

GENERAL AGREEMENT ON TARIFFS AND TRADE

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EUROPEAN COMMUNITIES - REFUNDS ON EXPORTS OF SUGAR

Article XVI:1 Discussions

Report to the Council

1. Following a decision adopted by the Council on 10 November 1980^{1/} and also a decision adopted by the CONTRACTING PARTIES at their thirty-sixth session held on 25 November 1980^{2/} the Director-General organized in a Working Party, Article XVI:1 discussions between the European Economic Community and the CONTRACTING PARTIES on the possibility of limiting EEC subsidization of sugar exports. The Working Party met on 4-5 December 1980, on 27-28 January 1981, and on 9 February 1981, under the Chairmanship of the Director-General. All contracting parties were invited to attend the meetings.
2. A list of documents laying out the background leading to the establishment of the Working Party (Annex I) and a list of representatives (Annex IV) are annexed to the present report.

^{1/}"With regard to the report of the GATT Panel entitled 'European Communities: Refunds on exports of sugar - Complaint by Australia' (document L/4833) adopted by the CONTRACTING PARTIES on 6 November 1979 and considering the conclusions of the Panel (paragraphs (g) and (h)) and considering as well the debates which took place in the Council and the reports submitted by Australia and EEC on their exchanges of views under the terms of paragraph 1 of Article XVI of the General Agreement, the CONTRACTING PARTIES request the EEC to discuss with them the possibility of limiting the subsidization.

The Director-General is invited to organize such discussions in a working party and to submit a report to the Council within three months." (C/M/144, item 8, page 10).

^{2/}"(a) With regard to the report of the GATT Panel entitled 'European Communities: Refunds on Exports of Sugar, Complaint by Brazil' (document L/5011) adopted by the Council on 10 November 1980, and considering the conclusions of the Panel (paragraphs (f), (g) and (h)), and considering as well the debate which took place in the Council, the CONTRACTING PARTIES request the EEC to discuss with them the possibility of limiting the subsidization.

(b) The Director-General is invited to organize such discussions in a working party and to submit a report to the Council within three months." (SR.36/2, item 11(a)(ii), page 17).

3. At the outset of the discussions, the representative of the EEC reported that world market prices for sugar were currently higher than the EEC intervention price, and consequently the Community was not giving export refunds on sugar but rather was applying an export levy on some of its exports. The interest of the present discussion was to be seen in the perspective of an eventual drop in world market prices in the future. In this context, he believed that the stimulus to sugar production in the EEC that followed the period of high world market prices in 1974/1975 would not be repeated, following the present high price record.

4. The representative of Australia expressed the view that the Working Party was not concerned with the situation in the EEC when sugar prices were high. Rather, it was when prices were low that the EEC system of export subsidies operated in such a way as to be a source of prejudice to the trade of contracting parties. The Working Party was holding these discussions with the EEC to determine what measures would be taken to change the EEC system so as to remove the prejudice, or the threat of prejudice, when world sugar prices were such that subsidies once again became payable on EEC sugar exports.

5. The representative of the EEC recalled that since 1978/1979, increases in EEC sugar support prices had been modest and below rises in inflation and production costs. He believed that the Community price policy on sugar would remain prudent in the future. A decision by the EEC Council on prices for 1981-1982 would come sometime later in the spring of 1981.

6. The EEC representative stated that no increase in the EEC maximum guaranteed quotas ("A" and "B" quotas) was foreseen. He explained that, in practice, "A" quota and a portion of "B" quota sugar together covered internal sugar consumption in the Community. The remainder of "B" sugar then could be exported and would be eligible for refunds if world market prices were to fall below the EEC intervention price. "C" sugar did not benefit from any EEC guarantee and was completely subject to market forces. As the trend in the volume of sugar exported in the world was on the rise, he therefore argued that a decision on the part of the EEC not to increase its guaranteed sugar quotas, was significant.

7. The EEC representative explained that the amount of the EEC export refund on sugar was intended to cover the difference between the EEC intervention price on the one hand and the world market price on the other. In determining the latter, he stated that the EEC relied on average price quotations on the Paris and London Exchanges. He expressed the EEC wish to co-operate with other exporting countries to improve the Community's knowledge of prices on the world market or on different specific export markets, so as to avoid the risk of the EEC overcompensating the difference between the internal price and the world market price.

8. The EEC representative stated that another positive sign of the Community's desire to limit its export refunds to the strict minimum was that budgetary credits available for refunds were no longer unlimited as they had been during the seventies.

