

CONCILIATION

EUROPEAN COMMUNITIES - REFUNDS ON EXPORTS OF SUGAR

*Report of the Panel
adopted on 6 November 1979
(L/4833 - 26S/290)*

I. *Introduction*

1.1 In a communication dated 25 September 1978 and circulated to contracting parties, the Government of Australia presented a complaint that the refunds on exports of sugar applied by the European Communities were inconsistent with the European Communities' obligations under the GATT, and furthermore requested the setting up of a panel to examine the problem (L/4701).

1.2 The Council had a first discussion of the matter at its meeting on 18 October 1978 when the representative of Australia sought recourse to the provisions of Article XXIII:2 on the question.

1.3 At its meeting on 6 November 1978 the Council agreed to establish a panel with the following terms of reference:

"To examine and report upon the issues relating to EEC sugar export practices, referred to the CONTRACTING PARTIES by Australia in document L/4701."

The Council authorized its Chairman to appoint the Chairman and the members of the Panel in consultation with the parties concerned.

1.4 Accordingly, the Chairman informed the Council, on 14 November 1978, that the Panel had been established with

Members: Mr. B. Eberhard (Chief of Section,

(b) had resulted in Community exporters having more than an equitable share of the world export trade in

2.8 He cited the agreement of the CONTRACTING PARTIES in 1948 that the phrase "to increase exports" in Article XVI was "intended to include the concept of maintaining exports at a level higher than would otherwise exist in the absence of the subsidy".¹ He argued that the quantitative increase in sugar exports by the Community and the consequent increase in its market share had far exceeded that which could reasonably be expected in the absence of subsidies. For example, he said, in August 1978 when the London Daily Price for white sugar stood at US\$206 per ton, the Community exporters were able to avail themselves of a subsidy

2.11 He also argued that the disparity between the decline in world prices and the increase in Community refunds was mainly due to an increase in the Community intervention price and a change in the relation between spot prices and forward prices on the world market. He further argued that Australia had not proved that the amount of the Community refund had had the effect of bringing the price of the product exported by the European Communities to a level below that of the world price.

2.12 With respect to the relation between the prices of white sugar and of raw sugar, he argued that this was

2.15 He furthermore argued that variations in commodity trade were not uncommon and, therefore, it was customary to use data for a previous representative period for comparison. The 8.8 per cent share of the *total world market* in 1972 cited by the Community was the highest annual total recorded in the eight-year period from and

accessible to all exporters on the basis of open competition and where, in consequence, the

2.24 The representative of the European Communities' representative considered that the years chosen as "previous representative period" should reflect, if possible, a normal market situation. Moreover, he did not see what could be the nature of the product sugar susceptible of creating a distinction in comparison with other agricultural products and which could justify the choice of such a long period. The years 1969 to 1971 constituted, in his view, a relatively remote period whose consideration did not seem justified in the absence of valid reasons. Furthermore, the Australian representative compared statistical averages for seven years (1969 to 1975) with averages based on two years (1976-1977) plus estimates for 1978. A reasonable number of years should be available for consideration in order to take into account certain realities such

that 60 to 65 per

Regulation (EEC) No. 1467/77. A description of some major provisions is given below, which is however not exclusive with respect to the elements taken into consideration by the Panel.

3.3 The common agricultural policy on sugar has two main objectives: to ensure that the necessary guarantees in respect of employment and standards of living in a stable market are maintained for Community growers of sugar beet and sugar cane; and to help guarantee sugar supplies to the entire Community or to one of its regions. In order to achieve those objectives, the common organization of the market in sugar introduces a single system of internal prices and a common trading system at the external frontiers of the Community (Regulation No. 3330/74, preamble).

3.4 Within the Community, the price level is established each year and is linked to a "target price" for white sugar (standard quality unpacked, ex-factory, etc.) which is determined for the Community area having the largest surplus, i.e. for

3.9 The quotas also have a function in the common trading system, in that the quantity C must be exported (unless there is a shortage within the European Communities) and does not entitle the exporter to a refund (Articles 19 and 26).

