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Germany

Agricultural Situation

German Check-off System for Ag-Commodities for Market Promotion Illegal

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Report Highlights:

The German Constitutional Court has ruled that the mandatory check-off system for agricultural commodities violates the German constitution and is illegal. The court ruled that the check-off program unfairly interferes with entrepreneurial freedom and stated that the information gathering and agricultural promotions are no longer a government task to be financed with special duties. As a consequence of the ruling, the German agriculture and food industries will either have to develop their own sector-related generic promotion programs and information gathering and analysis or general governmental funds will have to be provided to accomplish these efforts.

Includes PSD Changes: No
Includes Trade Matrix: No
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German Check-off Program for Generic Marketing of Agricultural Goods Violates Constitution

On February 3, 2009, the German Constitutional Court (GCC) ruled that the mandatory check-off program for agricultural products was unconstitutional and subsequently invalidated it. In Germany, generic marketing programs and market and price reporting for agricultural commodities have been financed with mandatory agricultural check-off assessment for more than 50 years. German farmers and food processors had filed suit against the Federal Office of Agriculture and Nutrition as the administrator of the check-off program. The complainants had argued that they were not receiving adequate value from the generic marketing programs run by the German Central Marketing Agency for Agricultural Goods (CMA).

In Germany, farmers and the food industry were legally required to pay assessments varied by commodity for sugar, flour, malt, horticultural products, milk, poultry products, beef cattle, hogs, sheep, rapeseed oil, and sunflower oil (based on the German Absatzfondsgesetz) to cover generic promotion programs within and outside of Germany, market and price reports, and analysis for agricultural products.

The GCC stated that special duties, such as a check-off program, need to be a very rare exception and meet strict constitutional standards. These standards require that the contributors to the fund must receive an identifiable advantage which cannot be achieved through other private industry programs. The court drew a line between what the government responsibility is and what can be achieved privately. The court opined that the check-off program unfairly interferes with entrepreneurial freedom and stated that agricultural promotion can be adequately organized by the private industry or industry organizations.

Background: In 2002, the European Court of Justice (ECJ) ruled that the German promotion programs for agricultural products did not conform to European law. The ECJ stated that the German Government's marketing programs in the EU disregarded the country of origin provision that required these programs to be of generic character. The ECJ ruling resulted in many farmers and food processing companies questioning the necessity of the sales promotion fund.

In recent years, many individual farmers and companies in Germany filed complaints against the German sales promotion fund. In anticipation of a negative ruling by the Constitutional Court, the German Government withheld the sales promotion funds and did not spend the proceedings received from the complainants. These proceeds will now be returned to the complainants.

Comments: CMA and the Central Market and Price Reporting Board (ZMP¹) are both organized as private limited companies. The GCC ruling freezing the check-off funds leave both organizations at risk for insolvency. A quick political or private financing solution is needed to guarantee their survival. Industry and policy reactions after the court decision indicate that there is great interest in the survival of both organizations. Typically with regard to ZMP, politicians and industry have expressed strong interest in a continuation of the market and price reporting service provided by ZMP.

The German government will now have to draft a new regulation for the financing of CMA and ZMP if the continuation of the organizations is politically desired. It is likely that both institutions will be partly financed out of the general government budget and to a small

¹ ZMP's core objective is to provide impartial agricultural market analysis reports.

degree from their own proceeds. The total budget of the sales promotion fund is reportedly €90 million annually, thereof €80 million for CMA and €10 million for ZMP. CMA does not generate its own proceeds while ZMP generates about €2.5 million of its own revenues, primarily from selling their market reports.

In early February 2009, the FAS/Berlin Agricultural Counselor gave a presentation at a ZMP seminar on statistical data and information gathering and distribution in the agricultural sector in the U.S. ZMP officials expressed interests in learning more about the USDA's marketing and reporting structure.