9. The representative of the EEC stated that the Community was in conformity with its obligations under GATT Article XVI:1 as it had notified its export refund scheme on sugar in the past and was engaged currently in discussing the possibility of limiting the subsidization in the context of the Working Party. He stressed that in an undertaking of this kind, full recognition should be given to contracting parties' rights and obligations under the General Agreement.

10. In responding to the point made by the EEC representative that the only obligation on the EEC under Article XVI:1 was to discuss the possibility of limiting subsidization, the Australian representative drew attention to the fact that the wording of paragraph 1 of Article XVI was essentially the same as in the United States (1945) Draft (Article 25) and in the Havana Charter. In discussions on the wording at the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment ("London Report" October-November 1946 - EPCT/1-34) it is recorded that:

"(a) In general, the intention of Article 25 of the United States draft charter is to give members, whose interests are prejudiced by subsidization, the right to full international consideration of their case, to oblige subsidizing members to participate in such consideration and to provide for limiting subsidization so that its prejudicial effects may be reduced;"

"(c) In view of the fact that export subsidies are recognized as being more likely to distort trade than so-called 'domestic subsidies' the Article looks toward the early elimination of the former in most cases, but merely to the limitation of the latter. Nevertheless, it is emphasized that the Article envisaged gradual rather than sudden modification of subsidies in cases where such modification calls for substantial economic and social adjustment in the territories of affected members"; and

"(d) (II) The word 'limiting' in the last sentence of paragraph (I) of the revision is used in a broad sense to indicate maintaining the subsidization at as low a level as possible, and the gradual reduction in subsidization over a period of time where this is appropriate."

11. The Australian representative also drew attention to document L/627 of 24 April 1957 relating to a complaint by Denmark under Article XVI:1 about subsidized egg exports from the United Kingdom. Denmark, supported by the Netherlands, Belgium, Germany and Sweden, contended that the United Kingdom was obliged under Article XVI to take action "with a view to limiting the effects of the subsidization". The United Kingdom accepted that it did have such an obligation and the complaint was satisfactorily resolved without further reference to the CONTRACTING PARTIES. In the view of the Australian representative, the intention of the final sentence of paragraph 1 of Article XVI was therefore to obtain a statement from the subsidizing contracting party of what action it intended to take to remove the serious prejudice or the threat of prejudice.

12. The representatives of Argentina, Australia, Brazil, Cuba, the Dominican Republic and New Zealand noted that the statements made by the EEC did not include any reference to actual measures that the EEC intended to take to limit its subsidization of sugar exports and thus remove the prejudice and/or threat thereof found to exist by the Panels.

13. The representatives of Australia, Brazil, Cuba and the United States raised specific points and questions on the possibilities for limiting subsidization of Community exports of sugar and thus removing the threat of prejudice which had been found to exist. The various points raised in the Working Party covered a range of possibilities related to the determination of the refund and to the determination of exportable quantities. An illustrative list of points and questions raised and of specific comments made by some representatives, is annexed to this report. (Annex II.)

14. With respect to the determination of the refund, the Working Party discussed possibilities of determining the prices on the world market in accordance with incontestable criteria so as to avoid over-compensation; co-operation, in particular through regular consultation with regard to price formation on certain markets; taking account of traditional trade flows when examining economic aspects of the proposed exports; reducing the intervention price for white sugar and for raw sugar in the light of the world market situation; giving some transparency to partial tenders in respect of the refund; limiting the tonnages awarded, taking account of the world market situation and establishing an overall financial ceiling for refunds.

15. Concerning the determination of exportable quantities, the Working Party discussed possibilities of reducing quota A before 1986; reducing quota B before 1 January 1984, depending on the world market situation; increasing production levies between now and 1986, in the light of the world market situation; extension of the obligatory storage of sugar C in such a way that sugar C would no longer be exported when the world price fell below a price to be determined and of initiating negotiations within the ISA regarding the basic export tonnage (BET).

16. The representative of Brazil also submitted examples of concrete measures that could be taken by the EEC, in order to limit the subsidization of sugar exports, in terms of Article XVI:1.

17. At the second meeting of the Working Party, the EEC representative presented a document elaborating further the EEC position and which is annexed to the present report (Annex III). In this document the EEC noted that with regard to the possibility of limiting the refund on exports of sugar from the EEC, account must be taken of the Community rules for the sugar market, which include a price system, a production quota system and a production levy.

