

20 February 1985

EUROPEAN ECONOMIC COMMUNITY - PRODUCTION AIDS GRANTED
ON CANNED PEACHES, CANNED PEARS, CANNED FRUIT
COCKTAIL AND DRIED GRAPES

Report by the Panel
(L/5778)

I. Introduction

1. In a communication dated 19 March 1982, which was circulated to contracting parties in document L/5306, the Government of the United States

6. The Panel met four times with the two parties: on 29 September 1982, 29 October 1982, 27 February 1984, and 28 June 1984. In addition, the Panel met on numerous occasions between June 1982 and July 1984.

II. Factual aspects

A. EEC Regulations

On

7. On 14 March 1977, the European Economic Community adopted Council Regulation No. 516/77,

On

	1				
	<u>1978/79</u>	<u>1979/80</u>	<u>1980/81</u>	<u>1981/82</u>	<u>1982/83</u>
	- E C U's PER TONNE -				
1. <u>Canned peaches</u>					
a. Minimum grower price	286.30	301.30	315.80	334.70	356.50
b. Production aid	218.20	276.90	260.60	211.20	227.70
2. <u>Canned pears</u>					
a. Minimum grower price	-	281.30	294.80	324.28	345.36
b. Production aid	-	264.10	231.60	210.40	234.40
3. <u>Dried Grapes</u>					
a. Minimum grower price	-	-	-	1,171.80	1,331.70
b. Production aid	-	-	-	115.90	361.40
c. Storage aid	-	-	-	3.20/wk	3.70/wk

¹Marketing year for peaches and pears is July-June, that for dried grapes is September-August.

Source: Nimexe and Official Journals of the European Economic Communities.

B. EEC tariff concessions on canned peaches,

III. Main Arguments

was made cheaper relative to imported product was equivalent to making imported product more expensive relative to domestic product. Therefore, in the United States' view, the subsidy was equivalent in protective effect to a tariff.

19. The United States claimed that since the subsidy was the difference between the EC's and third countries' prices of the final products, the EC processor was also subsidized to the extent that his processing costs were computed to be higher than those of third country suppliers. The US delegation claimed, however, that at the time the subsidies were introduced on these products there was no evidence to indicate that EEC processors were any less efficient than those of third countries since EEC processors had competed with those of third countries prior to the introduction of the processing subsidy. Data was provided illustrating the magnitude of the processor subsidy for canned peaches and canned pears in relation to costs of production. It was claimed that the subsidies represented a significant

23. The United States delegation also claimed that the production aid systems had stimulated increased plantings of peach and pear trees and would stimulate increased plantings of grape vines. As a consequence it was believed that the EEC's self-sufficiency in all the products in question would progressively increase and US interests would be progressively further prejudiced.

24. In defending the production aid system the EEC delegation stressed the following:

- (a) the aids granted by the EEC were reasonable and were given only to recompense processors for having had to pay the minimum price to growers;
- (b) the evolution of the United States' exports to the EEC had been satisfactory, and any difficulties which may have been encountered were unrelated to EEC aids;
- (c) the mere granting of an internal subsidy did not constitute a *prima facie* nullification or impairment of a tariff concession, and the United States had not demonstrated that the EEC production aids had distorted conditions of competition between EEC and imported product;
- (d) with respect to dried grapes, the United States legal basis was not appropriate. Aid to dried grape production was a heritage from a pre-existing situation and therefore the United States' could not claim any "legitimate expectation" regarding this matter. The matter actually fell under Article XXIV and was therefore within the competence of the Working Group on the accession of Greece to the EEC.

25. The EEC delegation emphasized that in its view the processor aid was simply a kind of reimbursement to the processor for the higher cost he had incurred owing to the necessity of paying the grower the minimum price. The processor acted as an intermediary enabling the Community to convey to the grower the deficiency payment deemed necessary in light of the Community's Mediterranean policy objectives and of the production structures of the mentioned products. It was the EC's view that the aid had been maintained within reasonable limits. In fact, available data indicated that while the aid to processors had been reduced for canned pears and increased slightly for canned peaches, the minimum prices which processors had had to pay had increased at a faster rate. In other words, the aid that processors had received upon inception of this scheme was partly eroded by the increase in the minimum price which they were obliged to pay to growers. Given these circumstances, the EEC delegation considered that the aid was justified.



It was the opinion of the EEC delegation that the US delegation had misinterpreted and misunderstood the 1955 and 1961 reports (BISD 3S/224 and BISD 10S/209). It was one thing to establish a reasonable expectation that a tariff concession would not later be impaired or nullified: it was quite another to prove that this had in fact occurred. In its view the mere introduction or increase of a domestic subsidy subsequent to granting tariff bindings was not prima facie nullification or impairment as the United States delegation asserted and that in fact the two reports in question did not say this.