3.10 The trading system with third countries is designed to prevent price fluctuations in the external market from affecting prices

per pound, the annual average price for November 1964 was

3.19 During the period 1964-1974 in 1974 world sugar production followed a rising pattern; however, there was a decline in 1974 while consumption increased while consumption and production continued

4.3 When examining the Community system for granting refunds on exports of sugar, the Panel found that such refunds were granted to enable Community sugar to be exported and that the refunds thus granted were financed

(c) *Consistency with Article XVI:3*

(i) *World export trade*

4.9 The Panel considered that its examination should be based not on the concept of "free market" introduced by Australia in presenting its contentions (see paragraph 2.20) but on the concept of "world export trade" mentioned in Article XVI:3 of the General Agreement. In that connection the Panel referred back to various discussions that had taken place in the past regarding the term "world export trade" and its interpretation.¹ In the eventjIn

TABLE 2

EUROPEAN COMMUNITIES:
SHARES OF WORLD EXPORT TRADE IN SUGAR
(in per cent of world totals)

Previous representative periods:

1971 to 1973	7.8
1972 to 1974	7.5
1972, 1973 et 1976	8.5

Periods subject to complaint:

1976 to 1977	9.0
1976	8.3
1977	9.6
1978 (preliminary)	14.3

(iii) *Equitable share*

4.11 The Panel noted that no definition of the concept "equitable share" had been provided, and neither had it in the past been considered absolutely necessary to agree upon a precise definition of the concept. The Panel felt that it was appropriate and sufficient in this case to try to analyse main reasons for developments in individual market shares, and to examine market and price developments, and then draw a conclusion on that basis.

(iv) *Market shares*

4.12 Table 2 shows the European Communities' share of world export trade in sugar for some previous representative periods and for periods subject to complaint. Table 3 is a compilation of the comparisons the Panel made in order to determine the direction and magnitude of the changes in Community market shares. The Panel found that the final result was very much the same whichever of the previous representative periods was used for comparison. In any case it appeared that the Community market share had increased in 1976 and 1977 compared to previous periods. The increase in the Community market shares for both 1976 and 1977 was nevertheless rather small, in no case exceeding 2.1 percentage points, which was the increase for 1977 compared to 1972-1974.

TABLE 3
EUROPEAN COMMUNITIES:
CHANGES IN SHARES OF WORLD EXPORT TRADE IN SUGAR

(in per cent of world totals)

Community market shares in periods subject to complaint	Community market shares in previous representative periods		
	1971-73 7.8	1972-74 7.5	1972, 1973 and 1976 8.5
	Changes in percentage points		
1976-77 9.0	1.2	1.5	
1976 8.3	0.5	0.8	
1977 9.6	1.8	2.1	1.1

4.13 In 1978, the Community export system with respect to sugar remained the same as in previous years. However, the Panel felt that this year constituted a special case, for the following two reasons: at the time when Australia presented its complaint, the year 1978 had not yet ended and the data for that year were not formally finalized at the time the Panel drew its conclusion; 1978 was also the year in which the International Sugar Agreement, 1977, came into operation modifying certain elements of the international sugar market. Despite these facts the Panel nevertheless felt that the year 1978 should be taken into consideration, be it on the basis of preliminary data noting that this would be in conformity with earlier practice.¹

4.14 An examination of available data for 1978 indicated that Community sugar exports had increased from 2.7 million tons in 1977 to 3.6 million tons in 1978. The share of Community sugar exports in world exports exceeded in 1978 14 per cent which meant a level 5-6 percentage points higher than the market shares in various reference periods considered. This increase in the Community market share corresponded to roughly 1.5 million tons of sugar.

4.15 With respect to the year 1978 the Panel, in addition, noted that the International Sugar Agreement, 1977 (ISA) came into operation on 1 January 1978. Australia limited its exports in accordance with obligations it had taken upon itself under that Agreement. The European Communities did not participate in the ISA.

