

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 CONTRACTING PARTIES authorized the Chairman of 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 Panel until the completion of its work, he was replaced by:

Mr. Ki-Choo Lee (Counsellor, Office of the Permanent Observer of the Republic of Korea to the United Nations in Geneva)

(C/M/135, pages 18 and 19).

II. Main arguments

(a) General

2.1 In presenting its complaint to the Council of Representatives, the delegate of Brazil claimed that the sharp increase in Community sugar exports had been made possible by the use of substantial subsidies which in recent years had consistently exceeded the international prices of sugar. The subsidies thus granted had allowed the European Communities to obtain a more than equitable share of the world sugar trade, to the detriment of Brazil and all other contracting parties which were exporters of sugar. The European Communities had thereby caused serious prejudice to the interests of such contracting parties and hampered efforts being made to stabilize the world market by means of the International Sugar Agreement, 1977.

2.2 The representative of Brazil focused his argumentation on the following points, namely that the application of the Community system of refunds on exports of sugar had resulted in:

- (a) the European Communities having more than an equitable share of world export trade in sugar, in terms of Article XVI:3;
- (b) that serious prejudice, and threat thereof, had been caused directly or indirectly to Brazilian interests in terms of Article XVI:1, through market displacement, reduced sales opportunities and diminished export earnings; and
- (c) that as a result of the failure of the European Communities to carry out its obligations under the General Agreement, benefits accruing to Brazil, directly or indirectly, under the General Agreement had been impaired, and the objectives of the General Agreement, including Part IV thereof, had been impeded, in terms of Article XXIII.

2.3 During meetings with the Panel, the representative of Brazil expressed the opinion that this Panel should proceed from the general findings and conclusions arrived at by a previous Panel established to examine a similar complaint by the Government of Australia, as contained in the report adopted by the Council on 6 November 1979 (document L/4833) and where it was stated that:

- (i) "... 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, ..."
- (ii) "... the Community regulations of 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."
- (iii) "... It was evident that the increase in exports was effected through the use of subsidies."
- (iv) "... the Community system for granting refunds on sugar exports and its application had contributed to depress world sugar prices in recent years ..."

- (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 complaint:

- (a) "the European Communities had notified their system of export refunds on sugar pursuant to Article XVI:1";
- (b) "examining the Community share of world export trade in sugar, the Panel noted that that share had increased somewhat in 1976 and 1977, although that increase was not unusual in magnitude. [For 1978] the Panel felt that the situation justified a thorough examination as to whether the Community system of export refunds for sugar had been applied in a manner which had resulted in the European Communities having more than an equitable share in world export trade in sugar";
- (c) "in the light of all the circumstances [related to the present complaint] and especially taking into account the difficulties in establishing clearly the causal relationships between the increase in Community exports, the development of [Australian] sugar exports and other developments in the world sugar market, the Panel found that it was not in a position to reach a definite 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";
- (d) "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."

In his view the final, general conclusion which could objectively be drawn from that Panel's report (L/4833) was that the European Communities had not infringed the provisions of the General Agreement in any way.

2.5 The Panel heard the specific arguments of the parties with respect to the various points of the complaint as listed in paragraph 1.3 above. A summary of the arguments presented by the parties on each of these points is given below. (Paragraphs 2.6 to 2.28.)

- (b) "The application of the Community system of refunds on exports of sugar had resulted in the European Communities having more than an equitable share of world trade in sugar, in terms of Article XVI:3".

- (i) Market shares

2.6 The representative of Brazil argued that the European Communities, through the unrestrained use of massive subsidies, had turned from a net importer into a sizable net exporter of sugar by displacing more efficient producers, mostly less developed countries, at a time of world over-production; and that the Community share in the world export trade in sugar had risen from an average of 7.5 per cent in 1972-74 to 9.6 per cent in 1977, 14.4 per cent in 1978 and was expected to be around 14 per cent for 1979.

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 all import growth registered in their traditional markets (Group A) and 54 per cent of import growth in the most dynamic sector of the world market for sugar (Group B). The decline in Brazilian exports to other markets was partly due to diminished exports to the European Communities, and he drew the attention of the Panel to the fact that the European Communities had changed from a substantial net importer to a substantial net exporter during the period under consideration.

TABLE 1
BRAZIL AND THE EUROPEAN COMMUNITIES (EC)

Average Sugar Exports 1973-75 and 1976-78
Groups of Countries of Destination

(Thousand tons, raw value and percentages)

	1973-75				1976-78				Change	
	Brazil		EC		Brazil		EC		Brazil	EC
	'000 tons	%								
Total	2,336	100	1,244	100	1,888	100	2,711	100	-448	+ 1,467
of which to:										
Group A ^a	729	31	1,138	92	577	31	1,535	57	-152	+ 397
Group B ^b	1,090	47	52	4	1,007	53	1,055	39	-83	+ 1,003
Other	517	22	54	4	304	16	121	4	-213	+ 67

^a Group A: Countries which on average imported from the European Communities more than 10,000 tons, raw value, in the period 1973-1975.