28. Moreover, the EEC delegation argued that the United States had not clearly demonstrated that the production aids systems had prejudiced its exports as the 1962 Panel report indicated it should. The mere coincidence of reduced exports and the existence of the production aid systems could not be accepted as evidence of nullification or impairment. The EC delegation drew attention to the evolution of the United States' canned peach exports. It suggested that the United States' trade performance into the EC market was not an isolated factor, but a symptom of a general loss of competitiveness by US canned fruit producers. Indeed the United States' exports had also declined in other markets where no aid was given to local producers.

29. The EEC delegation disputed the US delegation's contention that the production aid system had distorted competitive conditions for these products. In its view the processor aids could not be considered as being equivalent to a tariff. It was the EEC delegation's opinion that a tariff increase, by raising internal prices, discourages consumption. On the other hand deficiency payments (which the aids were) allow prices to be lower than they otherwise would be. It was not correct to say therefore, that an internal subsidy by its nature imparted effects equal to a tariff. The EEC delegation also argued that, even if competitive conditions on the EEC market had been distorted as the result of the measures in question, such distortion would not be prohibited by the General Agreement. According to its paragraph 8(b), Article III did not prevent the payment of subsidies exclusively to domestic producers. The EEC also referred to various provisions of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement in which it was recognized that contracting parties use subsidies " ... to promote

exporters

that this data demonstrated that the level of the minimum grower price under the Greek national subsidy system had tended to be similar to or below average export prices. Since the initiation of the EEC's system,

IV. Position of Australia

41. A written representati

- (ii) that the minimum price granted to EC growers of fresh peaches and fresh pears and primary producers of dried grapes were excessive and that they were stimulating increased plantings of peach and pear trees and of grape vines. It was the United States' assertion that these increased plantings, while not currently causing nullification or impairment, threatened to do so at some time in the future.
- (iii) that the production aid system as well as the ancillary provisions of the system for dried grapes had been, and were currently, disrupting normal marketing relationships and had depressed world market prices for dried grapes.

B. Consideration of whether to address the issue of dried grapes

45. The Panel noted first that the EC had expressed doubts in the framework of the GATT Council, regarding the appropriateness of including dried grapes ~~in the~~ terms of reference of the Panel. It was the EC's view that this issue was closely linked to the accession of Greece to the Community. Consequently, in the EC's view, the appropriate framework for dealing with this matter was the Working Party established to examine all matters relating to Greek accession. The Panel noted that the EC had notified ~~and~~ ~~the~~ marketing parties that it intended to modify, in the context of Article XXIV:6, the existing concession on dried grapes.

46. The Panel also noted, however, that its terms of reference, which had been set ~~by~~ the Council, included reference to dried grapes, and that ~~the~~ EC had accepted these terms of reference. The Panel ~~is~~ ~~not~~ obliged to address the issue of whether tariff concessions granted by the EC on dried grapes were being nullified and impaired by the ss1 0 0 1 125.52 512.4 Tm/F8i0 0 1 501.84 732.72 Tm/F8 cc1.28 Tm/F8 11 T

D. Nullification and Impairment of the Concessions granted to the United States on Canned Peaches, Canned Pears, Canned Fruit Cocktail and Dried Grapes

a) Nullification or impairment of tariff concessions in the case of a "non-violation" complaint

49. The Panel first considered the question of whether and to what extent the United States could claim "any benefit accruing to it directly or indirectly under this Agreement" (Article XXIII:1) in respect of the tariff concessions invoked. The Panel noted, firstly, the EEC's claim that it had withdrawn, in 1973, the tariff concessions granted in 1962 and 1967 on the four product categories concerned. The Panel noted that the EEC had notified in GATT document L/4067 of 6 August 1974 that, with effect from 1 August 1974, the concessions previously

b) Consideration of the existence of reasonable expectations on the part of the United States

52. The Panel observed that the EC production aids for canned peaches and canned pears had been introduced in 1978 and 1979, respectively, and that no party to the dispute had contended that the United States could have reasonably expected the introduction of these subsidies at the time it had received tariff concessions on these products in 1974. The Panel next observed that the EC production aids for canned peaches had been introduced by Regulation No. 1152/78 of 30 May 1978 prior to the conclusion of the Geneva (1979) Tariff Protocol on 30 June 1979. In the Panel's view, therefore, the United States should have been aware of the existence of this subsidy and have

The "computed" EEC price for each fruit was calculated as the sum of the minimum grower price for fresh fruit in the EEC and the estimated cost of processing fresh fruit into canned fruit in the EEC.

