

31 March 1992

FOLLOW-UP ON THE PANEL REPORT "EUROPEAN ECONOMIC COMMUNITY -
PAYMENTS AND SUBSIDIES PAID TO PROCESSORS AND PRODUCERS
OF OILSEEDS AND RELATED ANIMAL-FEED PROTEINS"

*Report of the Members of
the Original Oilseeds Panel¹
(DS28/R - 39S/91)*

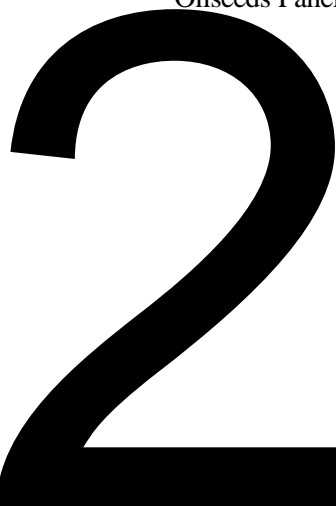
I. INTRODUCTION

1. At its meeting of 25 January 1990, the

prevent the tariff concessions from having any impact on the competitive relationship between domestic and imported oilseeds. The Panel recommends that the CONTRACTING PARTIES suggest that the Community consider ways and means to eliminate the impairment of its tariff concessions for oilseeds.

157. The Panel finally considered that, as the inconsistency with Article III:4 and the impairment of the tariff concessions arise from the same Community Regulations, a modification of these Regulations in the light of Article III:4 could also eliminate the impairment of the tariff concessions. The Panel therefore recommends that the CONTRACTING PARTIES take no further action under Article XXIII:2 in relation to the impairment of the tariff concessions until the Community has had a reasonable opportunity to adjust its Regulations to conform to Article III:4."

3. Following discussions regarding the follow-up on the Oilseeds Panel Report at previous meetings of the Council, the United States proposed at the Council meeting on 8 October 1991 that the original Oilseeds Panel be reconvened for the purpose of assis



concessions on oilseeds. Following further discussions in the Council and informal consultations, the CONTRACTING PARTIES at their Forty-Seventh Session reached an agreement on 3 December 1991 (SR.47/1 and DS 28/1 refer) under which the members of the original Oilseeds Panel were reconvened to begin work on the basis of document W.47/22 which

- (iv) in the case of oilseeds other than soya beans provision was made for monthly increments in target and intervention prices to enable sales to be staggered.

The New (per hectare) Support System

7. Council Regulation (EEC) No. 3766/91 establishes a new support system involving direct per hectare payments to producers of soya beans, rapeseed, colza and sunflowerseed, without reference to the quantity produced. Regulation 3766/91 was published in the Official Journal of the European Communities on 24 December 1991 and entered into force three days after that date (No L 356/17, attached as Annex A).

8. In terms of Article 1 of Regulation 3766/91 the new system is to apply with effect from those plantings intended for harvest in 1992. In effect, oilseeds harvested on or after 1 July 1992 (the beginning of the July/June marketing year) would be subject exclusively to the new support arrangements. Oilseeds harvested and identified before 1 July 1992 would continue to be eligible for price support under transitional arrangements provided for in Article 10 of Regulation 3766/91.

9. The new support system supersedes the provisions relating to oilseed aids contained in Regulation 136/66 (rapeseed, colza and sunflowerseed) and Regulation 1491/85 (soya beans), although Article 10:4 provides that Regulation 136/66 as well as the implementing rules thereof shall remain in force in so far as they are compatible with the provisions of Regulation 3766/91.

10. In general terms the returns to Community producers of oilseeds under the new support system will essentially consist of two elements: firstly, the price received from the sale of oilseeds in the Community market, which would be determined in part by the price of competing imports; and, secondly, a direct per hectare payment the amount of which depends on average historic yields of cereals or oilseeds for the "production region" in which the producer's holding is located and on the extent to which an observed Community market reference price deviates from a projected reference price of Ecu 163 per tonne. These and the other features of the new support system are described in more detail in what follows.