^b Group B: Countries which on average imported from the European Communities less than 10,000 tons, raw value, in the period 1973-1975, but on average exceeded that amount in the period 1976-1978.

Source: The representative of Brazil.

2.9 The representative of the European Communities argued that the trend in Community sugar exports was consistent with Article XVI, as there had been no substantial variations in the Community share of world export trade, 8.8 per cent in 1972 and 9.6 per cent in 1977. Even taking into consideration developments in the year 1978 it did not seem to affect this argument. He furthermore argued that a general conclusion which could be drawn from the report of the Panel examining a similar complaint by Australia (L/4833) was that the European Communities had not infringed the provisions of the General Agreement in any way. He also stated that the arguments presented by Brazil, related to a change in the Community position from a net importer to a net exporter were irrelevant as the appropriate chapters of the General Agreement contained no reference to this concept.

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	%
<u>Total:</u>	1,655	100	1,757	100
Group A	1,462	88	1,141	65
Group B	103	6	533	30
Other	90	6	83	5

Source: The Commission of the European Communities.

2.11 With respect to the comparison of market shares for a number of exporting countries presented by the Brazilian representative, the representative of the European Communities argued that it was not possible to come to any serious appreciation without a detailed examination by the Panel of all the international sugar trade, case by case for all exporting countries.

(ii) Displacement

2.12 The representative of Brazil argued that, taking 1972-1974 as a reference period, the market displacement suffered by Brazil in the years 1976-1978 as a result of the Community sugar subsidy system amounted to 3,402 thousand tons - a volume of sugar that Brazil would have been able to export given the accumulation of stocks and the substantial diversion of cane to the production of alcohol which took place during this period. In all countries importing Community sugar, Brazilian sugar exports had been directly affected and Brazilian exports had furthermore been indirectly affected in other markets due to increased competition from exports having been displaced elsewhere by Community exports.

2.13 The representative of Brazil presented to the Panel detailed statistical information on imports of sugar into selected countries for the years 1972 to 1979. Imports from Brazil into Algeria, Iraq, Israel, Kuwait, Lebanon, Nigeria, Spain, Sudan, Syria and Tunisia had declined from an annual average in 1972-75 of 193,900 tons to 78,700 tons on average for the years 1976-78, and Brazil's share of these markets had fallen from 17.2 to 5.7 per cent over the same period. Community exports had, however, expanded from an annual average of 270,400 tons in 1972-75 to 798,900 tons in 1976-78, and the European Communities had increased its share of these markets from 24.8 to 56.4 per cent. For another group of selected countries (Chile, China, Egypt, Iran, Jordan, Morocco, Portugal, Sri Lanka and the USSR) average annual imports from Brazil which in 1972-75 had totalled 729,400 tons had in 1976-78 fallen to 549,100 tons, while imports from the European Communities at the same time had expanded from an average of 35,600 tons in 1972-75 to 725,800 tons in 1976-78. Brazil's share of these markets had fallen from 16.7 per cent to 7 per cent while that of the European Communities had risen from 0.8 to 9.4 per cent.

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 countries in 1975-1977; almost the entire decrease in Brazilian exports in 1978 in relation to the 1975-1977 average is accounted for by two countries, Algeria and Iraq. It is interesting to note that between 1975-1977 and 1978, the Communities relatively insignificant exports to these two countries also fell.

2.16 With respect to the evolution in exports to markets in strong expansion (Group B), the Community representative argued that although Community exports to this Group of countries as a whole increased from 1972-1974 to 1975-1977, while Brazilian exports to the same group of markets at the same time declined, there was no connection between the two different developments. The conclusion would be the same both for the group of countries as a whole and for each individual country in the group. The degree to which Brazilian sugar exports dropped could not be attributed to increased Community exports because of the substantial difference in quantities involved. For 1978, Brazilian exports to the same group of countries were higher than in 1975-1977. There was therefore no reason for Brazil to complain about a loss of markets due to increased Community exports since there was no evidence to support such a claim.

2.17 Commenting upon the detailed statistics for selected markets presented by the Brazilian representative, the representative of the European Communities argued that there was no clear evidence that Community exports had displaced Brazilian supplies of sugar on the majority of these markets. Developments for instance in the markets of Algeria, Iraq, Sudan and Syria had been influenced by competition from sugar of other origin. In other cases, Brazil had always been an only marginal or occasional supplier. Developments in the Tunisian and other markets ought to be seen in connection with existing special commercial relations between the European Communities and these countries. Still in other cases (e.g. Chile, Cyprus, Iran, Morocco, United States, USSR and Sri Lanka) there was no evidence of any possible relation between Brazilian sales and Community exports. It was therefore not possible to establish a link between developments in Brazilian and Community sugar exports.

(iii) Reduced sales opportunities

2.18 The representative of Brazil argued that its exports of sugar had suffered the loss of sales opportunities in a number of markets in which the demand for sugar had shown a rapid expansion. Several importing countries (e.g. Iran, Kuwait and Nigeria) had declined to enter into long-term contracts with Brazil concerning supplies of sugar, in view of readily available supplies of white sugar offered

by the European Communities. Community sugar exports at depressed prices also resulted in reduced sales opportunities for Brazilian exports in other countries (e.g. China, Jordan and the USSR).

