

7 October 1980

EUROPEAN COMMUNITIES - REFUNDS ON EXPORTS OF SUGAR
COMPLAINT BY BRAZIL

Report of the Panel adopted on 10 November 1980
(L/5011 - 27S/69)

I. Introduction

1.1 In a communication dated 10 November 1978 and which was circulated to contracting parties in document L/4722, the Government of Brazil requested the CONTRACTING PARTIES to establish a panel to examine a dispute between Brazil and the European Communities over Community export refunds for sugar.

1.2 The Council had a first discussion of the matter at its meeting on 14 November 1978 when Australia, Cuba, India and Peru supported the setting up of a panel (C/M/130, page 7).

1.3 The matter was discussed again at the Thirty-Fourth Session of the CONTRACTING PARTIES, when it was agreed to establish a panel with the following terms of reference:

"To examine and report on the complaint by Brazil (document L/4722 of 14 November 1978) that the refunds on exports of sugar granted or maintained by the EEC

- (i) have resulted in the EEC exporters having more than an equitable share of the world export trade in terms of Article XVI:3;
- (ii) cause or threaten serious prejudice to Brazil's interests;
- (iii) nullify or impair benefits accruing either directly or indirectly to Brazil under the General Agreement."

The representative of Cuba expressed the hope that all interested contracting parties would have an opportunity to be heard by such a panel, but no delegation declared that it intended to submit representations to the Panel. The Council to nominate the chairman and the members of the Panel in consultation with the parties concerned (SR.34/1, pages 7 and 8).

1.4 Accordingly, the Chairman informed the Council, at the meeting on 29 January 1979, that the Panel had been established with the following composition:

- Chairman: Mr. P. Kaarlehto (Ambassador, Permanent Representative of Finland, Geneva)
- Members: Mr. B. Eberhard (Chief of Section, Division fédérale du Commerce, Palais fédéral, Berne)
- Mr. I. Parman (Counsellor, Permanent Mission of Turkey, Geneva)

(C/M/132, pages 9 and 10).

1.5 However, as Mr. Parman was unable to participate in the work of the

- (v) "... 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."

2.4 In respect of the findings and conclusions put forward in the report concerning Australia's recourse (document L/4833) the representative of the European Communities pointed out that the Panel reached the following conclusions on the main points concerning Australia's

2.7 Corresponding figures for Brazil were 12, 8.8, 7.8 and 8 per cent, respectively, and the representative of Brazil argued that a comparison of quantities exported and individual shares of the world export market for major sugar exporting countries demonstrated that the European Communities was practically the only leading sugar exporter who had made significant gains both in terms of absolute increases and in terms of market shares. Although other countries, such as Cuba and Thailand had indeed improved their positions in the world market in recent years, this could not be considered as being directly prejudicial to the interests of Brazil in terms of market displacement or reduced sales opportunities (Annex Tables IX and X).

2.8 He furthermore argued that between the two periods, 1973-75 and 1976-78, a complete reversal in the relative positions of Brazil and the European Communities had taken place as regards total exports to the world market (Table 1). With respect to particular groups of markets, Community exporters had absorbed

	1973-75				1976-78				Change	
	Brazil		EC		Brazil		EC		Brazil	EC
	'000 tons	%	'000 tons	%	'000 tons	%	'000 tons	%		
Total										
of which to:										
Group A ^a										
Group B ^b										
Other										

2.10 The representative of the European Communities had no major objections to following Brazilian suggestions concerning the grouping of countries (A, B and others) but said that figures for 1972 should also be taken into account in any calculation. He proposed that the two reference averages be those for 1972-74 and 1975-77 (Table 2). The year 1978 would be considered separately.

TABLE 2

EUROPEAN COMMUNITIES

Average Sugar Exports 1972-74 and 1975-77
by Groups of Countries of Destination

(Thousand tons, raw value and percentages)

	1972-74		1975-77
	tons	%	tons

2.14 He furthermore argued that in seventeen of these markets Community exports of white sugar had directly displaced Brazilian supplies of both white and raw sugar, and that in other markets, Brazilian exports had suffered from increased competition from raw sugar of other origin but which had been displaced elsewhere by increased Community exports of white sugar. One result of these developments was that the number of outlets for Brazilian sugar was strongly reduced. In 1972-75, Brazilian sugar had been exported to fifty-two destinations (of which white sugar went to thirty-four). In 1977, the number of outlets had fallen to thirty and in 1979 to twenty, with Brazilian white sugar being sold in only fourteen markets.