18. As far as the amount of the EEC export refund on sugar is concerned, the only real possibilities for influencing it depended on the levels of the EEC fixed internal prices and the world market prices for sugar. A theoretical possibility for limiting the export refund would require unilateral action by the EEC to fix its internal prices at a specified level. In this respect, it was to be noted that internal prices decreased in real terms during the last years. A second theoretical possibility would depend on determining world prices as precisely as possible and in this context the EEC was prepared to co-operate with the other sugar exporting countries.

19. As for the possibility of limiting the quantities for which an export refund might be granted the EEC pointed out that the B quota was the only means of influencing the volume of exports with refunds. Such a quota had been reduced from 35 per cent to 27.5 per cent of the A quota since the 1978/79 marketing year.

20. The EEC representative also drew attention to the decision taken by the EEC Council in April 1980 and put into effect by Regulation (EEC) No. 1592/80, according to which all expenses related to refunds of sugar produced in the EEC in excess of internal consumption would be covered by levies on producers. This meant that there would no longer be any net FEOGA disbursements for financing export refunds for sugar produced in the EEC and exports of such sugar would not benefit from any aid in economic terms apart from Community obligations related to the imports of ACP sugar.

21. The representatives of Australia and Brazil expressed the view that the replies given by the Community representative to points and questions raised at the initial meeting indicated that the EEC would neither make any firm undertakings as regards the level of internal support prices for sugar, nor undertake to reduce meaningfully the quantities of sugar eligible for export refunds, and furthermore a number of points and questions had received no response from the Community representative. The representatives of Argentina, Colombia, Cuba, the Dominican Republic and Nicaragua shared this view.

22. As to undertakings on the level of internal support prices for sugar or on the limitation of quantities of sugar eligible for export refunds, the EEC representative underlined that contracting parties have no obligation under Article XVI:1 to make such undertakings. The EEC representative had already indicated the measures taken by the EEC regarding internal prices and the B quota production which have an effect on the amount available per tonne for export refunds as well as on the global amount of export refunds.

23. The representative of Australia stated that the Community's report to the Council (L/5032) set out a number of "new developments since the 1976-1978 period examined by the Panel" which had been brought to the attention of Australia during bilateral discussions. The Australian report (L/5031) made it quite clear that the views expressed by the

Commission in the bilateral discussions on modification of the EEC sugar régime "would not remove the serious prejudice and threat of prejudice that its system had been found to cause". It was after consideration of those two reports (and bearing in mind debates in the Council) that the Council had set up the Working Party. The EEC response (Annex III) was essentially the same as the advice it gave in the bilateral discussions and if the EEC "reply" was considered unsatisfactory then, it remained so now.

24. The representative of Australia circulated a paper which attempted to compare the EEC response (Annex III) with the list of questions raised by members of the Working Party at its first meeting (Annex II). Only a few questions appeared to have been answered. He furthermore made comments on certain other statements included in the EEC response.

25. The EEC representative replied that most of the points raised concerned the proposal of the Commission to the EEC Council for the new sugar market organization, and therefore were not within the competence of the Working Party.

26. The representative of the EEC elaborated on the financial responsibility of EEC producers for covering the expense of export refunds on sugar. He recalled that during the period 1977/78 and 1978/79 receipts from EEC production levies only partly covered expenditures for EEC export refunds, while in 1976/77 and 1979/80 receipts from production levies exceeded expenditures for export refunds. During this time, the production levy applied only to B quota sugar production. The maximum level of the levy was fixed at 30 per cent of the intervention price. When the levy was insufficient to cover export refund expenditures, the balance was met from Community budgetary funds and this uncovered balance was not carried forward to the next year. However, in cases when the receipts from the production levy exceeded total refunds, then the positive balance was used to offset the production levy in the following year. Similarly, receipts from export levies were used to offset the production levy. So far in the 1980/81 season, no export refunds had been granted and consequently production levies had not been applied. The existing regulation provided, however, for full coverage by production levies of possible export refunds.

27. The EEC representative stated that under the co-responsibility principle agreed to by the EEC Council in April 1980, the entire financial burden involved in exporting surplus quota sugar would fall on Community producers. Except for Community obligations related to ACP sugar, there would be no net disbursements from Community budgetary funds for export refunds on sugar.

