

The Denunciation of the Sugar Protocol

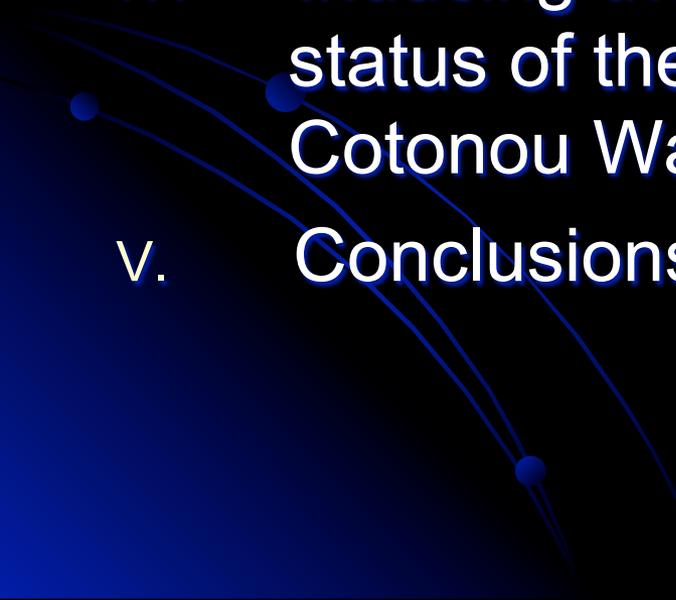
WTO Dispute Settlement, EU Domestic
Reform, and the Legal Status of the
Sugar Protocol

WTO Appellate Body Research Series
Geneva, February 28, 2008

Issue of Concern

- Denunciation of the SP on September 27th 2007 on behalf of EU – in the midst of EPA negotiations
- Termination of SP benefits for 18 ACP countries by October 1st 2009
- Sparking much confusion about the underlying reasons for the termination of the long-standing trade preferences

What led to the denunciation of the Sugar Protocol? Overview

- I. The legal nature and substance of the SP
 - II. The EU sugar policy: How did the SP fit in?
 - III. Inducing EU domestic reform: WTO dispute settlement in *EC – Export Subsidies on Sugar*
 - IV. Inducing the SP denunciation? The legal status of the SP after the expiration of the Cotonou Waiver in January 2008
 - V. Conclusions
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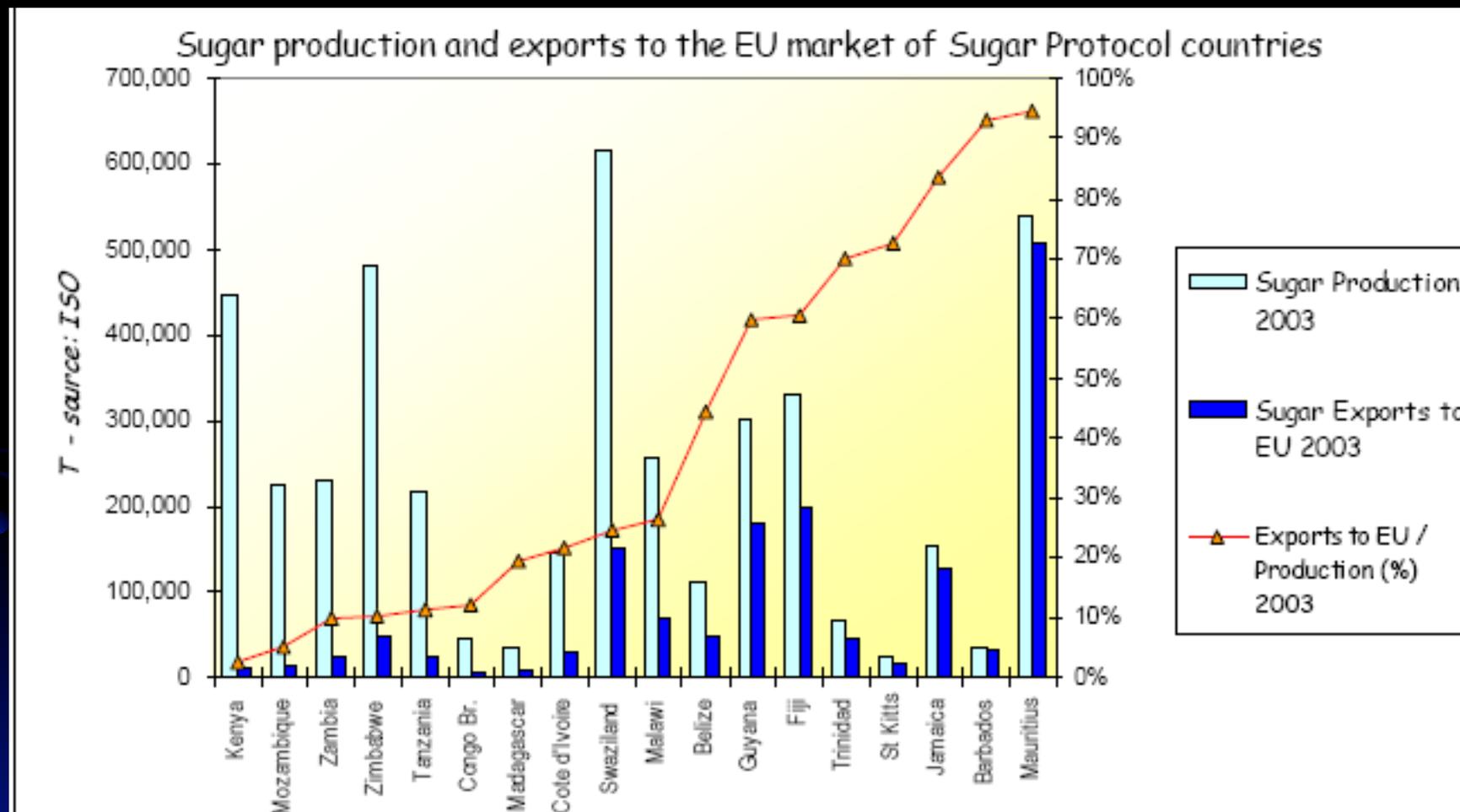
I. The Legal Status of the SP