2.19 He furthermore argued that the penetration of Community white sugar into the markets in Chile and Venezuela in the years 1977 to 1979 had resulted in market displacement and reduced sales opportunities for Brazil, thus adversely affecting the special commercial ties Brazil enjoyed with these two LAFTA countries. In his opinion the fact that import limitations imposed by Venezuela in 1979 according to its obligations under the International Sugar Agreement, 1977, resulted in only negligible imports from the European Communities and a strong increase in imports from Brazil was evidence of unfair competition from Community exporters in the Venezuelan market in the years prior to 1979.

2.20 The representative of the European Communities argued that EEC was one of Nigeria's traditional suppliers and there were no possible grounds to suppose that Brazilian exports were replaced at any time. As to Iran, he argued that it did not seem necessary for EEC to put forward any special arguments, since Brazil clearly stated that its efforts to conclude a long-term contract with Iran failed owing to the existence of trade links between Iran and the EEC. Concerning China, Jordan and the USSR, the representative of the European Communities stated that the Brazilian complaint appeared completely arbitrary and he referred to statistics.

2.21 In the case of Chile and Venezuela, the representative of the European Communities argued that trade statistics did not show that Community sugar exports had adversely affected Brazilian sales in these markets in recent years. He wished to draw the attention of the Panel to inconsistencies in the lines of reasoning of the representative of Brazil on this point.

(c) "The application of the Community system of refunds on exports of sugar had resulted in that serious prejudice, and threat thereof, had been caused directly and indirectly to Brazilian interests in terms of Article XVI:1, through market displacement, reduced sales opportunities and diminished export earnings"¹

(i) Diminished export earnings

2.22 The representative of Brazil argued that, taking 1972-1974 as a reference period, the losses in export revenues resulting from market displacement and reduced sales opportunities amounted to US\$707 million in the years 1976-1978, at the prices then prevailing. However, taking into account the dominant position of the European Communities as a world supplier of white sugar, the substantial volume of the Community export surpluses, the knowledge on the part of the trade that the amounts available to cover Community export refunds were not subject to prior limitations, the refusal of the European Communities to accept any form of discipline under the International Sugar Agreement of 1977, he assessed the depressing effect caused by the Community's sugar export practices on world prices to have represented, on average, \$0.01-2 per pound over the three-year period 1976-1978. This meant a reduction in export earnings to Brazil of US\$125-250 million on the volume of sugar actually sold abroad and a loss through market displacement of US\$782 to 856 million. Consequently, he estimated the total prejudice suffered by Brazil, either directly or indirectly, as a result of the Community sugar subsidy system in the period 1976-1978 to have amounted to between US\$907 and US\$1,106 million. For comparison, he mentioned that total Brazilian export earnings of sugar amounted to US\$1,095 million for this three-year period.

¹With respect to quantitative aspects related to "displacement" and "reduced sales opportunities", see under (b) above.

2.23 The representative of the European Communities argued that the level of the world price for sugar was affected by certain factors whose number, nature or possible impact were difficult to circumscribe. All participants in world trade had a joint responsibility and the European Communities could not accept the idea that it had a special responsibility of its own for world market price formation. He felt that the calculations of loss of earnings and financial prejudice presented by the representative of Brazil appeared to be unfounded or even irrelevant. Even to replace 1972 by 1971 as a reference year would suffice to change the result of the calculations. Apart from the fact that there is nothing to prove that the reduction in Brazil's share was attributable to other countries such as the EEC, for example.

(d) "... as a result of the failure of the European Community to carry out its obligations under the General Agreement, benefits accruing to Brazil, directly or indirectly, under the General Agreement had been impaired, and the objectives of the General Agreement, including Part IV thereof, had been impeded, in terms of Article XXIII"

2.24 The representative of Brazil argued that the application of the Community system of export subsidies for sugar was inconsistent with Article XVI:3 of the General Agreement. Constituting a form of export subsidy on primary products, the system as applied had not led to any reduction or limitation of exportable surpluses of the amount of export refunds. The increase in Community exports from 1977 onwards had resulted in the European Communities having more than an equitable share of world export trade in sugar.

2.25 He furthermore argued that the Community system for granting refunds on exports of sugar and its application were inconsistent with commitments under Part IV of the General Agreement. The increased Community sugar exports effected through the use of subsidies, had severely depressed world market prices, and had displaced Brazilian exports and led to reduced sales opportunities and to reduced export earnings for Brazil, contrary to the provisions of Article XXXVI:2. By enlarging its market share, the European Communities had failed to make positive efforts as indicated in Article XXXVI:3, thus impeding that Brazil could be secured a share of the growth in international sugar trade compatible with its needs of economic developments. By refusing to participate in the International Sugar Agreement, 1977, and restricting its exports accordingly, the European Communities had seriously jeopardized the attainment of the objectives of that Agreement, contrary to the provisions of Article XXXVI:4. Furthermore, concerning sugar, the European Communities had not acted in a manner as to give effect to the implementation of the relevant principles and objectives contained in Article XXXVI, as stipulated in Article XXXVI:9. Finally, the Brazilian representative argued that by maintaining its sugar subsidy system, resulting in increased exports and reduced imports, and by refusing to participate in the International Sugar Agreement, 1977, the European Communities had disregarded the undertakings set forth in Article XXXVIII:2(a) and (e).

