

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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

Communication from the European Communities

The following text was submitted by the representative of the European Communities at the Council meeting on 29 May 1985.

Observations of the European Communities

Introduction

This is the first case - in our knowledge - where a panel has had to interpret and apply the conclusions agreed by the 1955 working party, namely that:

"... a Contracting Party which has negotiated a concession under Article II may be assumed, for the purposes of Article XXIII, to have a reasonable expectation failing evidence to the contrary that the value of the concession will not be nullified or impaired by the Contracting Party which granted the concession by the subsequent introduction of increase of a domestic subsidy on the product concerned". (BISD 3S/224)

We submit that, in their report, the panel:

- (a) failed to consider - as it would have been appropriate in a case of subsidies - the relevant provisions of the Subsidy Code;
- (b) made an inappropriate application of the fundamental condition indicated in the 1955 text, namely the actual existence of a binding.

A. The question of the "adverse effects"

In our view the panel, basing itself both on the 1955 text and on the Subsidy Code, should have ruled that adverse trade effects are a precise condition, amongst others, to be demonstrated by the plaintiff in cases where impairment of a concession is claimed as a consequence of a domestic subsidy.

On the contrary, in deciding to include "neither the statistical data, nor its written analysis of this data in its report to the CPs" (paragraph 77) the panel deprives the CONTRACTING PARTIES of the necessary information which would enable them to judge if "adverse effects" to the interests of the United States have or have not been caused.

In doing so, the panel did not properly consider Article 8 of the Code which says, at paragraph 4(b) that:

"The adverse effects to the interests of another signatory required to demonstrate nullification of impairment of serious prejudice may arise through the effects of the subsidy in displacing or impeding the imports of like products into the market of the subsidizing country".

B. The existence of a binding

(a) In a case of "impairment of a tariff concession" the existence of a binding would seem to be the first condition to be fulfilled. Indeed the 1955 text is clear on that point.

In actual fact, the panel did not find any "impairment" as far as raisins are concerned. The EEC has to put on record its serious objections on a question of principle, as the panel concluded on the issue of raisins on the basis of the 1955 text as if a tariff concession given by Greece was in existence.

(b) It should be noted that the rationality of the 1955 text, if any, is that of protecting the balance of concession exchanged between partners in a negotiation.

No exchange, no concession, no protection.

In the case of raisins,

- clearly, the Community of Six Members and the United States exchanged reciprocal concessions in 1962;
- clearly the Community of Nine Members did the same in 1979.

However, Greece was never part of this exchange, and never received reciprocal advantages from it.

Why, therefore, should Greece be restricted in respect of domestic subsidies on raisins?

(c) This question is connected with that of a "reasonable expectation".

It is well known that nobody can sell what it does not possess. When the EEC/6 or the EEC/9 sold a concession on raisins, they could only engage themselves, and not Greece.

Greek domestic subsidies on raisins have been operated for a long time. Greece did not enter into any commitments on them and therefore, obviously, did not receive any "payment" in exchange. It follows that, in our view, Greece is still legally free to increase them on the grounds of the 1955 text.

To imply that Greece is bound to adopt a certain behaviour on domestic subsidies on raisins because of the 1955 text would mean that the United States would then receive more than they actually paid for.