AT A GLANCE

European Parliament

US duties on imports of Spanish ripe olives

In January 2019, the European Union (EU) launched a case before the World Trade Organization (WTO) against the United States (US) challenging duties on imports of Spanish ripe olives, definitively in place since July 2018. US authorities have concluded that certain EU support measures for Spanish olive producers under the common agricultural policy (CAP) are contrary to WTO rules and can be countervailed. Given the importance of such support for EU farmers, the US measures could have far-reaching consequences for the EU's agricultural model and set precedents in the WTO.

Background

The US, like any other WTO member, has the right to consider invoking its trade remedy laws to address unfair trade practices. The US decided to impose antidumping duties (AD) and countervailing duties (CVD) on Spanish ripe olives. The investigation proceeded as follows.

- On 12 July 2017, the US Department of Commerce (DOC) initiated AD and CVD investigations into imports of ripe olives from Spain, examining three companies in particular, following complaints from two Californian olive producers.
- In August 2017, the US International Trade Commission (USITC) found reasonable indications that US producers were 'materially injured' due to allegedly subsidised and dumped Spanish olives.
- In November 2017, the DOC's preliminary results from the CVD investigation stated that Spanish exporters received subsidies of 2.31 % to 7.24 % and imposed provisional countervailing duties.
- In January 2018, the DOC's preliminary AD investigation determined that Spanish companies had been dumping at rates of 14.64 % to 19.73 % and imposed corresponding provisional anti-dumping duties.
- On 15 March 2018, the European Parliament called on the US to withdraw its interim decision and expressed concerns about the negative consequences that the CVD procedure could have for the European agricultural model.
- On 12 June 2018, the DOC affirmed its preliminary findings and revised upward both the subsidy rates from 7.52 % to 27.02 % and the dumping rates from 16.88 % to 25.50 %, resulting in similar changes to duties.
- On 24 July 2018, the USITC issued its final determination that US sector had suffered material injury.

Economic impact

While US duties have arguably resulted in Spanish exporters making losses on the US market, overall the trade volumes at stake for the EU are rather small. The US duties have made Spanish exports of ripe olives to the US less competitive and endangered the livelihoods of those Spanish table olive producers that depend to a significant degree on exports to the US market. The DOC estimates that US$67.6 million worth of ripe olives was imported into the US from Spain in 2017. The European Parliament resolution of March 2018 notes that according to sectoral estimates, if the tariffs became permanent, the sector in Europe would lose between €350 to 700 million over the next five to ten years and risk a potential end to Spanish exports to the US. The Spanish association of olive exporters said that exports fell by 72 % two months after the US imposed its duties. Should the US duties pave the way for other countries to challenge EU support under the CAP, both through their own CVD investigations and in the WTO, a more significant economic impact on EU producers could materialise.

Systemic implications

At the systemic level, the US CVD in particular could represent a threat to the EU's agricultural model. The questioning by a major trade partner such as the US of the non-countervailable and non-trade distorting nature of certain EU subsidies provided under the current CAP creates systemic concerns for the EU.

Author: Jana Titievskaia, Members' Research Service
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US duties could open a Pandora's box in connection with domestic support and pave the way for further unilateral measures on agricultural imports from the EU. The US itself is an important user of similar agricultural support schemes, such as the Environmental Quality Incentives Program (EQIP) and direct payments by the Farm Service Agency, as notified to the WTO.

WTO framework

Article VI of the General Agreement on Tariffs and Trade (GATT) allows governments to impose anti-dumping duties on imports they find exported at a price below the 'normal' price of a like product on the home market. Whereas dumping is an action by a company selling below normal value, subsidies are actions by the government or its agencies. Countries may impose CVD in response to subsidies as provided for in the Agreement on Subsidies and Countervailing Measures (SCM Agreement). If an investigation finds that a foreign country subsidises the production of exported products in a way that hurts domestic producers, they can impose CVD for instance in the form of increased duties (as the US has done) to offset subsidies given to producers in the exporting country (in this case the EU). Countries must demonstrate genuine (material) injury to the competing domestic industry and a causal link to the subsidies. Under the WTO, subsidies are classified as green (permitted), amber (reductions needed), red (forbidden) and blue (programmes that limit production). The EU considers that its domestic support constitutes permitted ('green box') measures and has recently issued a notification to the WTO.

Challenge to EU CAP

Under WTO rules, a CVD investigation requires subsidies to be actionable and product-specific. The US has targeted support measures for Spanish farmers under the EU's CAP, such as the basic payment scheme or greening. The EU and the US have in the past jointly advocated, under the auspices of the WTO, moving away from trade-distorting subsidies in agriculture. Through the successive reforms of its CAP, the EU has made substantial moves to this end, including in the olive sector. Following its reforms, the EU considers that the olive sector is not directly subsidised under the CAP as support is decoupled from production and is fully WTO-compatible. The EU argues that these support measures are not product-specific, since the support is available to all EU farmers, irrespective of the volume of agriculture production or the type of crop, and therefore they are not countervailable under the WTO SCM Agreement. In contrast, the US has argued that, owing to the absence of alternatives, olive-growing groves decoupling has not had a production effect. Combined with the low prices of imported Spanish olives, Californian olives producers have reportedly lost competitiveness. It is worth noting however that the US has thus far not contested the non-trade and production-distorting characteristics of EU measures in the WTO committee on agriculture. China has CVD in place on imports of potato starch from the EU that could be seen as challenging the CAP on similar grounds to the US CVD.

EU response

In its March 2018 resolution, the European Parliament called on the Commission to study the possibility of challenging the US decision in the WTO and asked for support for the Spanish olive sector. In response, the Commission has sought to ring-fence €2.5 million to help the olive sector diversify their exports to other markets. Under the 2014 regulation on information provision and promotion measures for agriculture products, the Commission can earmark support for certain European sectors to help promote their products in third markets. The support is largely origin-neutral and all Member States compete for the funding on an equal basis. The Commission has raised the issue on several occasions with the US. In January 2019, the EU launched a case in the WTO against the US. The EU argues that the CVD appear to be inconsistent with the SCM Agreement, the Anti-Dumping Agreement and Article IV:1-3 of the GATT. The EU case includes concerns about US investigations, including the lack of pass-through analysis (from subsidy beneficiaries to processors of ripe olives) and no demonstrated causality between subsidies and injury. This casts doubt on whether or not the US investigation was carried out in a result-oriented manner. The two sides have 60 days to settle the dispute, after which potential panel examinations would begin. At the same time, owing to the blockage by the US of nominations of WTO Appellate Body members, the dispute settlement system itself is facing a severe backlog and risks becoming inoperable by the end of 2019. Finally, there is a parallel divergence on whether or not to include agriculture in a possible trade agreement seeking to eliminate tariffs, with the US in favour and the EU against in their negotiating objectives.

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