4.16 The Panel therefore concluded that given the significant increase of Community exports in 1978 both in absolute and relative terms it was justified to examine more thoroughly the conditions under which this development took place.

¹BISD, 25S/48.

(v) *Displacement*

4.17 The Panel was of the opinion that the term "more than an equitable share of world export trade" should include situations in which the effect of an export subsidy granted by a signatory was to displace the exports of another signatory, bearing in mind the developments in world markets. With regard to new markets, traditional patterns of supply of the product concerned to the world market, region or country, in which the new market is situated, should be taken into account in determining what would be "more than an equitable share of world export trade".

4.18 The Panel therefore proceeded to a detailed examination of sugar export statistics, notably in order to see if and to what extent the increased Community sugar exports had displaced Australian sugar exports.

4.19 The Panel noted that total Australian sugar exports had shown a fairly steady increase up to 1978, while Australia's share of world export trade had on the average remained fairly stable with three-year

TABLE 4
 EXPORTS OF SUGAR - EUROPEAN COMMUNITIES (E.C.)^{a)} AND AUSTRALIA (Au)
 (thousand tons - raw value)

A: total; B: increase or decrease from previous year

Origin	Destination	Group I		Group II		Group III		Group IV		Group V - Other		Group VI - World	
		A	B	A	B	A	B	A	B	A	B	A	B
1969	EC												
	Au												
1970	EC												
	Au												
1971	EC												
	Au												
1972	EC												
	Au												
1973	EC												
	Au												
1974	EC												
	Au												
1975	EC												
	Au												
1976	EC												
	Au												
1977	EC												
1978													

Note: Group I: P.R. China, Finland, US and USSR; Group II: EC; Group III: Canada, Oceania, Papua and New Guinea, Japan, Malaysia, New Zealand, Singapore and Korea Rep.; Group IV: Algeria, Iraq, Iran, Israel, Kuwait, Lebanon, Morocco, Nigeria, Sudan, Syria, Tunisia, Persian Gulf, Saudi Arabia, Yemen D.R.; Group V: All other; Group VI: World.

4.22 Group II in Table 4 shows Australian exports to the European Communities. The Panel noted that following the enlargement of the European Communities in 1973, and the termination of

TABLE 5
 EUROPEAN COMMUNITIES:
 EXPORTS OF SUGAR TO SELECTED MARKETS
 ('000 tonnes raw value)

	1972	1975	1976	1977	1978
Chile	2	-	-	26	54
China	-	-	-	-	93
Egypt	1	-	11	14	110
Iran	13	14	12	166	556
Lebanon	11	19	36	150	72
Morocco	-	-	12	83	104
Portugal	8	-	10	19	33
Sri Lanka	-	-	-	3	64
Syria	-	-	21	3	68
Tunisia	50	41	79	88	158
USSR	67	-	300	270	42
United States	21	-	17	49	77
Venezuela	-	-	24	-	66
	173	74	522	871	

4.30 Some basic data for production, trade, consumption and stocks of sugar, for Australia and the European Communities are shown in Annex Table I¹, and, for comparison, world totals for the same in Annex Table II¹. A simple comparison of the figures in these tables indicates that the increase in the Community sugar production corresponded roughly to the world average until 1978. For illustrative purposes, it can be mentioned that the Au

proved to be insufficient in any particular year, the Commission could have recourse to a supplementary budget during the financial year and there would thus be no legally fixed budgetary limits for how much could be spent on export refunds for sugar.

4.35 The Panel felt that in those conditions neither exportable surpluses of sugar nor the amount of refund granted had been effectively limited as a result of the Community system or its application. There was no element in the system and its application that would prevent the European Communities from having more than an equitable share of world export trade in sugar.