2.26 Referring to document L/4833 ("European Communities - Refunds on Exports of Sugar - Complaint by Australia - Report of the Panel"), the representative of the European Communities argued that there was no reference to any infringement by the European Communities of the provisions of Article XVI:3.

2.27 With respect to the opinion expressed by the representative of Brazil that the Community system of export refunds for sugar was inconsistent with Part IV and in particular Article XXXVI:2, 3, 4 and 9 and Article XXXVIII:1, 2, 2(a) and 2(e), the Community representative recalled the very considerable Community efforts made in favour of developing countries. These efforts comprised an innovative aid policy which through the STABEX system guaranteed export receipts for a number of least developed countries. In the field of primary commodities, the European Communities had always pursued an active and constructive policy towards the setting up of international agreements. With regard to Community participation in the International Sugar Agreement, 1977, there was no use in recalling the reasons for the present state of affairs.

2.28 He furthermore argued that the provisions of Article XXXVI constituted principles and objectives and could not be understood to establish precise, specific obligations. It was therefore not possible by definition to ascertain that these principles had been infringed through the application of any specific measure. He also argued that it was not possible to imagine that the Community system of export refunds for sugar could have objectives contrary to those of Article XXXVI. Given the legal analogy between the provisions of Articles XXXVI and XXXVIII, the comments made in connection with the former are also valid for the latter.

III. Factual aspects

(a) The sugar market system of the European Communities¹

3.1 The common organization of the market in sugar was originally established by Regulation (EEC) No. 1009/67 of the Council, of 18 December 1967. The single market in sugar came into force on 1 July 1968. Regulation (EEC) No. 1009/67 remained applicable until the end of the 1974/75 sugar year, when it was replaced by a new basic regulation (Regulation (EEC) No. 3330/74 of the Council of 19 December 1974) applicable to the sugar years 1975/76 to 1979/80.

3.2 The Panel's examination of the Community system was, *inter alia*, focused on Regulation (EEC) No. 3330/74 of the Council of 19 December 1974 on the common organization of the market in sugar as last amended by Regulation (EEC) No. 1396/78 of 20 June 1978; Regulation (EEC) No. 766/68 of the Council of 18 June 1968 laying down general rules for granting export refunds on sugar, as last amended by Regulation (EEC) No. 1489/76; and Regulation (EEC) No. 394/70 of the Commission of 2 March 1970 on detailed rules for granting export refunds on sugar, as last amended by 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 (Article 2), i.e. for the area in which the price is usually lowest.

3.5 At the operational level, the "intervention price" - lower than the target price (see Article 11) - is the price at which the intervention agencies of the member States are required to buy in sugar offered to them which has been manufactured in the Community (Article 9). This price is fixed at the same time as the target price and covers the same period, the same product and the same area. For other areas, however, derived intervention prices are fixed in the light of the regional variations which, given a normal harvest and free movement of sugar, might be expected to occur in the price of sugar under natural conditions of price formation (Article 3). In fact, the earnings of the sugar industry are determined by prices at, or very near to, the intervention price.

¹Annex Tables V to IX graph 1 and Table 3 give further details on Community sugar prices, export refunds, exports, production and consumption.

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 determination of this quantity takes into account the trends in production and marketing opportunities (Article 25). Quantity C is the quantity produced in excess of the maximum quota (see Article 26).

3.8 These quotas are of decisive importance for the application of the system of internal prices, since for quantity A (basic quotas), the beet producer receives not less than the minimum beet price and the manufacturer receives not less than the intervention price. For quantity B, the minimum price of the producer is lower and the manufacturer is required to pay the State a production levy (Table 3) which in part is born by the beet grower. This levy is designed to cover or, as the case may be, to limit any costs incurred by the Community in marketing the quantity of quota sugar produced beyond the so-called guaranteed quantity.¹ The production levy may not, however, exceed 30 per cent of the intervention price (Article 27). For quantities of beet exceeding the maximum quota, manufacturers, if not otherwise required by the regulations, determine prices to beet producers in the light of conditions on the world sugar market. Subject to certain conditions, an undertaking may carry forward that part of its production which is outside the basic quota, up to a maximum of 10 per cent of the basic quota, to the following marketing year (Article 31).

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 Community) 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 on the world market from affecting prices ruling within the Community. It does so by a system of import levies and export refunds designed to cover the difference between the prices prevailing outside and inside the Community when transactions - imports or exports - take place with third countries (preamble).

3.11 As regards imports, the system operates on the basis of a "threshold price" for white sugar, raw sugar and molasses fixed each year for the entire Community. It is based on the target price for the Community area having the largest surplus plus charges for transport from that area to the most distant deficit area (Article 13).