28. In response to specific questions raised by the representatives of Brazil and the United States, the EEC representative gave a description of how the system could operate. As this description was based on the EC

Commission proposals, the modalities of which were still subject to final Council approval, the indications given were of a purely technical and illustrative nature. At the beginning of the sugar marketing season, the EC Commission would estimate the probable costs for export subsidization on the basis of forecasts for production, price evolution and trade. If it were estimated that there would be no need for refunds, no production levy would be fixed. On the other hand, if it were estimated that subsidies would be required, a first tranche of the production levy would be applied at a maximum of 2.5 per cent of the intervention price, on both A and B quota sugar production. Towards the end of the marketing season, a second levy tranche could be made on B quota production up to a maximum of 37.5 per cent of the intervention price, if actual experience were to show that receipts from the first tranche were insufficient to cover real costs of export refunds.

29. The EEC representative admitted that there might be a small margin of error in these calculations as a result, for example, of weather variations. At any rate, he explained that if total receipts from both levy tranches were still insufficient to cover expenses for export refunds, the shortfall would be covered by budgetary means, which would have to be recovered from production levies charged in the following year. If, however, production levies charged exceeded subsidy costs, then the surplus would be carried forward to offset production levies in the following year. Similarly, receipts from export levies would be used to offset production levies.

30. The EEC representative explained that under the current price situation of the Community the proposed maxima for the production levies (2.5 per cent on A quota sugar and 2.5 per cent +37.5 per cent on B quota sugar) would suffice to cover export subsidies, were world prices to fall even below levels of the past. He argued that the system of self-financing by producers would affect the volume of the exportable surplus in the Community since with increases in export refunds there would be increases in production levies, thus affecting the returns to producers of B sugar, in particular, who would decide whether they still had an interest in continuing production. The EEC representative also questioned whether the export scheme could be considered to be a subsidy, in light of the self-financing element.

31. The representatives of Australia and Brazil expressed the view that the co-responsibility scheme outlined by the EEC representative, was essentially irrelevant to the issue. It was the nature and extent, rather than the source, of subsidization that was important and relevant to the issue being considered by the Working Party. They noted that the proposal shifted a greater financial burden for subsidization on to producers. However, this in itself would do nothing to eliminate the prejudice and/or threat of prejudice caused by EEC subsidization to the trade of other sugar exporters as the proposed scheme contained no built-in mechanism to limit the subsidization.

In other words, they considered that the scheme would not result in limiting the subsidization either as regards the quantity of Community sugar to be exported with a subsidy, or the amount of the export subsidy itself.

32. In the view of the Australian representative, the contention that shifting a little more of the burden of financing export refunds to production levies would limit the subsidization was irrelevant and unacceptable. The proposed scheme would make more funds available to finance EEC export subsidies, and he felt that the proposed increase in production levies would not act as a disincentive to EEC production bearing in mind, for example, that in 1977/1978 and 1978/1979 B quota sugar production and C sugar production expanded greatly despite the apparently high incidence of the levy on B quota sugar production at the time. The representative of Australia also pointed out that, in any event, there was no certainty that the EEC Council would approve the present Commission proposal as described.

33. The EEC representative pointed out that the sugar régime resulted in the pooling of producers' receipts from sales in internal markets at supported prices, receipts from exports of B quota sugar and receipts from exports of C sugar. Adjustments were made for production levies and export refunds, but according to the principle of producers' co-responsibility there was no net subsidization from the EEC budget. The EEC system was therefore similar to systems applied by other contracting parties whereby receipts from sales on the internal market at fixed prices and receipts from exports under long-term agreements or on-the-spot markets, were pooled.

34. The representatives of Australia and Brazil did not accept the EEC position set out in document Spec(81)5 (Annex III) that ACP sugar imported and re-exported by the EEC was a specific case which must be assessed separately and could not be included in any consideration of the volume of EEC exports on which refunds were granted. The Working Party, in their view, should be concerned with all Community exports and all subsidization available to them. They stated that the adverse effects of subsidized EEC exports on their trade were the same, whether the sugar came from domestic Community surpluses or from re-exports of ACP sugar imported into the EEC. The representative of Australia also stated that most ACP sugar went to the United Kingdom market and was refined and consumed there.

35. The EEC representative thought that the problem of ACP sugar should be dealt with separately. As was well known, the EEC imported 1.4 million tons per year of ACP raw sugar at guaranteed prices and exported an equivalent amount of white sugar. It should be noted that if such raw sugar were to be exported directly by ACP countries on to the international market, it would compete with the raw sugar of other exporting countries.