Basis and Method of Calculation of Direct per Hectare Payments

11. Under Article 3:2 of Regulation 3766/91 a Community reference amount for oilseeds, which provides the basis for calculating the regionalised direct payments to eligible oilseeds producers, is set at Ecu 384 per hectare. As explained by the Community, EEC producers of oilseeds benefited during the 1980s from a level of price support per tonne between 2.3 and 2.7 times greater than the level of price support per tonne of cereals (i.e., between 2.3:1 and 2.7:1). The point of departure for the new system of

Modalities of Payment

18. In order to qualify for payment, producers who are entitled to apply ("Producers established

23. Regulation 3766/91 provides for a range of matters to be determined by the Commission inission

The original Panel found (paragraph 156) that "as a result of the introduction of production subsidy scheme which operate to protect

the concessions. The original Panel's recommendations and rulings did not conclude that the level of

continues to impair the tariff concessions. The original Panel's recommendations and rulings included the conclusion that the Community had impaired benefits accruing to the United States under Article II of the General Agreement as a result of "production subsidy schemes". The mandate of the Panel, as set forth in document W.47/22, is therefore to examine whether recent changes in

prevent the tariff concessions from having any impact on the competitive relationship between domestic and imported oilseeds" (paragraph 156: emphasis added). The Community maintained that in bringing its regulations into conformity with Article

producer support measures into a Community support scheme. Furthermore, the Community maintained

with an approved first buyer" and have actually sown the seed on the designated acreage with the intent to harvest. Moreover, under Article 4 of Regulation 3766/91 eligibility for final payment is conditioned on actual harvest of the crop. The Community payments are therefore related to, and based on, the prices applying to current production, with the observed reference price being adjusted for actual market prices. The payments are also related to the factors of production currently employed, since payments are tied, among other things, to the use of land for oilseeds.

47. In the view of the United States the production subsidies provided under the new support system distort producers' production decisions and the incentives for the use of the producers' land. They therefore provide artificial incentives to devote land to the production of oilseeds. Producers would therefore continue to make production decisions on the basis

be no more than half, or even less, of what he obtained under the former support system. The direct payments received by

average price changes. In the view of the Community the new support system would lead many producers to re-assess the value of oilseeds cultivation in their crop rotation.

55. The United States maintained that the use of averages in this context was an accurate means of

and incentives for Community oilseed production that the variable levy and intervention systems provide for cereals.

60. The Community explained, in response to the Panel question referred to above, that, as cereals were widely cultivated throughout the Community, it was necessary in order to avoid stimulating interest in the cultivation of oilseeds, to take a realistic and reliable basis as a point of departure for estimating the return per hectare in Europe which would be comprehensible throughout Europe. As cereals were the most common crop in Europe, the return per hectare of cereals was chosen as the basic historic reference for a per hectare oilseeds return. However, this point of departure did not purport to establish a relationship between returns to producers of cereals and returns to producers of oilseeds, as both will be treated differently and will evolve in a totally disconnected manner. Community oilseed producers would thus be able to appreciate that the average benefits to be expected are: less than in the past; less than for growing cereals; and are dependent on import prices, because all market price support instruments have been abolished.

61. Finally, the Community drew attention to the fact that since 1979, imports of soyabeans and soyameal had increased by 5.2 million tonnes, from 15.4 to 20.6 million tonnes (expressed in soyameal equivalent) and that over the same period imports from the United States had declined by 4.5 million tonnes, whereas imports from other sources had increased by more than 9 million tonnes. The Community submitted that, in view of these developments, the erosion of the United States position as a supplier to the Community market was not due to Community policies but to other factors.