3.12 In the case of imports, a levy is charged which is equal to the threshold price less the import price (Article 15). This import price is either a c.i.f. price fixed in advance or, if it is less, the offer price in the case in question (Article 14). Where, on the other hand, the import price (c.i.f. price) is higher than the threshold price and the supply situation so requires, a subsidy for imports may be granted (Article 17).

¹The guaranteed quantity is equal to the human consumption in the Community less the quantity imported on preferential terms (e.g. Lomé) but may in no case be less than quantity A.

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 with the Overseas Countries and Territories (Regulation (EEC) No. 766/68).

3.15 Depending on the methods of application, export refunds are granted either under a general procedure, or by way of competitive tender.

3.16 According to the general rules, periodic refunds are to be fixed every two weeks. The fixing takes into account such elements as the situation on the Community and world markets in sugar, in particular the intervention price, transport costs, trade expenses and packing charges, quotations on the world market, and the economic aspect of the proposed exports (Regulation (EEC) No. 766/68, Article 3).

3.17 The amount of the refund may also be fixed by tender. As a matter of fact, most exports of sugar with an export refund are authorized under the tender procedure (Table 3). In that case a maximum amount of the refund is fixed, taking account of the situation within the Community with regard to the supply situation and prices, prices and potential outlets in the world market and costs incurred in exporting sugar. Any application for a refund which exceeds the maximum fixed is to be rejected. For other applications, the amount of the refund will be that appearing in the respective application (Regulation (EEC) No. 766/68, Article 4). The maximum amount determines also, indirectly, the quantity assigned for each tender.

(b) Some features marking the world sugar economy

3.18 World sugar production reached 92 million tons in 1977 and 1978, and had been steadily increasing from its level of less than 70 million tons in 1969. Total world consumption of sugar also increased from 68 million tons in 1969 to almost 90 million tons in 1979. During the period 1969 to 1979 world trade in sugar varied between 18.5 million tons in 1969 and 28 million tons in 1977 while total world stocks of sugar on 31 December varied between 28 million tons in 1974 and 46.3 million tons in 1978. Sugar prices have been very sensitive to the balance between supply and demand. While for 1970, the annual average of the ISA Daily Price (raw sugar, f.o.b. and stowed Caribbean port in bulk) was 3.68 US cents per pound, the annual average for 1974 reached almost 30 US cents per pound, and the monthly average for November 1974 was more than 56 US cents per pound.¹

¹Annex Tables I and II show developments in production stocks and trade for Brazil, the European Communities and totals for the world 1969-79. Tables III and IV show developments in world market prices: 1969-79.

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	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
1979 prelim.	(3,577)	(2,430)	..	640* 752*	..

Source: The Commission of the European Communities.

* Figures from "The Agricultural Situation in the Community, 1979 Report", pages 256, 257.

3.19 During the period between 1971 and 1974, world consumption exceeded world production and in 1974 world sugar stocks fell to the lowest level in many years. During the same period world prices followed a rising pattern, reaching exceptionally high levels in the third quarter of 1974. In 1975, however, there was a reversal of the supply and demand situation, owing to the fact that world production increased while consumption declined by some three million tons. In 1976 and 1977, world sugar production continued to increase at an even faster rate. In 1977, it was 32 per cent higher than in 1969 and 16 per cent higher than in 1974. In 1977, the crop area of beet was 850,000 hectares greater than in 1974. As to consumption, it too had continued to rise in recent years. The rise was slower, however, than that of production and consequently, in 1978, world stocks reached a record level, exceeding the average level of the 1969-1975 period by 40 per cent. In the summer of 1978, world prices fell to their lowest level since 1971. The situation improved somewhat late in 1978, but remained low until the end of 1979, when prices started to increase rapidly. By the end of 1979 world market prices for sugar were about twice their level of one year earlier and corresponded to the price level in 1975/1976. The main reasons for these developments were a decline in total world production of 3.7 per cent from 1978/1979 to 1979/1980 and an expectation of reduced supplies to be offered on the world market by some major exporters.

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 annexed to the Lomé Convention whereby the European Communities undertook to import at guaranteed prices a total of 1.3 million tons of sugar (refined sugar equivalent) from a number of developing countries.

3.21 In 1978, world trade in sugar was at about the same level as in the preceding years with the sole exception of 1977, during which it established an all-time record, with world exports of more than 28 million tons of sugar (raw sugar equivalent). As 1977 was the year which preceded the entry into force of the new International Sugar Agreement, 1977 (ISA), this had a certain influence on the volume of trade. In 1978, the first year of the provisional entry into force of the ISA, the exporting countries which had acceded to it had to limit their exports to their minimum levels, i.e. 81.5 or 85 per cent of the basic export tonnages provided for by the Agreement, owing to the depressed prices on the world market. These minimum levels were maintained throughout 1979, but early in 1980 following the rapid increase in sugar prices, export quotas under the ISA were suspended. The European Communities, for their part, had not acceded to this Agreement.

