applied antidumping duties to biodiesel originating in Argentina in a manner that was inconsistent with its international obligations. The decision was mainly grounded on the fact that the EU acted inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement by failing to calculate the cost of production of biodiesel on the basis of the records kept by Argentine producers.

It is worth recalling that when assessing the cost of production of biodiesel in order to determine the normal value and consequent dumping margin, the EU authorities disregarded the information stemming from records kept by the Argentine producers for considering that domestic prices of soybeans, associated with the production and sale of biodiesel, were abnormally or artificially lower than the product's international prices -and thus not representative- due to the Argentine export tax system.

As a consequence of the foregoing, when constructing the cost of production, the EU took as a reference, prices published by the Argentine Ministry of Agriculture, which happened to be FOB prices and therefore not a permissible substitute for the prices recorded by the producers since they did not reflect the cost of soybeans in Argentina, but rather their international prices. The WTO Appellate Body considered that the EU allegation was not, in itself, sufficient for disregarding the information stemming from such records and that, in any event, the referenced surrogate prices chosen by the EU should have been adapted in order to reflect the cost of production in the country of origin.

Based on its findings, the WTO Appellate Body confirmed that the EU had infringed its obligations assumed under the Antidumping Agreement and the WTO, and consequently upheld the Dispute Settlement Body's recommendation for the EU to bring its measures into conformity with such obligations.

It is worth highlighting that despite the existence of trade barriers, Argentine biodiesel production and exports during the first half of 2016 grew significantly in relation to 2015, in the latter case mainly

by exports to the US which has been the most demanding market.

While it is estimated that the EU might not resume its historical level of imports and that any possible demand will likely be absorbed exclusively by large companies to the detriment of SMEs, the WTO Appellate Body's decision envisages a favorable outlook for the sector.

Next steps

The Dispute Settlement Body has to accept or reject the appeals report within 30 days. Once adopted by the Dispute Settlement Body, the decision will have to be accepted by the parties and the EU will have to state its intention to comply.

Once done, in case of failure to comply, the EU will have to enter into negotiations with Argentina in order to determine a mutually-acceptable compensation, for instance, tariff reductions in areas of Argentina's particular interest. If after 20 days, no satisfactory compensation is agreed, Argentina may ask the Dispute Settlement Body for permission to take temporary retaliation measures (i.e. to suspend concessions or other obligations or to block imports by raising EU import duties) under the Dispute Settlement Body's monitoring, in order to encourage the EU to comply.

Background

Through Commission Regulation (EU) No. 490/2013 issued on May, 27 2013, the EU imposed anti-dumping duties on imports of biodiesel originating in Argentina and Indonesia.

On December 19, 2013, Argentina requested consultations with the EU within the framework of the WTO procedures, regarding the way in which such measures had been applied by the EU in particular with regard to the manner in which both the dumping and injury determinations had been assessed.

The WTO panel issued its decision on March 29, 2016 and agreed that the EU had applied antidumping duties to biodiesel originating in Argentina in a manner that was inconsistent with its WTO obligations.

On May 20, 2016 and May 31, 2016 the EU and Argentina notified respectively to the WTO's Dispute Settlement Body their decision to appeal the report issued by the panel and requested the Appellate Body reverse certain of the Panel's findings.