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ELSA Moot Court Competition on WTO Law 2005/2006

CASE

Subsidia – Agricultural Subsidies on Sweet Biscuits, Wheat & Pork

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Subsidia is a developed WTO Member, which has a long-standing tradition of subsidizing its farmers and agribusiness interests. The government of Subsidia has agreed in principle to reforming (reducing) its agricultural subsidies – in particular as a response to severe pressure from other Members of the WTO. However, in practice, it has found itself unable to reduce subsidies below the levels of its scheduled commitments under the Agreement on Agriculture because of heavy political pressure from major exporters of agricultural products. These agribusiness interests are among the world's leading exporters of agricultural products, as well as being major political campaign contributors. Most are apparently concerned that their profits would suffer if the current subsidy programs were reduced or eliminated.

Competia is a developing WTO Member, which expelled an unpopular dictator approximately 15 years ago with the help of Subsidia. Subsidia also has periodically assisted Competia with economic development programs over the years. However, Competia agricultural interests, and the government, have become tired of what they perceive as Subsidian arrogance with regard to agricultural subsidy programs and other trade policies. Consequently, Competia has reduced its level of diplomatic relations and declined all development assistance offered by Subsidia.

In recent years, a coalition of agribusiness groups and its supporters in the Competia government have determined to work towards taking over Subsidia's current position as the world's leading exporter of wheat and sweet biscuits. Although Competia has not yet achieved this objective, it has come close; Competia is now the world's second largest exporter of wheat and sweet biscuits.

Sweet biscuits are one of the items at issue in the current list of trade disputes between Subsidia and Competia. Subsidia produces sweet biscuits with ingredients (sugar, butter, wheat flour) that are expensive in Subsidia due to high labor and other production costs.

As an additional outlet for sugar, butter and wheat flour produced in Subsidia and in order for sweet biscuits produced in Subsidia to be sold at reasonable prices to consumers and to remain competitive, Subsidia provides to its sweet biscuit manufacturers subsidies for purchasing sugar, butter and wheat flour produced in Subsidia. These subsidies are set at an amount that brings the price of these ingredients to the level of market prices at which imported ingredients are sold in Subsidia.

Subsidia has developed a sophisticated system by which it "tracks" whether sweet biscuits are sold on the domestic market or exported. It has done so in order to comply with the WTO commitments to schedule subsidies in the "correct" manner; i.e. domestic support and export subsidies. The export subsidies are scheduled as "sweet biscuits" (and not as sugar, butter and wheat flour). 60% of the production is being exported and out of that amount, 10% is produced with imported ingredients that are not subsidized (because these ingredients are priced at world market prices).

Subsidia's export subsidies are scheduled under the Harmonized System Heading 19.05, HS number 1905.31. It has scheduled 55 million Subs (Subsidian currency) and 600.000 tonnes sweet biscuits.

Subsidia has also scheduled its domestic support according to the Agreement on Agriculture.

Subsidia has fully met its budgetary commitment, but the biscuit exporters are able to export quantities beyond the scheduled volume at prices generally 10-15% below the average cost of production in Subsidia and between 5-10% below world market prices. During consultations with Subsidia, Competia claimed that the export subsidies *"must be overly generous as to export that many sweet biscuits produced with expensive domestic ingredients."* Competia had consistently replied that it did not pay out one Subsidia Cent beyond its scheduled commitments. Under these circumstances, Subsidia views the entire issue to be yet another form of Competian harassment.

Wheat is also a source of trade friction between Subsidia and Competia. Subsidia provides price-contingent export subsidies in order to ensure that farmers are not adversely affected by fluctuations in world market price and demand. As with its other farm subsidies, Subsidia does not pay out export subsidy amounts in excess of its scheduled commitments. Subsidia does not deny that its export subsidies on wheat have trade distorting effects, but Subsidia's position is that the subsidy nevertheless is legal because it conforms to the scheduled amount of subsidies (by value) under the Agreement on Agriculture.

Subsidia's share of the world wheat market has grown steadily by about 5 % each year during the ten years in which Subsidia's price-contingent export subsidy program has been in place. This level of growth has not been affected by the gradual reduction of export subsidies (36% in total) over the ten-year period. Subsidia's world market share was 35% in 2002, 37% in 2003 and 39% in 2004. Competia's world market share was 15% in 2002, 24% in 2003 and 20% in 2004. Competia claims – based on a series of complex economic calculations – that the fluctuations in its world market share are caused by the trade-distorting effect of the price-contingent subsidies provided by Subsidia.

Pork is the third area of agricultural subsidy disputes between Subsidia and Competia. Pork is the only area of the agricultural industry in which Subsidia has effectively tried to limit production. Here, Subsidia is not motivated primarily by the desire of limiting farm subsidies, but, rather, by environmental concerns. In year 2000, 9 million swine were produced in Subsidia; Subsidia has decided that by 2015 the number must be reduced to 7 million. In implementing this policy, as laid down in Subsidia Law no 345, Section 40, Subsidia has limited the amount of domestic support provided to each farmer, under a complex calculation system. The system essentially functions so that the farmers receive the same amount of subsidies each year, provided they cut production according the plan made out for each farm.

Subsidia considers this type of domestic support to be "Blue Box" because the subsidy is contingent on production limitation. (If a farmer exceeds the number of heads in a given year, he looses 50% of his support payments that year and for the next year as well. To date, this has only happened to one farmer, who is now incarcerated for violating the environmental laws regarding swine-related pollution of the ground water).

In 2005, Subsidia remains the leading exporter of pork; econometric models demonstrate that this will also be case in year 2015 unless the world market changes dramatically. Subsidia exports in year 2004 amount to the equivalent[1] of 7 million swine, at prices that are about 15 % below the average cost of production, and 20 % below world market prices. Subsidia does not provide for any other subsidies than the domestic support it has notified as "Blue Box" subsidies.

The WTO Dispute

After the mandatory consultations between the parties failed to resolve the dispute, Competia formally requested the formation of a panel under DSU Article 6. Competia has raised the following issues:

The Sweet Biscuit "scheme" is in violation of the Agreement on Agriculture Articles 3, 9 and 8. The Wheat "scheme" violates Part III of the SCM Agreement. The Pork "scheme" violates Articles 3, 6, 8, 9 of the Agreement on Agriculture.

Indicative references

Agreement on Subsidies and Countervailing Measures
Agreement on Agriculture
Canada – Dairy *(WT/DS103, 113)*
EC – Sugar *(WT/DS265, 266, 283)*
US – Cotton *(WT/DS267)*

[1] The term "equivalent" is used to make the facts easier, so that each team discuss numbers of swine instead of a wide range of pork products (e.g. bacon, sausages, etc.).