3-29-2006

WTO Issues Final Decision Declaring Mexican Tax on Corn Syrup Illegal

LADB Staff

LADB Article Id: 51773
ISSN: 1054-8890

WTO Issues Final Decision Declaring Mexican Tax on Corn Syrup Illegal

by LADB Staff
Category/Department: Mexico
Published: 2006-03-29

In early March, a World Trade Organization (WTO) panel issued a final decision declaring that Mexico was in violation of fair-trade rules by imposing a tax on soft drinks sweetened with high-fructose corn syrup (HFCS). The decision leaves Mexico without any more appeals, meaning that the tax will have to be removed.

The ruling does not, however, impose or recommend a specific timetable for Mexico to eliminate the 20% special tax (Impuesto Especial sobre Produccion y Servicios, IEPS). The tax must be removed by an act of Congress, which means that no action will be taken this year, said Economy Secretary Sergio Garcia de Alba. "It will be very difficult to implement the decision in the short term," de Alba told reporters before meeting with US and Canadian counterparts in Acapulco in late March. "It's most likely that it won't happen until the next legislative period."

The three countries called the Acapulco meeting to review the impact of the North American Free Trade Agreement (NAFTA) since its inception 12 years ago. The Congress imposed the IEPS in 2001 as part of a limited tax-reform package (see SourceMex, 2002-01-09 and 2002-01-16). Under pressure from the US, President Vicente Fox suspended the tax later that year, prompting Congress to file a complaint with the supreme court (Suprema Corte de Justicia de la Nacion, SCJN).

In filing the complaint, legislators argued that the executive branch had violated the Constitution by reversing a decision reserved for the legislative branch (see SourceMex, 2002-04-10). The SCJN ruled in favor of the Congress (see SourceMex, 2002-07-17). At that point, the Fox administration restored the tax, pledging to maintain the restrictions on imports of HFCS. The US attempted through negotiations to convince Mexico to remove the restrictions, but the Mexican government did not budge.

The Office of the US Trade Representative (USTR), at the request of legislators from US midwestern states, filed a formal complaint before the WTO (see SourceMex, 2004-07-14). In 2005, a WTO panel issued a preliminary ruling declaring the tax illegal, a decision that the Fox government immediately appealed (see SourceMex, 2005-08-31 and 2005-12-07).

The appeal was denied, exhausting Mexico's options in the case. US officials said the WTO ruling justified the complaints of US producers, who said that the tax was arbitrary and inhibited competition. "It is clear that Mexico must eliminate this tax and restore fairness for our US corn growers and refiners," said USTR Rob Portman. "This is a good result for our farmers and producers, who seek a level playing field."

LADB Article Id: 51773
ISSN: 1054-8890

The WTO ruling is not likely to end the US-Mexico dispute over HFCS. Three US companies Archer Daniels Midland (ADM), Corn Products International (CPI), and Cargill have filed legal action through a NAFTA tribunal demanding compensation of US$1 billion from the Mexican government for damages caused by the HFCS tax.

Hugo Perezcano, who heads the office at the Secretaria de Economia (SE) that handles legal affairs related to international trade, said the WTO ruling does not require Mexico to respond to the lawsuits filed by the three companies. But he noted that the resolution could be entered into evidence when the tribunal considers the merits of the case.

Mexico could replace tax with tariffs

Perezcano raised the possibility that Mexico would replace the tax with tariffs as high as 210%, which would be applied to any imports of HFCS above a quota of 250,000 MT established for the current fiscal year. Perezcano said the Mexican government was willing to adopt a more flexible position if the US agreed to comply with NAFTA's original sugar-import provision, which allowed Mexico to export all its excess sugar to the US.

The provision raised strong concerns among US sugar producers, which led the US government to negotiate a letter of understanding with Mexico to change the terms of the accord and impose limits on duty-free imports of Mexican sugar. The US argues that the letter supersedes the original provisions, while the Mexican government contends that the terms are not valid because they were negotiated outside the parameters of NAFTA and were not brought before the Mexican Senate, which must ratify all international treaties, including trade agreements (see SourceMex, 1998-09-16 and 2000-05-31).

