

2 March 1984

UNITED STATES - IMPORTS OF SUGAR FROM  
NICARAGUA

*Report of the Panel adopted on 13 March 1984  
(L/5607 - 31S/67)*

1. Introduction

1.1 In a communication dated 11 May 1983 Nicaragua requested consultations with the United States under Article XXIII:1 on the announcement by the United States Government of a reduction in the sugar import quota allocated to Nicaragua. That communication was circulated to the CONTRACTING PARTIES on 16 May 1983 (L/5492).

1.2 The consultations were held on 8 June 1983. As no satisfactory settlement was reached Nicaragua, in a communication dated 27 June 1983, requested the CONTRACTING PARTIES to establish a panel to examine the matter under Article XXIII:2. This was circulated to the CONTRACTING PARTIES on 1 July 1983 (L/5513).

1.3 At its meeting on 12 July 1983, having heard the representatives of the two parties and a number of other speakers, the Council agreed to establish a panel, and authorized its Chairman to draw up terms of reference in consultation with the parties concerned and with other interested contracting parties, and to designate the Chairman and members of the Panel in consultation with the parties concerned (C/M/170).

1.4 At the meeting of the Council on 18 October 1983 (C/M/171), the Chairman of the Council announced that, following consultations, the Panel's composition and terms of reference had been agreed as follows:

A. Composition

Chairman: Mr. R.E.B. Peren  
Members: Mr. H. Villar Sarraillet  
Mr. C. Manhusen

B. Terms of Reference

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Nicaragua, relating to the measures taken by the United States concerning imports of sugar from Nicaragua (L/5492 and L/5513), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided in Article XXIII."

2. Factual Aspects

2.1 On 5 May 1982 the President of the United States established by Proclamation No. 4941 a quota on imports of certain sugars, syrups, and molasses (items 155.20 and 155.30) pursuant to the authority in headnote 2 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States. The relevant part of this headnote reads as follows:

"(i) ... if the President finds that a particular rate not lower than such January 1, 1968, rate, limited by a particular quota, may be established for any articles provided for in items 155.20 or 155.30, which will gilBT1 0 0 1 218.88 122.4 T38511 T1m3 11 Tf(which) TjETcont2.57coal1y55.30,

producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation, ..."

(ii) ... any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations; ..."

The above headnote is also contained in the GATT schedule of concessions of the United States (Schedule XX). It was included in 1967, following the Kennedy Round negotiations, as note 2 in Chapter 10

Although this headnote, which authorized the President to establish and modify under certain conditions quota limitations on sugars, syrups, and molasses (items 155.20 and 155.30), had been incorporated into the United States schedule of concessions, that in no way changed the obligat

in particular the objectives and commitments

4.2 Nicaragua claimed that the United States sugar quota system was contrary to Article XI of the General Agreement and not covered by the decision of the CONTRACTING PARTIES of 5 March 1955 which waived, inter alia, the obligations of the United States under this Article to permit actions under Section 22 of the Agricultural Adjustment Act (BISD 3S/32). The Panel noted that its terms of reference defined the matter before it as "the measures taken by the United States concerning imports of sugar from Nicaragua", and referred to document L/5492 in which Nicaragua had asked for consultations under Article XXIII:1 on "the announcement by the United States Government of the modification regarding the allocation of the sugar import quota to Nicaragua". The Panel concluded, therefore, that the task assigned to it by the Council was to examine not the United States sugar quota system as such but the reduction in the quota allocated to Nicaragua within that system, and that any consideration of the sugar quota system in the light of Article XI fell outside its terms of reference.

4.3 Nicaragua argued that the United States measures were inconsistent with the provisions of Article XIII of the General Agreement and in particular with paragraph 2 of that Article, according to which "in applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions, ...". The Panel noted that under the sugar quota system established by the United States on 5 May 1982 the share of each supplying country corresponded to its share in the total sugar imports of the United States during a previous representative period, and that Nicaragua had, on this basis, been allocated 2.1 per cent of the total import quota, which amounted in the fiscal year 1982/83 to 58,000 short tons. Nicaragua's quota for the fiscal year 1983/84 had been reduced to 6,000 short tons, or about one-tenth of its prior allocation, and this reduction had not been motivated by any factor which might have affected or might be affecting trade in sugar. The Panel therefore concluded that the sugar quota allocated to Nicaragua for the