

GENERAL AGREEMENT ON TARIFFS AND TRADE

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STATEMENT BY BRAZIL
ON THE REPORT CIRCULATED IN DOCUMENT L/5011^{1/}
(Report of the Sugar/Brazil Panel)

1. The matter we have before us is already quite familiar to the Council. I therefore do not intend to take the Council's time by delving into the problems that have arisen, as a result of the European Communities' system of refunds on exports of sugar, in the world trade of sugar. These are well known to the Council. I shall limit my remarks to the Report of the Panel which is now before us.
2. Allow me first to extend our gratefulness and appreciation to the Chairman of the Panel, Ambassador Kaarlehto, and its members, Mr. Eberhard and Mr. K.C. Lee, who replaced Mr. Parman. They have worked with a high sense of responsibility with enormous patience and utter dedication to their job.
3. My remarks on the report presented by the Panel will deal mainly with the conclusions set out in Section V of the report.
4. We regret that, in the first part of these conclusions (items (a) to (e)), 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 (of EC exports) 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". The Brazilian representative himself had been the first one to point to the difficulty of establishing, under strict and formal requirements, judicial or quasi-judicial evidence of direct displacement, in a given country, especially when dealing with such complex a market as the international sugar market. This problem, which involves the methodology for establishing what is a "more than equitable share of world export trade" under Article XVI:3, is one which should deserve the attention of the CONTRACTING PARTIES in the future.
5. Nevertheless, the reports of the two Panels - on the Australian and on the Brazilian cases - show beyond any doubt that the significant increase in Community sugar exports was made possible by the use of subsidies. In other words: had it not been for these subsidies, the Communities would not have reached the position of a top net exporter of sugar in the world market that it now enjoys, after having

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

traditionally been a net importer. Therefore, it was through the use of subsidies that a group of developed countries - with ample financial resources available to them - displaced exports from other countries to carve out its dominant share in the world sugar export market.

6. The conclusions of the Panel relating to the other aspects of the Brazilian complaint - Article XVI:1 and Part IV - are, however, absolutely clear and irrevocable.

7. Under Article XVI:1, the Panel found that the Community system of granting export refunds 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", (item (f)).

8. The Panel went on to find that "neither the (EC export refund) system nor its application would prevent the European Communities from having more than 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", (item (g)).

9. It should be noted that in the latter case, the Panel did not refer to the "particular market situation prevailing in 1978 and 1979". It is therefore obvious that the Community system of export refunds and its application, in their present form, constitute a permanent threat of serious prejudice, which can, at any moment in the future, result in serious prejudice to Brazil and other exporting countries. To sum up, the Panel found that the Community system did constitute a serious prejudice to Brazilian interests and, more, that it still constitutes a permanent source of uncertainty and a threat of additional serious prejudice.

10. The conclusions of the Panel regarding the obligations of the Communities under Part IV of GATT are equally clear. It noted the fact that developing countries parties to the ISA had taken steps to improve the conditions of the world sugar market, and that the increased Community exports of sugar through the use of subsidies in the particular market situation in 1978 and 1979 had reduced the effects of these efforts. It therefore concluded that, "for this time-period and for this particular field, the European Communities had 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", (item (h)).

11. As in the case of the Panel's conclusion (f) on the serious prejudice suffered by Brazil in terms of Article XVI:1, the Panel's conclusions (h) regarding Part IV stipulate the time-frame under which they were reached. This is not to say, however, that the Communities, in this particular field, are now collaborating in terms of Part IV. We might well ask whether it will do so in the future.

12. This lack of co-operation, this disrespect for principles and guidelines formally accepted in GATT and elsewhere has increased the burden of developing countries exporters of sugar directly affected by the situation in the international sugar market - and should be a grave concern to the membership of GATT as a whole, and to developing countries in particular.

13. The responsibilities of the Council in this situation are self-evident. May I refer to paragraphs 21 to 23 of the Understanding regarding dispute settlement, adopted by the CONTRACTING PARTIES on 28 November 1979, and which emanated from the Framework negotiations in the MTN. The CONTRACTING PARTIES are expected to take action on reports of panels. Paragraph 21 specifies that, in the case of a complaint by a less-developed contracting party, "the CONTRACTING PARTIES shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of less-developed contracting parties concerned". This provision seems to be particularly relevant in this case.

14. Paragraph 22 states that CONTRACTING PARTIES shall keep any matter on which they have made recommendations or given rulings under surveillance, and provides for further action when recommendations are not implemented. In the case of less-developed contracting parties, paragraph 23 also provides for further action appropriate to the circumstances.

15. After the adoption of the report today, the CONTRACTING PARTIES should call on the Communities to urgently take the necessary steps to modify its subsidization of sugar exports in such way as to correct the situation that is described in the Panel's report.