Mexico has asked for a NAFTA dispute-resolutions panel to examine the controversy, but the US has declined. Mexican negotiators repeated their request for a dispute-resolution panel at the NAFTA-consultations meeting in Acapulco, but were rebuffed. Instead, the US pledged to continue working with Mexico to increase the amount of Mexican sugar allowed into the country duty free, said the Mexico City daily newspaper El Financiero.

Also missing from the agenda for the NAFTA meeting was a comprehensive discussion on two other controversial bilateral trade matters: continuing US restrictions on Mexican tuna imports and the lack of access for Mexican trucks to US roads. For years, Mexico has pushed unsuccessfully for the US to ease restrictions in both areas, gaining some concessions but not the market-opening measures that were targeted (see SourceMex, 2000-08-16, 2001-08-15, 2002-02-20 2004-06-09).

Perezcano said the HFCS imports will displace a lot of cane sugar on the Mexican market, and, to compensate for the loss of the domestic market, sugar producers must be allowed to boost their exports to the US. "Without a doubt, we will continue restricting the access of imported fructose as long as we don't find a solution to the sugar problem," said Perezcano.

Sugar industry worries about sharp drop in prices

The sugar-industry chamber (Camara Nacional de la Industria Azucarera y Alcoholera, CNIAA) has asked the SE to immediately impose the 210% tariff on HFCS and yellow corn, but Garcia de Alba

LADB Article Id: 51773
ISSN: 1054-8890

said procedural matters prevent immediate application of the measure. CNIAA officials said the sugar industry would have no choice but to adjust to any changes in the market once the Mexican government begins to comply with the WTO ruling. One of the more visible impacts would be a sharp reduction in the cost of sweeteners for beverage companies, which acquire about 1 million MT of cane sugar a year. The bottlers are not expected to abandon cane sugar altogether, but are considering using a combination of that sweetener and HFCS in their final product. "We have been using sugar primarily," said Armando Alvarez, finance director of Geupec bottling company. "But if the cost of fructose comes down, then we can reduce our costs by creating a formula that uses both products."

The reduction in demand for cane sugar could worsen an already bad oversupply situation for sugar millers. At present, Mexico's 58 sugar mills have a total inventory estimated somewhere between 650,000 and 1 million metric tons. "I think that the sugar industry will have to become more efficient because [easing restrictions on HFCS] will cause prices to come down," said Luis Antonio de Leon, an analyst with the Mexico City office of Banif Investimento.

CNIAA vice president Jose Ruben Garcia Trevino urged President Vicente Fox to take urgent measures to prevent inventories from increasing substantially. "As an agricultural industry, we are asking the executive to defend us from this unjust treatment," said Garcia. "The international trade organizations listen to the arguments of other countries but ignore Mexico."

While the WTO ruling could harm the sugar industry, the decision may open some opportunities for Mexican corn producers. The Union Nacional de Productores de Maiz (UNPM) said the HFCS used in the manufacture of soft drinks does not all have to come from the US. He said Mexican corn producers supplied about 1 million MT of yellow corn to manufacture HFCS domestically. "We have the capability of growing 6 million MT of yellow corn needed to meet domestic demand annually," said UNPM president Efrain Bello Garcia.

Bello said the UNPM has proposed an alliance with sugar producers to manufacture a variety of products, which would include HFCS but also ethanol, starches, and other derivatives. "We intend to form alliances with cane growers to find market niches for our products," said Bello. "This way we all win." (Sources: Associated Press, 03/06/06; El Universal, 03/07/06; Agencia de noticias Proceso, 03/08/06; The Herald-Mexico City, 03/07/06, 03/08/06; Reforma, 03/07-09/06; La Jornada, 03/13/06; Reuters, 03/23/06; El Economista, 03/08/06, 03/27/06; El Financiero, 03/08/06, 03/13/06, 03/28/06)

-- End --