Submissions by Other Contracting Parties

Argentina

62. Argentina, noting that oilseeds accounted for 20 per cent of its export revenue, submitted that the impairment of tariff concessions had not been eliminated because: (i) production subsidies are maintained and the provisions of Regulation 3766/91 tend to ensure that the level of production is maintained; (ii) both production and areas eligible for subsidies are increased (by 27 per cent compared to the year immediately prior to the adoption of the Oilseeds Panel Report); and (iii) the relationship between domestic subsidies and the world price had not been reduced and, moreover, the arrangements for adjusting direct payments in response to world market prices ensures that domestic production of oilseeds continues to be insulated from the movement of import prices.

63. With regard to compliance with the original Panel's findings under Article III, Argentina noted that products such as linseed would continue to be governed by the provisions of the former support system that had been found to be inconsistent with Article III:4. Argentina also noted that in the system established by Regulation 3766/91, the reference to the contract with the first approved buyer and the proof of sale for the producer to receive additional payments, might signify that bargaining leverage is given to such buyer from which he can derive economic benefits; this would therefore give rise to a preference for processing domestic raw materials rather than imported products. In other words, the inconsistency with Article III:4 of the General Agreement could persist.

Australia

64. Australia considered that the issue for the Panel members was whether the revised system will allow the tariff concessions to have any impact on the competitive relationship between domestic and imported goods, and that this issue should not be decided solely on the basis that one form of producer subsidy is more GATT consistent than other forms of producer subsidy. In the view of Australia a support scheme reasonably expected by the United States at the time the concession was granted could also be expected to apply evenly at all points of world price between zero and infinity. The

arrangements in the new Regulation ensure that this will not be the case, causing producers to be protected completely from the movement of prices for imports that take place below 8 per cent of the national reference price. At these points the concession has no value and is therefore impaired. With reference of the orderly marketing bonus provided for in Article 4:6, Australia noted that experience with similar private storage aids in the EEC beef sector demonstrated that producers can secure significantly higher payments than by selling into public intervention (which was available to Community oilseeds producers under the former system). Australia submitted that the European Community subsidy scheme does not conform to the criteria set by the Panel established to consider the United States initial complaint. Australia therefore concluded that the impairment of the United States zero tariff concessions will continue under the new Community arrangements.

Brazil

65. Brazil, noting that oilseeds provide one of its major sources of export revenue, considered that the new Community support system would not effectively expose Community producers to world price movements since final regional reference amounts will be maintained

the tariff in ergramense,

impairment of cast

ania

thae, conequemenlye,

the

utside the per cent tBe in rojted

Community anadia

upw
proc

price u der newconsidered

and in of and
to these conclssion:y

for Community

h in
owerfu(1) TjETBT1 0 0 1591.04 102.4 Tm/F8
modified 102.4 Tm/F8 (note) TjETBT1 0 0 1591.04 102.4 Tm/F8

Moreover,

they are able to obtain on the Community market in competition with other producers and imported oilseeds; and a direct payment linked to average yields of cereals or oilseeds assigned to the production region in which the producers' holdings planted to oilseeds are located. These direct per hectare payments are subject to adjustment (up or down) depending on the extent to which average Community market prices for oilseeds in general or for particular oilseeds, as calculated by the Commission, deviate by more than 8 per cent from the ECU 163 reference price;

- (v) Under the former system, monthly increments in intervention prices for rape, colza and sunflower seeds were provided in order to stagger the marketing of these

on such buyers, thus reviving the possibility of a preference for processing domestic raw materials rather than imported products. The Panel noted, however, that the United States, which had not submitted any arguments in relation to paragraph 155 of the Oilseeds Panel Report, had confirmed that it did not claim that the measures taken by the Community were inconsistent with Article III. In these circumstances the Panel suggests that the CONTRACTING PARTIES take note of the Community's statement that the new

- that the subsidies concerned had impaired the tariff concessions because they upset the competitive relationship between domestic and imported oilseeds, not because of any effect on trade flows.

78. In the light of this analysis of the reasoning underlying the original Panel's conclusions on the impairment of the benefits of the 1962

level of the product subject to the concession were to be systematically counteracted. The Panel considered that the original Panel's finding with respect to impairment had not been based on the specific method of delivering production subsidies, but rather on the Community's systematic denial, through substantially offsetting the effect of the general movement of import prices on the allocation of resources to production, of the benefits reasonably to be expected from the reciprocal exchange of tariff concessions.