- Cotonou Agreement, Annex 5, Protocol 3
- Annexed to EU-ACP partnership agreements since 1975
- Legally distinct from Lomé Conventions and Cotonou Agreement
- Bilateral Agreements between EU and 18 sugar producing ACP states
- Indefinite duration (Art.10)
- Option to denounce SP, subject to 2 years 'notice (Art.10)

I.1 Legal Substance of the SP

- Guaranteed import quantities, duty free
- 1.3 Mio tons of quota split between 18 countries
- Guaranteed import prices
- Import price linked to EU domestic price
- Three times higher than world market price

I.2 Economic Significance of the SP for ACP Countries



II. EU Sugar CMO 2001-2006

- 300 % price support on domestic production quota (A-sugar: 14.3 mio tons) and 300% subsidy on export quota quantities (B-sugar: 3.1 mio tons)
- Requirement to export out-of-quota production (C-sugar)
- Excessive price support and export requirement encourages over-quota/ surplus production and its exportation

- 300% import subsidy on imports under preferential arrangements
 - Sugar Protocol: 1.3 Mio tons
 - Special Sugar from SP countries: 300.000 tons
 - Western Balkans: 400.000 tons
 - EBA initiative: roughly 170.000 tons
 - Brazil & Cuba: 100.000 tons

- Prohibitive tariff on non-preferential sugar keeps most efficient foreign exporters out of the market

II.1 The EU Sugar Market and Sugar CMO 2001- 2006

- 16 mio tons domestic consumption
- 14.3 mio tons A-Quota – subject to price support three times world market price
- 3.1 mio tons B-Quota – eligible for export „refunds“ – equals the gap between administered price and world market price
- About 3 mio tons over-quota production (C-Sugar)
- 2.3 mio tons total imports under preferential arrangements
- 3 to 5 mio tons total exports: dumping of over-quota production and guaranteed preferential imports on the world market
- BUT: only 1.3 Mio tons eligible for export subsidies under WTO law

III. Inducing EU Reform: The *EC* – *Export Subsidies on Sugar Dispute*

- Challenge of the 2001-2006 EU Sugar CMO by Australia, Brazil and Thailand in 2004
- Finding 1:
- EC enables exports of out-of-quota sugar at below average cost of production, by means of providing excessive domestic price support to quota sugar production
- Subject to export competition disciplines of Agreement on Agriculture (AoA), and therefore subject to EC reduction commitment (Art. 9.1(c), 3.3, 8 AoA)
- Finding 2:
- Footnote attached to sugar export subsidy reduction commitment in EC schedule is inconsistent with scheduling requirements, as laid down in the Agreement on Agriculture (Art. 3.3 AoA)
- The footnote was meant to exclude 1.6 Mio tons of ACP/Indian origin from reduction commitment

III.1 EC – Export Subsidies on Sugar cntd.

