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EU's General Court rules against anti-dumping duty on U.S. ethanol

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Report Highlights:

On June 9, 2016, the European Union (EU) General Court ruled that the European Commission (EC) violated its own laws by issuing a country-wide anti-dumping (AD) duty on imports of U.S. ethanol. The exact interpretation of the ruling as well as its implications for U.S. bioethanol exports to the EU are currently unknown. The EC has two months to file an appeal of the ruling, during which time the AD duty will remain in place. Although there have been some developments since AD duties were imposed in 2013 that limit U.S. export volumes, U.S. price competitiveness would improve if these duties were annulled or lowered which, in turn, could lead to increased U.S. exports. However, the longer-term FAS outlook for EU policy suggests that sales growth opportunity for all suppliers is constrained and U.S. exports are unlikely to reach the previous 2011 export record of 300 million gallons (MG) even if the AD duty is removed due to a multitude of factors.

General Information:

Situational Context

On October 12, 2011, the European renewable ethanol association (ePURE), on behalf of producers representing more than 25 percent of the total EU production of bioethanol, initiated an anti-dumping complaint to the EC concerning imports of bioethanol into the EU from the United States. On February 19, 2013, the Council of the EU introduced an anti-dumping duty of $83.03 per metric ton on imports of U.S. origin bioethanol. In May 2013, the Renewable Fuels Association (RFA) and Growth Energy, on behalf of the U.S. ethanol industry, filed a joint complaint arguing that duties should only be imposed on individual companies and not as a blanket country-wide duty.

On June 9, 2016, the EU's General Court ruled that the AD duty was invalid. The Court agreed with RFA and Growth Energy that the EC breached EU law and longstanding WTO precedent by issuing a blanket duty on U.S. exports as opposed to imposing specific duties to individual sampled producers. While the U.S. ethanol industry hails the decision by the EU Court calling it a, "fair and logical ruling," EU ethanol organizations argue that that the ruling, "does not call into question the legitimacy and necessity of the anti-dumping duties themselves." The duty will remain in place pending possible appeal by the EC, which has approximately two months from the EU Court's decision to file an appeal. Typically, the time required to make a decision on an appeal would be 12 to 18 months, but varies with the complexity of the case.

Past US Ethanol Exports to the EU

Prior to the imposition of the AD duty, EU non-beverage ethanol imports from all countries rose to a record 370 MG [1] in 2011 as a result of high EU consumption and ethanol/gasoline blends that reclassified U.S. ethanol shipments into the EU under a lower duty rate (known as the E90 loophole). That year, U.S. ethanol exports to the EU reached a record 296 MG valued at $821 million [2] . In April 2012, the EU closed this loophole under which 80% of U.S. ethanol shipments in 2011 had entered without paying the higher ethanol duty. By 2013, exports to the EU represented only 1 percent of U.S. exports after a high of 26 percent (2010-2012 average). This sharp decline came as a result of the closed E90 loophole, the imposition of the AD duties, as well as a 9 percent reduction in EU consumption of ethanol.

Conclusions

Due to the extreme protectionism of domestic ethanol production within the EU despite the final outcome of the case, hurdles are likely to remain. If AD duty is dropped entirely, U.S. suppliers will still face a steep duty on U.S. ethanol of $0.43/gallon (at today's exchange rates) which increases U.S. landed prices relative to several supplier countries with duty-free access under preferential trade agreements with the EU. Additional factors that could impact U.S. ethanol exports include certification requirements, minimum greenhouse gas (GHG) savings criteria (an increase from a 35 percent threshold to a 50-60 percent target), and a stronger U.S. dollar.

[1] FAS/Post 2015 Annual Biofuels Report.

[2] U.S. exports for all 2207.10 and 2207.20 codes, excluding beverages (U.S. Census Bureau Trade Data)