IV. Findings

(a) Introduction

4.1 The Panel has carried out its considerations of the matter referred to it for examination in the light of its terms of reference as expressed in paragraph 1.3. It has based its considerations on arguments presented to it by the parties to the dispute (Chapter II) and on various factual information which was available to it, notably that concerning the sugar market system of the European Communities and features of the world sugar market (Chapter III).

4.2 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 out of the European Agriculture Guidance and Guarantee Fund. The Panel considered this Fund to be a government fund of the type mentioned in the Notes and Supplementary Provisions concerning Article XVI:3.¹

4.3 The Panel therefore found that the Community system for granting refunds on exports of sugar must be considered to be a form of subsidy and which was subject to the provisions of Article XVI. The Panel noted that the parties to the dispute were in agreement with this interpretation.

(b) The Complaint

4.4 The Panel understood the complaint of the Government of Brazil to be that the application of the Community system for granting refunds on exports of sugar has resulted in that the European Communities had more than an equitable share of world export trade in sugar, in terms of Article XVI:3, had caused or threatened to cause serious prejudice to Brazilian interests in terms of Article XVI:1 and that the application of the Community system was not in conformity with the guidelines for joint action stipulated in Article XXXVIII to further the principles and objectives of Article XXXVI.

¹"Notwithstanding such determination by the CONTRACTING PARTIES, operations under such a system shall be subject to the provisions of paragraph 3 where they are wholly or partly financed out of government funds in addition to the funds collected from producers in respect of the product concerned." (BISD Volume IV page 68.)

(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 in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products including in particular measures destined to attain stable, equitable and remunerative prices, thus permitting and expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development."

"9. The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly." (BISD, Volume IV, pages 53 and 54.)

(iv) Article XXXVIII:1

"1. The contracting parties shall collaborate jointly, within the framework of the Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI." (BISD, Volume IV page 56.)

(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 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 in light of the circumstances related to the present complaint try to determine any causal relationship between the increase in Community exports of sugar, the developments in Brazilian sugar exports and other developments in the world sugar market, and then draw a conclusion on that basis.

4.7 The Panel furthermore noted Article 10:2(a) and (b) of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, and which has been accepted by the parties to the dispute:

"2. For purposes of Article XVI:3 of the General Agreement and paragraph 1 above:

- (a) 'more than an equitable share of world export trade' shall include any case in which the effect of export subsidy granted by a signatory is to displace the exports of another signatory bearing in mind the developments on world markets;
- (b) 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 shall be taken into account in determining 'equitable share of world export trade';"

4.8 The Panel also noted that Brazil had presented its complaint before final data for 1978 were available and that it would even at the conclusion of its work only have preliminary data for 1979 at its disposal. The Panel nevertheless felt that it was appropriate to include not only 1978, but to the extent possible, also 1979 in its considerations, as the Community export system with respect to sugar had remained the same as in previous years and the effects of the application as the system may have been even more significant than previously. Furthermore, the complaint by Brazil also covered threat of serious prejudice. The Panel therefore felt it appropriate to take into consideration any available information about developments in recent periods and that this would be in conformity with earlier practice.¹

4.9 Table 4 shows the shares of world export trade for the European Communities; Brazil and "Others" for the two periods which the Panel considered to qualify as "previous representative periods", namely 1971-73 and 1972-74 and for the years 1976 to 1979, to which the complaint referred. The Panel found that whichever of the two previous representative periods is used for comparison, the outcome would be fairly similar.

¹BISD Twenty-Fifth Supplement, page 48. L/4833 paragraph 4.13.

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 1977 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, the market share of Brazil was comparable to that in 1977 but remained inferior to the averages for the years 1971-73 and 1972-74. Preliminary data for 1979, available to the Panel, confirmed that the situation of 1978 had persisted in 1979 available to the Panel. It was evident that the increase in Community sugar exports had been effected through the use of subsidies. The Panel therefore felt that the Community share of world export trade in sugar had increased in such proportions that a thorough examination of the situation was required.

(ii) Displacement

4.12 The Panel undertook systematic analysis of data for imports of sugar into a number of countries and also examined these data in detail with the parties to the dispute. The cases thus examined were selected markets which the representative of Brazil claimed constituted traditional outlets for Brazilian sugar had traditionally been offered for sale (countries listed in Annex Table IX). The purpose of the analysis and examination was to determine whether subsidized Community sugar exports had displaced Brazilian exports of sugar.

4.13 Table 5 shows total Brazilian and Community shares and that for "others" for a selection of markets examined (countries listed in Annex Table IX). For this selection of markets as a whole, the Community share started to increase in 1976 and was for the years 1978 and 1979 around two and a half times of what it had been in previous representative periods. Brazil's share which had been extremely low in 1976 (for reasons mentioned above), showed a good recovery in 1977, and the share then attained was more or less kept in the following years, but nevertheless remained inferior to the

Brazilian share of the market in 1971-73 and 1972-74. The Panel therefore found that there was a change in the relative positions of Brazil and the European Communities for this group of markets as a whole.