82. The Panel considered that whether the extent of protection of production would be sufficient to impair the tariff concession could be determined neither solely on the basis of an analysis of the new system's effects on selective examples of individual producers, nor solely on the basis of simple averages derived from the parameters in Regulation 3766/91 as explained by the Community. From the point of view of the original Panel's conclusions and reasoning with regard to competitive conditions, what is relevant is whether the EEC oilseeds production as a whole continues to be protected from the effect of the general movement of import prices, not whether particular categories or individual oilseeds producers are protected from each and every movement of import prices with respect to particular transactions.

83. The Panel then examined whether the Community's new support system for oilseeds under Regulation 3766/91, even though it might not present as extreme a case as the former support system, nevertheless involves a systematic offsetting of the effect of the general movement of import prices on production levels. The Panel considered that the new support system had retained the essential features which had led the original Panel to find that the former scheme gave rise to impairment of concessions. In the new system, the subsidies are still production subsidies specific to the product which is the subject of the tariff concessions in question. The system was designed to m1 1(the) TjETBT1 0 0 1 ETBT1

Paragraph 157 of the Oilseeds Panel Report

86. The Panel then turned to paragraph 157 of the Oilseeds Panel Report, in which the original panel had considered that: "as the inconsistency with Article III:4 and the impairment of the tariff concessions arise from the same Community Regulations, a modification of these Regulations in the light of Article III:4 could also eliminate the impairment of the tariff concessions. The Panel therefore recommends that the CONTRACTING PARTIES take no further action under Article XXIII:2 in relation to the impairment of the tariff concessions until the Community has had a reasonable opportunity to adjust its Regulations to conform to Article III:4."

87. The Panel noted that over two years had passed since the Oilseeds Panel Report had been adopted by the CONTRACTING PARTIES. While the Community Regulations had been modified, the impairment of the tariff concessions had not been eliminated. Under these circumstances, the Panel can see no reason for the CONTRACTING PARTIES to continue to defer consideration of further action in relation to the impairment of the tariff concessions.

88. The Panel therefore recommends that the Community should act expeditiously to eliminate the impairment of the tariff concessions -- either by modifying its new support system for oilseeds or by renegotiating its tariff concessions for oilseeds under Article XXVIII. In the event that the dispute is not resolved expeditiously in either of these ways, the CONTRACTING PARTIES should, if so requested by the United States, consider further action under Article XXIII:2 of the General Agreement.

CONCLUSIONS

89. With respect to Paragraph 155 of the Oilseeds Panel Report, the Panel suggests that the CONTRACTING PARTIES take note of the Community's statement that the new support system for oilseeds under Regulation No. 3766/91 was intended to eliminate any inconsistency with Article III:4 by the discontinuation of payments to processors conditional on the purchase of domestic oilseeds.

90. With reference to paragraph 156 of the Oilseeds Panel Report, the present Panel finds that benefits accruing to the United States under Article II of the General Agreement in respect of the zero tariff bindings for oilseeds in the Community Schedule of Concessions continue to be impaired by the

ANNEX A

COUNCIL REGULATION (EEC) No. 3766/91
of 12 December 1991

establishing a support system for producers of soya beans, rapeseed and colza
seed and sunflower seed

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas a new support system for the producers of soya beans, rapeseed and sunflower seed harvested within the Community, has to be established; whereas the best way to achieve this objective is to provide for a direct payment for producers who sow and intend to harvest such products; whereas this system shall be applied with effect from those plantings intended for harvest in 1992 thereby superseding the provisions relating to oilseeds aids contained in Regulation No. 136/66/EEC⁽⁴⁾ and Regulation (EEC) No. 1491/85⁽⁵⁾;

Whereas such direct payments should reflect the specific structural characteristics that influence yields and that the drawing up of a regionalization plan based on objective criteria should be

