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EU Appeals WTO Ruling In Argentine Biodiesel Fight

By Hannah Sheehan

Law360, New York (May 20, 2016, 5:54 PM ET) -- The European Union is appealing a World Trade Organization ruling against anti-dumping duties it imposed on imports of Argentine biodiesel, the WTO said Friday, noting that more details would follow in the next few days. A WTO dispute settlement panel handed down the **mixed ruling** in March, faulting numerous portions of the EU's anti-dumping duties on imports of biodiesel from Argentina and asserting that the tariffs were incorrectly calculated. Although the panel failed to make a broad ruling against the EU's trade remedy policies as a whole, it said that the 28-nation bloc made several errors in tabulating and applying the tariffs on the Argentine biodiesel and called for Brussels to immediately correct its errors.

At the heart of the panel's report was the EU's decision to ignore Argentina's actual costs of production when calculating a so-called normal value for the biodiesel shipments at issue, a clear violation of the WTO's Anti-Dumping Agreement. "The panel considered that the reason stated by the EU authorities for disregarding producers' costs — i.e. the prices for the input were artificially lower than international prices due to an alleged distortion — does not constitute a sufficient basis for concluding that the producers' records do not reasonably reflect the costs associated with the production and sale of biodiesel," the WTO said.

Argentina first **launched the case** in December 2013, alleging that the EU had imposed the duties on a "purely protectionist" basis, a move that would badly hamper export opportunities for its biodiesel producers. Nearly all of the points on which Argentina prevailed revolved around the EU's failure to accurately peg its anti-dumping duties to the actual market of the South American nation's biodiesel production.

For instance, the panel ruled against the EU for making its anti-dumping duties higher than they ought to have been based on Argentina's commercial reality. The report also faulted the EU for using costs in their duty calculation that were not based on costs originating within Argentina.

This reasoning applied not only to the calculation of the duties themselves, but also the injury finding that allowed the EU to implement them. "The panel upheld Argentina's claim that, in regards to the injury determination, EU authorities acted inconsistently with ... the ADA by excluding certain production capacity not available for use (so-called 'idle capacity') in their consideration of the domestic industry's production capacity and capacity utilization," the WTO said.

But the report was not a complete win for Argentina, as the panel did turn away a series of challenges that cut to the systemic core of the EU's administration of its trade remedy laws. Representatives for Argentina and the EU could not immediately be reached for comment after normal business hours Friday.

--Additional reporting by Alex Lawson. Editing by Rebecca Flanagan.