[CALCULATION OF PRODUCTION AID FOR CANNED FRUIT IN THE EEC]

[graph]

To aid CONTRACTING PARTIES to understand this complicated calculation method, and the resulting subsidization effects, the Panel decided to include a graphical illustration of the process of calculation of production aid in the EEC. In Fig. 1, the "computed" EEC price for canned fruit is represented by (B). The duty-free price of imported product is represented by (C). The difference between these two prices, (A), is the production aid. The "computed" price for EEC canned fruit (B) is composed of two parts: the minimum grower price for fresh fruit in the EEC (D) and the computed cost of processing in the EEC (E). The difference between (D), the minimum grower price, and (F), the price for fresh fruit in the apparent "free market" in the EEC, is represented by (G). This is the increased cost experienced by EEC processors. The Panel observed, however, that there was only one way in which this method of calculation would yield an amount of aid which would exactly compensate the EEC processor for this increased cost (G). This would be in the situation here the sum of the computed processing costs in the EEC (the amount E) and the cost of fresh fruit in the apparent "free market" (the amount F) exactly equalled the duty-free price of imported products (C). Expressed more briefly, the Panel noted that:

since, $G + F + E = C + A$
only if $F + E$ equalled C would A equal G

60. The Panel noted, however, that if the cost of producing canned product in non-member countries was lower than that in the EEC (either because of lower processing costs or because of lower prices of fresh fruit) the EEC processor would receive an aid in excess of that which would compensate him for the difference between the minimum grower price and the "free market" price in the EEC. That is to say, the amount represented by (A) in figure 1 would exceed that represented by (G). It was the Panel's opinion that in this situation the EEC processor would receive a net subsidy enabling him to improve the price of the product. That

With regard to canned pears it noted that the

Panel noted that in a situation of falling world prices for canned product this "inflexibility" could imply, equally, an "under-compensation" of processors/exporters.

65. The Panel therefore found that there were at least three ways in which the production aid had upset the competitive relationship between domestic and imported canned peaches and canned pears:

- since the production aids made up any differences between the

- since the production aids make

72. Therefore, in comparing the market distortions imparted by the prior national Greek subsidy scheme with the market distortions imparted under the present EC subsidy scheme, the Panel found that:

- the annual increases in the minimum grower price under the prior

d) Consideration of whether the production aid systems constitute prima facie nullification and impairment

75. The Panel noted that the United States had claimed that the production aid

the Panel concluded that the United States could not have anticipated the introduction of the subsidy at the time it negotiated concessions on these products

compensation for losses on sales by tenders by

ANNEX

	<u>EEC</u> <u>minimum grower</u> <u>price,</u> <u>fresh peaches</u>	<u>Apparent</u> <u>"free market" price</u> <u>fresh peaches</u>		<u>Difference between</u> <u>minimum price and</u> <u>"free market" price</u>		<u>Production</u> <u>aid, EEC</u>
		<u>Italy</u> ¹	<u>Greece</u> ²	<u>Italy</u>	<u>Greece</u>	
		- E C U P E R T O N N E -				
1978/79	286.30	379.00	-	-93.00	-	218.20
1979/80	301.30	331.20	-	-29.90	-	276.90
1980/81	315.80	419.90	-	-104.10	-	260.60
1981/82	334.70	347.60	255.40	-12.90	79.30	211.20
1982/83	356.50	578.90	387.20	-222.40	-30.70	227.70

¹Average price of most representative varieties (both white and yellow) franco processing plant.

²Average price of all varieties, ex. farm.

Source: Eurostat, Agricultural Price Statistics, 1971-82

	<u>EEC</u> <u>minimum grower</u> <u>price,</u> <u>Williams pears</u>	<u>Apparent</u> <u>"free market" price</u> <u>Williams pears</u>	<u>Difference between</u> <u>minimum price and</u> <u>"free market" price</u>	<u>Production</u>
--	---	--	---	-------------------

	<u>EEC</u> <u>minimum grower</u> <u>price,</u> <u>dried grapes</u>	<u>"Free market" price</u> <u>sultanas, Greece</u>	<u>Difference between</u> <u>minimum grower price and</u> <u>"free market" price</u>	<u>Production</u> <u>aid, EEC</u>
	- E C U P E R T O N N E -			
1981/82	1171.80	1302.10	-130.30	115.90
1982/83	1331.70	1416.10	-84.40	361.40

¹Delivered at wholesaler store

Source: Eurostat, Agricultural Price Statistics, 1971-82