TABLE 5

Shares of the Total of Imports into Selected Markets
(Countries Listed in Annex Table IX)
(in per cent of totals)

	European Communities	Brazil	Others
1971-73 (average)	6.5	15.7	77.8
1972-74 (average)	6.0	18.1	75.9
1976	8.4	5.6	86.0
1977	8.9	11.4	79.7
1978	15.6	11.3	73.1
1979 (preliminary)	13.9	9.7	76.4

Source: Annex Table IX.

4.14 Systematical analysis of trade statistics for individual markets did not produce statistically significant conclusions, and it was evident that developments had also been influenced by factors such as particular trade relations, competition from other exporters and prevailing market prices. The size and destination of Brazilian sugar exports in 1978 and 1979 were apparently also influenced by national sugar export policy. As an illustration it can be mentioned that in the major outlet for Brazilian sugar, i.e. the United States market, Brazilian sales which had been very low in 1975 and 1976 reached a level comparable to that of 1971-73 in 1977 and 1978. In 1979, Brazilian sales of sugar to the United States market exceeded 1 million tons, nearly twice the sales in previous years, resulting in Brazil having a share of that market of almost one fourth.

4.15 An examination of individual markets indicated that there was simultaneously a decline in Brazilian sales and an increase in imports from the European Communities only in a few markets (e.g. Lebanon, Morocco, Sudan and Tunisia), but in the majority of markets examined it was not possible to establish a clear relationship between developments in imports of sugar from Brazil and developments in imports of sugar from the European Communities. This systematic analysis thus did not provide clear and general evidence that Brazilian supplies had been directly displaced by subsidized exports of Community sugar.

(iii) Special factors

4.16 The entering into force on 1 January 1978 of the International Sugar Agreement, 1977, apparently had a strong impact on the volume of world sugar trade in 1977 already. In 1977, total world exports of sugar exceeded 28 million tonnes, with an increase of one quarter from the previous year, the largest annual increase ever recorded. These developments were due to efforts made by exporters to ship as much sugar as possible before the entry into operation of export quotas under the ISA on 1 January 1978, and also to an expectation prevailing among refiners and importers that prices might increase with the entry into force of the ISA.

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 members of the ISA. Among the non-members to the ISA, the European Communities accounted for nearly three quarters of the total supplies coming from these countries in 1978.² As a consequence, supplies of sugar to the world market remained high in 1978 and 1979 and prices did not improve before late in 1979. Major exporting members of the ISA were thus unable to obtain any immediate benefits of their efforts to stabilize the world sugar market. Export quotas were maintained at their minimum level in 1978 and 1979, and it was impossible to increase basic export tonnages as well. In this situation, Brazil was committed to limit its exports to 81.5 per cent of its basic export tonnages under the ISA, but this reduced quota was filled and even exceeded slightly both in 1978 and 1979.

(iv) Effects of the operation of Community regulations

4.18 The Panel proceeded to an examination of whether the increase in 1976 to 1979 in Community sugar exports, notably the increase in the Community share of world sugar export trade could be contributed to the operation of the Community regulations. With regards to production, the Panel noted that the Community system may put an economic but not necessarily legal limit to the size of the production.

4.19 Some basic data for production, trade, consumption and stocks of sugar, for Brazil and the European Communities are shown in Annex Table I, and, for comparison, world totals for the same in Annex Table II. 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 Brazilian sugar production showed a stronger increase over the same period.

4.20 Graph 1 shows developments in Community sugar production, consumption and target prices from 1969 to 1979. Up to 1977, the Community area under sugar beet increased with the increase in the Community target price, the price policy, apparently being a stimulating factor. Although the increase in the target price was halted in 1977, and the area of sugar beet was reduced, total Community sugar production continued to increase because of higher average yields. Preliminary data for 1979 indicated that area, yields and total production remained at a level comparable to that of 1978.

4.21 It can be seen from Annex Table I and Graph 1 that there was a downwards shift in the Community sugar consumption in 1975 contributing together with a continued growth in production, significantly to increase exportable surpluses of sugar.

4.22 The Panel noted that the fixing of production quotas was of decisive importance for the application of the price system for sugar in the European Communities. It also noted that in 1975 the basic quota was raised from 7.82 million tons to 9.14 million tons and the maximum quota was maintained at 145 per cent of the basic quota. The basic quota was then maintained in the following years, but the maximum quota was reduced to 135 per cent in 1976 and reduced further to 127.5 per cent in 1978 and maintained at that level for 1979/80 (Annex Table VIII).

¹Article 41 of the International Sugar Agreement, 1977.

²ISO Annual Report for the year 1978, page 32.

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 total amount spent by the European Communities on refunds of sugar in 1977, 1978 and 1979. This was partly due to larger Community exports entitled to refund and to falling world market prices, but partly also due to the annual increases in the Community market intervention price for sugar. When examining the question of whether Community export refunds could be subject to budgetary limits, the Panel noted that if the appropriations originally allocated to the Guarantee Section of the European Agriculture Guidance and Guarantee Fund 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.

4.26 The Panel felt that in those conditions neither exportable surpluses or sugar nor the amount of export refunds 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.