36. Concerning possible EEC participation in the International Sugar Agreement, 1977 (ISA) the Community representative said that this would naturally be one possibility of co-operation between the EEC and other interested countries. This was, however, a question to be dealt with within the framework of that Agreement. He also mentioned that the EEC was a signatory to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, which was not the case for all sugar exporting countries.

37. The representative of Australia noted that the Commission proposal for new EEC sugar market regulations contained draft provisions which would enable the EEC to limit sugar production if the EEC acceded to the ISA. However, it was still uncertain whether the proposal would be approved and implemented or whether the EEC would join the ISA and even whether the ISA would continue after 1982.

38. The representatives of Brazil and of the Dominican Republic recalled the findings and conclusion of the Panel dealing with the complaint by Brazil with respect to Articles XXXVI and XXXVIII of the General Agreement. The Panel had found that it would in any case be appropriate for the EEC to collaborate with other contracting parties to further the principles and objectives of Article XXXVI (L/5011 paragraph 4.31).

39. A number of representatives expressed an interest in pursuing further the EEC offer to co-operate on price data in order to seek ways of making the world market more transparent and determining offer prices more objectively. No specific proposals as to the modalities for this co-operation were presented. The representatives of Brazil and Cuba stressed that such an offer would have no real meaning in GATT unless this eventual exercise were to be closely connected to measures to be taken by the EEC to limit its subsidization of sugar, as it was clear that the whole purpose of these discussions of the EEC with the CONTRACTING PARTIES was the limitation of the subsidization that caused prejudice and/or threat of prejudice to other sugar exporting contracting parties. The representative of Australia argued that the EEC's offer to co-operate with other exporters to achieve greater market transparency and more objectivity in determining world prices, did nothing to solve the basic problems of the EEC's sugar régime and the threat to international trade which it had caused, and would continue to cause.

40. The representatives of Australia, Argentina, Brazil, Colombia, Cuba, Dominican Republic and Nicaragua expressed the view that in the discussions, the EEC representative had not produced any meaningful possibilities of limiting the EEC subsidization of sugar, which had been found to cause prejudice and/or threat thereof. The Community régime for both production and subsidies available remained an open-ended one, and thus continued to constitute a threat of prejudice in terms of Article XVI:1.

41. In summation, the EEC representative expressed the opinion that the measures taken in the field of prices and quotas, and the inclusion into the EEC common market organization for sugar of a new fundamental element constituted by the total financial responsibility of producers for export refunds, gave a sufficiently large response to the request put to the EEC within the terms of Article XVI:1. In addition, the EEC offered to co-operate on price data in order to seek ways of making the world market more transparent and determining offer prices more objectively. He stressed that in undertaking this exercise of Article XVI:1 discussions, full recognition should be given to contracting parties' rights and obligations under the General Agreement.

42. Other participants in the Working Party did not find that the representative of the EEC had provided sufficient assurances that the prejudice and/or threat of prejudice which had been found by the Panels to exist would be eliminated. It was recognized that the EEC representative had admitted that possibilities existed for limiting the subsidization of exports of sugar. It was also recognized that the Community representative had tried to demonstrate to the Working Party that the principle of co-responsibility and its application would meet the concerns of other contracting parties. These other participants, nevertheless, found that the EEC had not advanced any meaningful possibility of limiting the subsidization. They considered that the EEC régime for both production and subsidies available would continue as an open-ended one and consequently would remain a source of uncertainty in world sugar markets and continue to constitute a threat of prejudice in terms of Article XVI:1.

43. In concluding the discussions, the Director-General noted that the participants in the Working Party held differing views (reference paragraphs 41 and 42) as to the concrete results of the discussions regarding the possibilities of limiting EEC subsidization of sugar exports. However, these discussions had offered the opportunity of discussing in detail the policies of a group of contracting parties in a specific sector. He stated that the views of delegations would be placed on record as concisely and precisely as possible, so as to enable the Council to consider whatever further action might be appropriate.

44. The Working Party expressed its appreciation to the EEC representative for the openness, courtesy and frankness with which he had participated in its deliberations, and for the information and clarifications he had provided.