TABLE 6
EUROPEAN COMMUNITIES: SUGAR EXPORTS BY CATEGORY,
TOTAL AMOUNTS OF REFUNDS
AND PRODUCTION LEVY 1972 TO 1978

Year	Exports - thousand tons (raw value)					Amounts in million u.a.	
	Total	With refund (A and B - sugar)			Without refund (C - sugar)	Total refund	Production levy
		Total	of which				
			Periodic refund	Under tender			
1972	1 920	1 223	16	1 207	697	70	86
1973	1 916	1 634	14	1 620	282	56	39
1974	1 128	551	13	538	577	8	0
Average 1972-1974	1 655	1 136	14	1 122	519		
1975	702	645	15	630	57	31	0
1976	1 869	1 802	165	1 637	67	56	0
1977	2 699	2 520	73	2 447	179	363	121
1978	3 566	2 708	2	2 706	858	557	186

Source: The commission of the European Communities.

(d) *Effect on world market prices*

4.36 In examining more in detail the granting of export refunds on sugar by the European Communities, the Panel noted that for the quasi-totality of exports with refunds, the refunds were granted under the tendering procedure (e.g. for 91 per cent in 1976, 97 per cent in 1977 and almost 100 per cent in 1978, - Table 6). Under the tendering procedure, the Commission fixed maximum amounts of refunds and for a given quantity, taking into account the supply situation and prices within the Community, prices and potential outlets on the world market, and costs incurred in exporting sugar. The Commission's determination of what were world market prices for sugar was based on the amount of refund proposed in the tenders which were occasionally based on prices lower than the average quotations for white sugar published by the Paris Exchange.

4.37 The Panel noted that the weighted average of export refunds usually corresponded to the difference between the Community intervention price at f.o.b. stage and average spot quotations for white sugar

on the Paris Exchange. However, towards the end of the crop years 1975/1976, 1976/1977 (and apparently also 1977/1978) the weighted average refund had tended to exceed that difference. The Panel also noted that from the middle of 1976 on, Community export refunds were increased sharply with only little difference between weighted average refunds and maximum refunds. These developments coincided with a sharp decline in world market prices. Furthermore, the premium for white sugar had diminished, and at times white sugar had been quoted at prices lower than those quoted for raw sugar.

4.38 The Panel felt that since the Community sugar exporters were leading the world market for white sugar, traditionally covering more than half of the world market for refined sugar, the availability of exportable Community surpluses of sugar combined with the possibility of non-limited amounts available to cover export refunds, may well have had a depressing effect on world market prices for sugar, both white and raw sugar.

V. *Conclusions*

In the light of the foregoing findings, the Panel reached the following conclusions:

- (a) The Panel concluded that the Community system for granting refunds on exports of sugar must be considered as a form of subsidy which was subject to the provisions of Article XVI, and it noted that the European Communities had notified their system of export refunds on sugar pursuant to Article XVI:1.
- (b) When examining whether or not the Community system of export refunds on sugar was consistent with Article XVI:3, the Panel first noted that, in spite of various measures taken to limit Community sugar production, the Community regulations on sugar and their operation had not prevented production from continuing to increase, and neither exportable surpluses of sugar entitled to export refunds nor the amount of refund granted had been reduced or limited.
- (c) Examining next the Community share of world export trade in sugar, the Panel noted th0 0 1 254.88 475

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conclusion that the increased share had resulted in the European Communities "having more than an equitable share of world export trade in that product", in terms of Article XVI:3.

- (g) The Panel noted however that the Community system for granting refunds on sugar exports and its application had contributed to depress world sugar prices in recent years and that thereby serious prejudice had been caused indirectly to Australia, although it was not feasible to quantify the prejudice in exact terms.
- (h) The Panel found that the Community system of export refunds for sugar did not comprise any pre-established effective limitations in respect of either production, price or the amounts of export refunds and constituted a permanent source of uncertainty in world sugar markets. It therefore concluded that the Community system and its application constitutes a threat of prejudice in terms of Article XVI:1.
- (i) No detailed submission had been made as to exactly what benefits accruing to Australia under the General Agreement had been nullified or impaired or as to which objective of the General Agreement had been impeded, and the Panel did not consider these questions.