2.15 The representative of the European Communities considered that it was inadmissible that country A (Brazil) could claim an exclusive right over country B (EEC) to export a specific product (sugar) to any importing country. There is no provision in the General Agreement upholding such a right. Consequently the calculations put forward by Brazil concerning direct or indirect losses of markets caused by exports from the European Communities appear to be unfounded. The representative of European Communities argued that between 1972 and 1977 on its principal export markets, Brazil had maintained or increased its sugar exports, while on those same markets, Community exports remained negligible or showed only insignificant changes (Annex Table IX). Furthermore he argued that there was no possible relationship between the decline in the Brazilian share and the slight increase in the Community share over the same period. In 1978 Brazilian exports declined in relation to average exports to the Group A

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3.6 Lastly, by the same procedure, a minimum price is fixed for each producing area, payable by the manufacturer to beet producers at a specified delivery stage and for a specified quality. The minimum price is derived from the intervention price for white sugar in the area in question, i.e. it is adjusted by fixed values identical for the entire Community representing such factors as the processing margin, the yield, and certain additional costs and receipts (Articles 4 and 5). Conditions for purchasing sugar cane are fixed only in the absence of agreements within the trade between producers and manufacturers.

3.7 Different minimum prices are established depending on whether the beet delivered is or is not within the basic quota (Articles 4 and 28). For, since the price system is designed to influence the production of sugar beet and sugar cane (see preamble), there is a system of sugar quotas. A basic sugar quota is allotted to each undertaking within the basic quantities of sugar assigned to each member State or area of the Community (Article 24). This basic quota (quantity A) may be increased by a quantity B, which has a linear annually determined relationship to quantity A; the sum of these two quantities (A and B) constitute the maximum quota in any given marketing year. The

3.13 Contrariwise, to the extent necessary to enable sugar to be exported, a refund may be granted to cover the difference between the world market price and prices within the Community (Article 19), i.e. in practice, the intervention price plus all the costs and charges involved in transporting the sugar from the factory and putting it in the f.o.b position ready for export (see for example Article 3 of Regulation (EEC) No. 766/68).

3.14 These refunds are granted only for sugar obtained from beet or cane harvested within the Community or imported under the Lomé Convention, the Cane-Sugar Agreement concluded with India and the preferential arrangements

TABLE 3

EUROPEAN COMMUNITIES: SUGAR EXPORTS BY CATEGORY, TOTAL AMOUNTS OF REFUNDS AND PRODUCTION LEVY 1972 TO 1979

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				
1973	1,916	1,634	14				
1974	1,128	551	13				
Average 1972-1974	1,655	1,136	14				

3.20 The International Sugar Agreement 1968 entered into force in 1969. Owing to rising prices on the world market the basic export tonnages stipulated by the Agreement were raised in 1970 and 1971 and suspended in 1972, when, moreover, reserve stocks were released. The Commonwealth Sugar Agreement expired in 1974 and was replaced by a protocol concerning sugar

(c) Relevant GATT provisions

4.5 The Panel therefore noted that the relevant GATT provisions concerned were the following:

(i) Article XVI:1, last sentence:

"In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization." (BISD Volume IV page 26.)

(ii) Article XVI:3, last sentence:

"If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product." (BISD Volume IV pages 26 and 27.)

(iii) Article XXXVI, paragraphs 2, 3, 4 and 9:

"2. There is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties."

"3. There is a need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development."

"4. Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and

range

(d) "More than equitable share"

(i) General

4.6 The Panel noted that no complete definition of the concept "more than equitable share" had been provided, and neither had it in the past been considered absolutely necessary to have an agreed precise definition of the

TABLE 4

Shares of World Export Trade in Sugar
(in per cent of world totals)

	European Communities	Brazil	Others
1971-73 (average)	7.8	10.4	81.8
1972-74 (average)	7.5	12.0	80.5
1976	8.3	5.5	86.2
1977	9.6	8.8	81.6
1978	14.4	7.8	77.8
1979 (preliminary)	14.1	8.0	77.9

Sources: Annex Tables I, II and X.