Annex I

LIST OF BACKGROUND DOCUMENTS

1. L/4833 - European Communities - Refunds on Exports of Sugar - Complaint by Australia - Report of the Panel
2. L/5011 - European Communities - Refunds on Exports of Sugar - Complaint by Brazil - Report of the Panel
3. L/5031 - European Communities - Refunds on Exports of Sugar - Communication by Australia dated 26 September 1980
4. L/5032 - European Communities - Refunds on Exports of Sugar - Communication by the European Communities dated 26 September 1980
5. C/M/135 Council - Minutes of meeting 6 November 1979
6. C/M/138 Council - Minutes of meeting 29 January 1980
7. C/M/139 Council - Minutes of meeting 26 March 1980
8. C/M/143 Council - Minutes of meeting 9 October 1980
9. C/M/144 Council - Minutes of meeting 10 November 1980
10. C/W/354 Comments by the EEC on the report circulated in document L/5011
11. C/W/355 Statement by Brazil on the report circulated in document L/5011
12. SR.36/1 CONTRACTING PARTIES, thirty-sixth session, Summary Records of the first meeting 24 November 1980
13. SR.36/2 CONTRACTING PARTIES, thirty-sixth session, Summary Records of second meeting 25 November 1980

Annex II

ILLUSTRATIVE LIST OF POINTS AND QUESTIONS RAISED,
AND OF SPECIFIC COMMENTS MADE IN THE WORKING PARTY

I. Points relating to determination of the refund

1. Possibility of determining the prices on the world market in accordance with incontestable criteria so as to avoid over-compensation.
2. Possibility of co-operation, in particular through regular consultation with regard to price formation on certain markets.
3. Possibility, during examination of the economic aspects of the proposed exports, of taking account of traditional trade flows.
4. Possibility of reducing the intervention price for white sugar and for raw sugar (Article 3 of the Commission's draft) in the light of the world market situation.
5. Possibility of giving some transparency to partial tenders in respect of the refund.
6. Possibility of limiting the tonnages awarded, taking account of the world market situation.
7. Possibility of establishing an overall financial ceiling for refunds.

II. Points relating to determination of exportable quantities

A. Quota A

8. Possibility of reducing this quota before 1986.
9. Possibility of increasing the production levy beyond the maximum of 2.5 per cent of the intervention price, between now and 1986, in the light of the world market situation.

B. Quota B

10. Possibility of reducing quota B to the minimum provided for in Article 25 of the Commission's draft, depending on the world market situation.
11. Possibility of reducing this quota before 1 January 1984 (Article 25:5 of the Commission's draft).

12. Possibility of an increase in the ceiling for the production levy (37.5 per cent of the intervention price) in the light of the world market situation.

C. Quota C

13. Possibility of extension of the obligatory storage of sugar C (provided for in Article 26) in such a way that sugar C would no longer be exported when the world price fell below a price to be determined.

D. Point relating to the ISA

14. Early possibility of the Community's initiating negotiations within the ISA regarding the basic export tonnage (BET).

III. Additional questions asked by the representative of Australia

A. EEC production levels

1. Is there any assurance that a significant reduction in the quantity of Community production eligible for price and sales guarantees (A - B quotas) is likely to occur in practice?

(- given proposed redistribution of B quotas according to actual recent performance)

2. Does the proposed system provide for any direct reduction in total Community production?

(- that is quite apart from quotas A and B is there any control on C sugar production?)

B. Export refunds

3. Would the proposed system:

- (a) reduce the quantity of exports eligible for export refunds?
- (b) reduce the total quantity of funds which would be available to finance such refunds?
- (c) reduce the amount of government-sourced (FEOGA) funds which will be available to finance such refunds?

4. Is it true that the proposed system of export refunds (regardless of whether it involves greater producer contributions) is capable of comfortably meeting the costs of refunds at a rate more than 1 1/2 times that which initially caused the prejudice?

- i.e. around US\$400/ton as against an average of some US\$230/ton in 1978, which caused the prejudice
- and in respect of a greater volume of subsidized exports (some 3.2 million tons) than the quantity that caused the prejudice (in 1978 some 2.7 million tons)?

IV. Additional comments made by the representative of Brazil

The only direct, effective way of eliminating the permanent threat of prejudice to other contracting parties would be for the EEC to set A and B quotas at a level compatible with the need to avoid substantial export surpluses whenever the international price falls below the intervention price. Taking into account the needs of sugar-exporting contracting parties, the objective should be, at least, to limit EEC exports to a volume corresponding to ACP imports, so that the Communities would cease being a net exporter of sugar as it has been since 1977.

In order to reach such a goal, three intermediary solutions, among others, may be contemplated under GATT whereby the necessary limits would not apply directly to exportable volumes, but to the use of subsidies in terms of Article XVI:1.