Whereas as long as an integrated approach to support for the producers of arable crops as proposed by the Commission is not applied, it seems appropriate to ensure a system of maximum guaranteed areas;

Whereas a quality policy for rapeseed is required;

Whereas the Member States should enact appropriate measures in order to ensure the respect of Community legislation concerning oilseeds;

Whereas it is necessary to provide for transitional measures, in particular to preserve the acquired rights of operators holding stocks of oilseeds on 30 June 1992,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation establishes a support system for producers of soya beans, rapeseed and colza seed and sunflower seed.
2. The system referred to in paragraph 1 shall be applied with effect from those plantings intended for harvest in 1992 thereby superseding the provisions relating to oilseeds aids contained in Regulation No. 136/66/EEC and Regulation (EEC) No. 1491/85.
3. The marketing year for the products listed in paragraph 1 shall run from 1 July to 30 June.

Article 2

1. Each Member State shall establish a regionalization plan setting out the criteria for the establishment of separate production regions. The criteria used must be appropriate, objective and provide the necessary flexibility for the recognition of distinctive homogeneous zones of a minimum size and allow for specific structural characteristics that influence yields such as soil fertility, including, where appropriate, due differentiation between irrigated and non-irrigated land.
2. For each production region, the Member State shall give details of the areas and yields of cereals and, whenever possible, oilseeds produced in that region during the five-year period 1986/87 to 1990/91. An average cereals yield shall be calculated for each region by excluding the year with the highest and the year with the lowest yield during that period; whenever possible an analogous calculation shall be made for oilseeds.
3. Each Member State shall specify for each region on the basis of appropriate, objective criteria whether the projected regional reference amount (and the final regional amount) shall be derived by a comparison between the regional and Community average yields for either cereals or oilseeds. When exercising this choice, the Member State may not come to a global result which would be higher than if it had used exclusively either cereals yields or oilseeds yields.
4. Member States shall submit their regionalization plan to the Commission together with all available supporting information including, if necessary, the measures the Member State intends to take in the case of applications for the sowing of seed on unsuitable land with as a main objective obtaining the direct payments rather than the growing of a commercial crop. These plans shall be submitted to the Commission by a date fixed by the Commission in accordance with the procedure laid down in Article 38 of Regulation 136/66/EEC.

5. The Commission shall examine the regionalization plans submitted by the Member States and shall ensure that each plan is based on appropriate, objective criteria and is consistent with available historical information, notably the Community average yield for cereals (4.6 tonnes per hectare) and oilseeds (2.36 tonnes per hectare) and the related national averages.

The Commission may object to plans which are not compatible with the relevant criteria in particular with the average yield of the Member State. In this case the plans shall be subject to adjustment by the Member State concerned after consultation with the Commission.

6. The regionalization plan may be revised by the Member State concerned at the request of the Commission or at the initiative of that Member State in accordance with the same process as outlined in the preceding paragraphs.

Article 3

1. A projected reference price for oilseeds is set at ECU 163 per tonne.

2. A Community reference amount for oilseeds is set at ECU 384 per hectare.

3. For each region identified pursuant to Article 2, a projected regional reference amount for oilseeds shall be established by the Commission which reflects the comparison between either the cereals yield for that region and the average cereals yield for the Community (4.6 tonnes per hectare) or the oilseeds yields for that region and the average oilseeds yield for the Community (2.36 tonnes per hectare).

4. Before 30 January in each marketing year the Commission, acting in accordance with the procedure laid down in Article 38 of Regulation No. 136/66/EEC, shall calculate a final regional reference amount based on the observed reference price for oilseeds. The final calculation shall be made by substituting the observed reference price for the projected reference price; no account shall be taken of price variations within 8 per cent of the projected reference price.

5. The Commission may make the final calculations separately for each oilseed in order to avoid favouring one oilseed rather than another and to take account of the possible application of Article 6, including taking due account of the lower yields typically associated with the catch-cropping of soya beans.