(d) Effect on world market prices

4.27 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 and 1979 - Table 3). 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. In such situations, Brazilian sugar, (notably white sugar), which in the absence of long-term contracts was offered at prevailing world market prices (i.e. London and New York quotations), was at a disadvantage and had difficulties in competing with subsidized Community sugar (e.g. in Iran, Israel, Kuwait and Nigeria).

4.28 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 (Annex Table VII). However, towards the end of the crop years 1975/76, 1976/1977, and 1977/1978 the weighted average refund had tended to exceed that difference (Annex Table VII). 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.

4.29 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, inevitably must have had an amplifying effect on the depressed world market prices for sugar, both white and raw sugar.

(e) Articles XXXVI and XXXVIII

4.30 The Panel noted the principles and objectives stipulated in Article XXXVI and the guidelines for joint action given in Article XXXVIII to further the objectives set forth in Article XXXVI, and that Brazil being a developing country could expect to enjoy benefits in accordance with these provisions. In this connection, the Panel also noted that the European Communities has made considerable exports in favour of a number of developing countries and had pursued an active and constructive policy towards the setting-up of international agreements.

4.31 However, the Panel also noted that in the particular situation in the sugar market in 1978 and 1979, when Brazil and other developing countries took action through the ISA to improve the market situation, the European Communities increased its subsidized sugar exports to an extent that inevitably reduced significantly the effects of the measures taken by Brazil and other sugar exporters. It was evident that the magnitude of subsidized Community sugar exports together with the extensive use of maximum export refunds, tended to accentuate the detrimental effect on export earnings of other sugar exporters directly faced with the competition from Community sugar. The Panel felt that even though the European Communities was not a party to the ISA and not bound by the same obligations as members to that Agreement, it would nevertheless be appropriate to collaborate with other contracting parties in conformity with the guidelines given in Article XXXVIII and thus further the principles and objectives of Article XXXVI.

V. Conclusion

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

(a) The Panel found that the Community system for granting refunds on exports of sugar must be considered to be a form of subsidy and thus subject to the provisions of Article XVI, and it noted that the parties to the dispute were in agreement with this interpretation.

(b) The Panel noted that Brazilian sugar exports had been extremely low in 1976, but that this was due to other factors than competition from Community sugar and furthermore that Brazilian exports in 1977 corresponded roughly to the quantities available for export. The Panel therefore concluded that although the Community share of world export trade in sugar had increased somewhat in 1976 and 1977, this increase was not to be considered as unusual and did not explain the reduced market share of Brazil in these years.

(c) For the years 1978 and 1979 (according to preliminary figures), the Panel found that the Community share of world export trade in sugar was significantly higher than in previous representative periods, while the market share of Brazil was comparable to that of 1977, but remained inferior to averages for previous representative periods. The Panel furthermore found that for a group of markets where it was believed to have been a direct competition between Community and Brazilian sugar, the Community share had increased even stronger, while the share of Brazil basically maintained its level of 1977. Further expansion in Brazilian exports in 1978 and 1979 was limited by Brazilian commitments under the ISA, but Brazil filled and even exceeded slightly its reduced ISA export quotas in both years.

(d) A close examination of individual markets did not provide clear and general evidence that Community exports had directly displaced Brazilian exports. There was simultaneously a decline in Brazilian sales and an increase in imports from the European Communities in only a few markets of minor importance.

(e) Therefore, in light of all the circumstances related to the present complaint and especially taking into account the difficulties in establishing clearly the causal relationships between the increase in Community exports, the developments of Brazilian sugar exports and other developments in the world sugar market, the Panel found that on the basis of the evidence available to it in this particular case, it was not able to conclude that the increased share had resulted in the European Communities "having more than an equitable share of world export trade in the product", in terms of Article XVI:3.

(f) The Panel concluded that in view of the quantity of Community sugar made available for export with maximum refunds and the non-limited funds available to finance export refunds, the Community system of granting export refunds on sugar had been applied in a manner which in the particular market situation prevailing in 1978 and 1979, contributed to depress sugar prices in the world market, and that this constituted a serious prejudice to Brazilian interests, in terms of Article XVI:1.

(g) 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 that the Community system had not been applied in a manner so as to limit effectively neither exportable surpluses nor the amount of refunds granted. Neither the system nor its application would prevent the European Communities from having more than an equitable share of world export trade in sugar. The Panel, therefore, concluded that the Community system and its application constituted a permanent source of uncertainty in world sugar markets and therefore constituted a threat of serious prejudice in terms of Article XVI:1.

(h) The Panel recognized the efforts made by the European Communities in complying with the provisions of Articles XXXVI and XXXVIII. It nevertheless felt that increased Community exports of sugar through the use of subsidies in the particular market situation in 1978 and 1979, and where developing contracting parties had taken steps within the framework of the ISA to improve the conditions in the world sugar market, inevitably reduced the effects of the efforts made by these countries. For this time-period and for this particular field, the European Communities had therefore not collaborated jointly with other contracting parties to further the principles and objectives set forth in Article XXXVI, in conformity with the guidelines given in Article XXXVIII.

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