- A. The EEC would be entitled annually to export with refunds a pre-established volume of sugar (e.g., equal to ACP imports or a given share of the world market); all additional exports could not benefit from such refunds (in other words, would be treated as C sugar is now treated);
- B. the EEC would be entitled annually to use a maximum pre-established sum to subsidize its exports. This sum should be sufficient to cover exports of sugar corresponding, for instance, to ACP imports with a maximum subsidy calculated taking into account the difference between the intervention price and, say, the upper limit of the ISA price range;
- C. the EEC would be entitled to set a maximum export refund corresponding to a given percentage of the prevailing international price.

V. Additional questions and comments by the representative of Cuba

1. Would the EEC continue the system of subsidies it maintained in its sugar trade, which affected other contracting parties, and which had enabled the EEC to increase its volume of production and exports in the world market to the detriment of sugar-exporting developing countries?
2. Because of its sugar policy, the EEC had so far not acceded to the International Sugar Agreement, thereby acting as a disturbing element with respect to the control mechanisms established in that Agreement. Was the EEC now considering acceding to this Agreement?

3. Like Brazil, Cuba had not heard from the representative of the EEC any indication or undertaking to limit the subsidies. The EEC comments had been ambiguous and had not specified what measures would be taken.

VI. Additional questions raised by the representative of the United States

1. Is the purpose of the proposed EC production levy to shift the burden of financing subsidization to the producer?
2. Is it anticipated that the production levy will be increased?
3. Is the production levy intended as a control on EC production, directly or indirectly?

Annex III

WORKING PARTY - EEC REFUNDS ON EXPORTS OF SUGAR

The following communication, dated 19 January 1981, has been received from the Delegation of the European Economic Community for circulation to the members of the Working Party.

Reply by the European Economic Community to the GATT Working Party
Concerning the Examination Conducted under Article XVI (1)
of the General Agreement - the case of
Australian and Brazilian Sugar

(Following the decisions by the GATT Council on 10 November 1980
and by the Contracting Parties on 25 November 1980)

I

Under the above-mentioned decisions, the Contracting Parties requested the European Economic Community to discuss with them the possibility of limiting the subsidization on sugar exports.

At the first meeting of the Working Party on 4 and 5 December 1980, a number of suggestions were put forward by the various delegations with regard to the possibility of limiting the refunds on exports of sugar from the EEC, from the angle of exportable quantities and/or the amount of the refund.

In addition to the observations made by its Representative in the Working Party, the EEC would make the following comments and clarifications:

It should be noted first of all that the examination conducted under Article XVI (1) cannot and must not call into question the other agreed conclusions resulting from the reports by the "Australia" Sugar Panel and the "Brazil" Sugar Panel.

Secondly, the examination can be conducted only within the limits of the rights and obligations arising from the General Agreement.

With regard to the possibility of limiting the refund on exports of sugar from the EEC, account must be taken of the Community rules for the sugar market.

These rules include a price system, a production quota system and a production levy. The price and quotas system affects and helps to determine the amount of the refund and the exportable quantities.

The production levy concerns the financial responsibility of producers and influences the way in which exports refunds are covered.

II

The amount of the refund

The amount of the refund is determined by the level of internal prices fixed in the EEC and world market prices for sugar.

The only real possibilities for influencing the amount of the refund depend on the levels of these prices.

One theoretical possibility for limiting the export refund would require unilateral action by the EEC to fix its internal prices at a specified level.

A second theoretical possibility would depend on determining world prices as precisely as possible, insofar as this is feasible, in order to avoid any danger that the EEC sugar may be offered at prices below prices ruling on the world market.

Production quotas

Sugar in the EEC qualifies for price and marketing guarantees within the limits of the quantities produced under the A and B quotas.

The A quota represents a basic amount of 9,136,000 tons of white sugar for the whole of the EEC. In addition to the A quota there is a B quota for each producer fixed uniformly for 1980/81 at 27.5 per cent of quota A. There is a production levy on B quota sugar which since 1975/76 has been at maximum of 30 per cent of the intervention price.

Any production outside the quotas, designated "C sugar", has to be exported by the producer at his own expense.

As what is at issue is the possibility of limiting the export refund, the examination can cover only the A and B quotas.

Quota A is fixed in the light of actual production in the EEC in 1968-72. Production under the A quota varies between 8.6 and 9 million tons, i.e. it remains between 0.5 and 0.9 million tons below the EEC's internal consumption. That therefore leaves only the B quota as a means of influencing the volume of exports with refunds.