6. The Commission shall publish the aforementioned amounts in the *Official Journal of the European Communities*. The publication shall include a succinct explanation of the calculations made.

Article 4

1. Producers established in the Community who sow and intend to harvest the products listed in Article 1 shall be entitled to apply for a regionalized system of direct payments. The direct payment shall be made to the producer who makes the application, provided that entitlement to such a payment is recognized by the Member State on whose territory the production holding is located.

2. In order to qualify for any payment a producer must, by the date specified for the region in question:

- have sown the seed, and
- have lodged an application.

Article 6

1. A system of maximum guaranteed areas shall apply for payments. The maximum guaranteed areas shall be:

Soya beans

EEC-12	509,000	hectares
--------	---------	----------

Rapeseed and colza seed

EEC-12	2,377,000	hectares
--------	-----------	----------

Sunflower seed

Spain	1,411,000	hectares
Portugal	122,000	hectares
The rest of the Community	1,202,000	hectares

2. If the area planted to an oilseed exceeds the maximum guaranteed area then the relevant direct payments shall be reduced by 1 per cent for each 1 per cent overshoot. The application of the foregoing provisions shall be based exclusively on the areas for which these payments are claimed. The relevant direct payments shall be reduced by the Commission when the final regional reference amounts are calculated.

Article 7

1. Access to the direct payment for growers of oilseed rape and colza shall be restricted to those growers using seed of an approved quality and variety.

2. The Commission, in accordance with the procedure laid down in Article 38 of Regulation No. 136/66/EEC, shall establish what rapeseed and colza seed shall be eligible for aid pursuant to paragraph 1.

Article 8

The determination of the amounts, the rules governing the payment of the direct payments, including the determination of the minimum size of a region and the other detailed rules for the implementation of this Regulation shall be decided on by the Commission in accordance with the procedure laid down in Article 38 of Regulation No. 136/66/EEC.

Article 9

1. Member States shall take all action necessary to ensure that the provisions of this Regulation are fully respected.

2. Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 38 of Regulation No. 136/66/EEC, and in particular those relating to:

- the minimum area to be cultivated; such rules shall take particular account of the monitoring requirements and of the sought-after effectiveness of the scheme in question,

- monitoring; such rules shall include, *inter alia*, the use of means of remote sensing and/or plausibility monitoring on the basis of binding official documents that are already available in the national administrations,
- the date referred to in Article 4 (2), which may be varied for specific regions to take account of normal and exceptional circumstances.

Article 10

1. The provisions

ANNEX B

Extract From Introductory Comments as Delivered by the Chairman
of the Reconvened Members of the Original Oilseeds Panel
at the First Meeting with the Parties on 3-4 February 1992

Establishment and mandate

1. I would recall that the establishment of this body and the mandate assigned to it resulted from discussions at meetings of the GATT Council from April 1991 onwards concerning the follow-up on the Oilseeds Panel Report and the agreement reached at the Forty-Seventh Session of the

4. A second general point is that the matters that this body is required to examine and make findings on concern a formal request made to the Community by the CONTRACTING PARTIES to bring its Regulations into conformity with Article III:4 of the General Agreement, and a formal suggestion that the Community consider ways and means to eliminate the impairment of the oilseed tariff concessions as found by the original Panel.

5. In these circumstances we consider that the Community is required in these proceedings to demonstrate that the measures it has taken satisfy the ruling relating to Article III:4 in paragraph 155 of the Oilseeds Panel Report; and that, in relation to the ruling in paragraph 156 of that report, as qualified by paragraph 157 thereof, the Community would be expected to demonstrate, if this is what the Community is asserting, that the measures it has taken have in fact also eliminated the impairment of concessions as found by the original Panel. In other words, if the assertion of the Community is that the impairment of concessions as found by the original Panel has been eliminated, then this body would expect the Community to substantiate its assertion because this is a matter which has a bearing on the matters to be examined by this body and on the nature of the findings it is required to make in terms of its mandate.

6. Finally, I would like to say that what I have referred