- Panel and AB conclusion: EC subsidizes 2.8 Mio tons of exports in excess of its 1.3 Mio tons reduction commitment
- Requesting the EC to bring its sugar regime into conformity with its reduction commitment regarding export subsidies on sugar
- Additional challenges for EU policy makers:
 - EBA duty free & quota free market access by October 2009
 - Pressure to eliminate export subsidies as a result of the Doha Round
- Ultimate need to eliminate export subsidies and therefore exports of sugar entirely

III.2 EU Policy Response: Radical Reform of the EU Sugar Sector

- In February 2006 EU Council adopts reform programme for 2006-2010
- Objectives
 - Reduce domestic production by 6 to 7 Mio tons
 - Transform EU from net sugar exporter to net importer
 - Allow for 4 Mio tons of imports under EBA initiative and EPAs
- Means
 - Reduce domestic administered sugar price by 36% over four years to curb production incentives
 - Setting of strong financial incentives for domestic refiners to renounce production quota shares
 - Withdrawal mechanism: ad-hoc withdrawal of surplus quantities from the market if reform (dis)incentives are not sufficient to curb production
 - Politically: compensate sugar beet farmers with single payment scheme (AoA Green Box) worth 60% of their historical sugar revenue

III.3 Implications of Price Cut for SP Beneficiaries

- 36% EU price reduction renders sugar exports to EU unprofitable for the least efficient producers (Trinidad & Tobago, St. Kitts & Nevis, Barbados, Madagascar, Kenya, Cote d'Ivoire)
- Severe losses in export earnings for several SP beneficiaries, who are heavily dependent on this revenue (Tanzania, Republic of Congo, Jamaica, Fiji, Belize, Mauritius, Guyana, Zambia, Swaziland)
- Only Zimbabwe, Malawi, and Mozambique remain comfortably able to supply the EU market at the reduced price
- EU Adjustment Assistance: €1.3 billion over 8 years

III.4 How does the Denunciation of the SP fit into the EU post-reform scenario?

- Responds to the ‘footnote finding’ of the sugar panel and the AB
- relieves EU market of supply pressure
- Additionally:
 - matches starting date for quota free & duty free market access under EBA initiative
 - matches EU plans for granting of quota free & duty free market access under EPAs by 2015
 - If EPA signed, SP beneficiaries receive quota rights additional to those under the SP from October 2009 on, until they receive unlimited market access in 2015 (subject to safeguard clause for non-LDCs)

IV. Inducing the Denunciation of the SP: Inconsistency with WTO law?

- SP grants trade preferences to some developing and least-developed countries, discriminating against other WTO members
- Generally inconsistent with Art. I and Art. XIII GATT 1994 (*EC – Bananas III*)
- Inconsistent with the non-discrimination requirement of the Enabling Clause (*EC – Tariff Preferences*)
- Need for a waiver for MFN obligations regarding exclusive trade preferences under the Cotonou Agreement, to be issued by the WTO General Council (Art.9 paras 3+4 Marrakesh Agreement)

IV.1 Doha MFN Waiver for Cotonou Preferences 2001-2008

- MFN Waiver issued in 2001 at Doha Ministerial Conference
- “to permit the European Communities to provide *preferential tariff treatment* for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the ACP-EC Partnership Agreement, without being required to extend the same preferential treatment to like products of any other member”
- Expired on 31 December 2007
- Issue: Specific Art. XIII waiver necessary for quota restrictions?
- Generally: MFN waiver has shielded SP from legal challenge in practice

IV.2 The Post-Waiver period I: SP inconsistent with WTO Law?

- Does the expiry of Doha Waiver render SP inconsistent with WTO law?
- SP quotas are part of EC schedule → part of the Uruguay Round Single Undertaking and agreed upon by WTO membership?
- Collision of EC schedule entry with GATT 1994 provisions (Art.I & XIII)
- AB: schedule entries cannot modify existent obligations of members, as laid down in the multilateral trade agreements (*EC – Export Subsidies on Sugar*)
- Of particular relevance for SP beneficiaries who contemplated not to sign EU-ACP EPAs

IV.3 The Post-Waiver Period II: SP shielded through (interim) EPAs / Art.XXIV

- January 1st 2008: SP beneficiaries enter into (interim) EPAs with EU
- Issue: GATT illegal TRQs covered by Art. XXIV on a temporary or even permanent basis?
- Expansion of TRQs after October 2009 for EPA signatories
- Duty free & quota free market access by 2015 for EPA signatories
- EBA and EPA countries compete for about 4 mio tons of EU import capacity, at significantly reduced price rate

V. Conclusions

- EU domestic sugar reform induced by WTO dispute settlement
- EU domestic sugar reform erodes SP preferences
- SP denunciation complements EU domestic reform efforts
- (Interim) EPAs heal SP inconsistency with WTO law until October 2009, as covered by Art. XXIV GATT
- By 2015, EBA and EPA countries have largely liberalized duty and quota free access to EU sugar market, at reduced rates

Thank you for your attention!

Paper Title:

*The Reform of the EU Sugar Sector: Implications
for ACP Countries and EPA Negotiations*

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