4.10 For the years 1976 and 1977, the Community share of world export trade in sugar showed some increase compared to average shares in 1971-73 and 1972-74, the increase corresponding to 0.5 to 2.1 percentage points. The very low market share for Brazil in 1976 was mainly due to a certain lack of sugar available for export caused by a reduced crop in 1975, low carry-over stocks and a continued increase in domestic consumption. In 1977, Brazilian sugar exports showed a good recovery and corresponded in absolute terms to the average for previous representative periods, but the market share did not reach the previous level. However, the Panel felt that Brazilian sugar exports in 1978, corresponded roughly to the quantities of sugar available for export, and that the comparatively low market share for Brazil was not necessarily due to increased Community exports.

4.11 For 1978, subsidized Community sugar exports were increased further, resulting in a significant increase in the Community share of world export trade in sugar. Exports from Brazil could not be increased in spite of ample supplies available for export and which would in themselves permit larger shipments to have been made. In 1978,

4.17 However, as supplies continued to be affluent, world market prices for sugar remained depressed throughout 1978 and most of 1979. With a situation of depressed prices for sugar in the world market, major exporting members were committed to limit their exports to 85 per cent or less of their basic export tonnages stipulated in the ISA.¹ For major sugar exporting countries having acceded to the ISA, the result was a substantial contraction in their exports. In practice this meant that nearly 2 million tonnes of sugar was withheld from world markets by these countries both in 1978 and 1979. However, these efforts did not immediately result in a better market equilibrium as total supplies offered in the world market remained in excess of demand, due to increased exports under special arrangements not subject to the limitations under the ISA and to increased exports from countries not being

4.23 Furthermore, the Panel noted that sugar produced in excess of the basic quota, but within the limits of the maximum quota, was subject to a production levy of up to 30 per cent of the intervention price. Although this step was followed by a smaller area planted with sugar beets in 1977 and 1978, total production continued to increase, as yields were higher. The steps taken (i.e. reduced maximum quotas for 1978 and 1979 and the collection of production levies at their maximum level for 1977/78, 1978/79 and 1979/80) were therefore not sufficient to prevent the exportable surplus from increasing further in 1977 and 1978, and to remain at a high level in 1979.

4.24 The Panel understood the Community system of regulations concerning the sugar markets to imply that the quantity exported from the European Communities with an export refund would be limited by the total of maximum production quotas, plus imports under special arrangements minus domestic consumption. Any sugar produced in excess of maximum quotas must be disposed of on external markets without benefiting from any refund. Table 3 shows Community exports totally and with a breakdown into exports with refunds and exports without refunds in 1972-1978. A comparison of figures for 1976, 1977 and 1978 with averages for 1972-1974, indicates clearly that the increase in Community sugar exports in 1976-1978 mainly consisted of increased exports with export refunds, i.e. sugar produced within the maximum quota. Both in 1976 and 1977, exports without refunds were inferior to the average for 1972-1974. Although Community exports without refund (C - sugar) showed some increase in 1977 and 1978, the reduction in maximum quotas and the application of production levies had not prevented that exports with refund continued to increase even in 1978, and still counted for 76 per cent of Community sugar exports.

4.25 The Panel noted the strong increase in the

4.28 The Panel noted that the weighted average of export refunds usually corresponded to the difference between

DRAFT STATISTICAL ANNEX
Tables I to X omitted

Table

I	Production, Trade, Consumption and Stocks of Beet and Cane Sugar in Brazil and the European Communities, 1969-1979
II	World Production, Trade, Consumption and Stocks of Beet and Cane Sugar, 1969-1979
III	International Sugar Agreement Daily Price
IV	World Market Prices for Sugar
V	European Communities - Import Prices for Sugar
VI	European Communities - Internal Sugar prices
VII	White Sugar: Sport Quotations Paris - Community Refund and Intervention Prices at f. o. b. Stage
VIII	European Communities - Sugar Production and Production Quotas
IX	Imports of Sugar into Selected Countries, 1971-1979
X	Market Shares of Leading Sugar Exporting Countries