

GENERAL AGREEMENT ON TARIFFS AND TRADE

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(Report of the Sugar/Brazil Panel)

It should be noted first of all that in the course of the Panel's work, no contracting party expressed any intention of making representations to that body, although an invitation to that effect had been extended. At the beginning of its conclusions (sub-paragraph (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.

If this is a matter of a form of subsidy applied on a primary product such as sugar, the Panel's finding means that the Community system for granting refunds on exports is compatible with Article XVI:3 (beginning of the second sentence). In addition, Article XVI:3 stipulates that application of the system must remain consistent with the rule of "equitable share".

Now, the Panel examined this question at length. After recalling the Panel's terms of reference, the Introduction to the Report summarizes the main arguments adduced by the two parties; in this context the Brazilian representative claimed that the export subsidies granted by the Community had allowed the latter to obtain a more than equitable share of the world trade in sugar, to the detriment of Brazil; and that the European Economic Community had thereby caused serious prejudice to the interests of Brazil and hampered efforts being made to stabilize the world market by means of the International Sugar Agreement, 1977.

Taking into account the importance of the matter and the direct link between the concept of "equitable share", on the one hand, and that of prejudice and hampering, on the other hand, the Panel examined in great depth the world export trade in sugar and every problem concerning "equitable share". It should be underlined that the examination was made on the basis of factual data and fairly comprehensive statistics submitted to the Panel, and taking into account a list of many countries and their grouping by category, selected and determined by Brazil.

^{1/} Statement made by the representative of the European Communities at the Council meeting held on 10 November 1980.

The conclusions reached by the Panel (sub-paragraphs (b), (c), (d), (e)) afford a categorical reply to the main question concerning "equitable share". Indeed, the Panel did not or could not reach a finding of any violation by the Community of Article XVI:3 ("equitable share").

For this reason, the contentions by Brazil concerning serious prejudice caused to its interests and the hampering of attainment of the objectives of the International Sugar Agreement (1977), in respect of stabilization of the world market, become groundless.

After the above-mentioned findings, the Panel added (sub-paragraph (f) of the conclusions) that the Community system of granting export refunds on sugar had been applied in a manner which contributed, in the particular market situation prevailing in 1973 and 1979, to depress sugar prices in the world market, and that this constituted a serious prejudice to Brazilian interests, in terms of Article XVI:1.

In this connexion it should be noted that: the Panel did not carry out any systematic examination concerning price formation in the world market for sugar and the multiple factors that influence price levels, including the rôle of each partner in world export trade.

Pursuing this analysis of the conclusions - sub-paragraph (g) - one may note that the Panel added 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". The Community is of the opinion that by that affirmation the Panel has entered into manifest contradiction with its own conclusions under sub-paragraphs (a), (b), (c), (d), (e) from which it is clearly apparent that the Community system is recognized under Article XVI:3, like any other system or form of subsidy applying on a primary product.

With respect to application of the system, the Panel recognized that such application had not allowed the Community to obtain more than "an equitable share" of the world export trade in sugar during the period taken into consideration 1976-1977-1978-1979.

Lastly, in sub-paragraph (h) of its conclusions the Panel, while recognizing the efforts made by the Community for complying with the provisions of Articles XXXVI and XXXVIII, found that during the period 1978 and 1979 the Community had not collaborated jointly, in the particular field of sugar, with other contracting parties to further the principles and objectives set forth in the said Articles.

In this connexion, the Community wishes to underline that this finding by the Panel is essentially motivated by the Community's non-participation in the International Sugar Agreement (1977) which cannot, in itself, be considered as non-compliance with a commitment.

Final considerations

The Community co-operated to the full in the work of the Panel in a spirit of objectivity and of respect for the GATT procedures. It expresses its appreciation to the Panel for the difficult task accomplished.

Nevertheless, the Community feels bound to state that the conclusions of the Panel set forth in sub-paragraphs (f) and (g) are groundless and constitute a source of misunderstandings, for the reasons expounded above.