III

Imports of ACP sugar by the EEC

The EEC imports from the ACP countries 1,400,000 tons of raw sugar at a guaranteed price, equivalent to the EEC internal price.

These imports are effected as part of the undertakings entered into by the European Economic Community under the Lomé Convention and are intended to help stabilize the export earnings of the countries in question by guaranteeing a price tied to the Community price.

The imported sugar is re-exported by the EEC to the world market as white sugar and may qualify for export refunds.

This is a specific case which must be assessed separately and cannot be included in any consideration of the volume of exports with refunds.

IV

In the light of the foregoing and in particular in view of the possible ways existing, the EEC considers that it can give the following positive reply, under Article XVI, paragraph 1, to the request for an examination of the possibility of limiting the export refund as following:

- Sugar prices within the EEC (intervention price for white sugar) have been fixed during the last three marketing years at a level involving very slight increases over the previous years, especially in view of the fact that inflation rates (based on the average general index of consumer prices in the EEC) have been relatively high over the last few years.

<u>Marketing year</u>	<u>Intervention price for white sugar</u>	<u>% increase over preceding marketing year</u>	<u>Average rate of inflation in the EEC in relation to preceding year</u>
1975/76	35.58	+ 15.7%	
1976/77	37.94	+ 6.6%	1976 = 10.8%
1977/78	39.69	+ 4.6%	1977 = 10.5%
1978/79	40.49	+ 2.0%	1978 = 7.5%
1979/80	41.09	+ 1.5%	1979 = 10.0%
1980/81	43.27	+ 5.3%	1980 = 13.0%

- With regard to the world market price, the EEC - which does not control this price - is prepared to co-operate with the other sugar exporting countries in order to seek ways of making the world market more transparent and making the method of determining offer prices more objective, if possible.
- As for the possibility of limiting the quantities for which an export refund may be granted, the EEC wishes to point out that B quota has been reduced from 35 per cent to 27.5 per cent of A quota since the 1978/79 marketing year.
- The EEC would also draw attention to the decision taken by EEC Council on 27/28 April 1980 according to which all exports refunds of sugar produced in the EEC in excess of internal consumption will be covered by levies on producers.

This principle was put into effect by Regulation (EEC) No. 1592/80 of 24 June 1980 on the application of the system of quotas for sugar for the 1980/81 marketing year.

It should be pointed out that in the 1979/80 marketing year the total amount of the production levy amply covered the costs arising from refunds on exports of sugar produced in the Community.

V

As regards the context in which the Working Party will conduct its examination, it should be noted that owing to the trend of the world market no export refund has been granted since the beginning of May 1980. On the contrary, the EEC found it necessary to impose levies on exports of B sugar in order to stabilize its own market which at present is since May 1980 lower than the world market price. The examination by the Working Party will therefore be of practical relevance only in the event of a new world market trend characterized by prices lower than those ruling on the EEC market. In this respect, it should be noted that following the second significant rise in the world market over a period of only six years, the EEC is reacting very differently from the way it acted following the first rise in 1974/75.

As a result of the 1974/75 sugar shortage, the EEC decided on incentives for production (EEC price up by 15 per cent; A quotas up by 16 per cent; B quotas for 1975/76 marketing year 45 per cent of the A quota).

In contrast, starting with the 1978/79 marketing year and for the following two marketing years, the B quota was reduced from 35 per cent to 27.5 per cent of A quota and the guaranteed prices, as already indicated, rose by only a fairly slight amount compared with the general trend of consumer prices.

The EEC is considering not increasing the quotas - or even reducing them slightly for the next few years - and restraining price increases as part of a generally prudent policy on agricultural prices. It is applying this policy despite an upward trend in the quantities involved in international trade.

It may also be pointed out that in the absence of supplies of sugar available for export from the EEC, given the current buoyancy of the world market, the consequences would have been serious for importers and exporters alike, both categories being concerned with stabilization and therefore also with the maintenance of sufficient supplies for the world market.

VI

As a conclusion, EEC is of the opinion that in addition to the measures taken in the field of prices and quotas, the EEC common market organization for sugar contains a new fundamental element constituted by the total financial responsibility of producers for export refunds and this gives a sufficiently large response to the request put to EEC in terms of Article XVI, paragraph 1.

Export Refunds¹ and Production Levies

Year	I Total refunds (million ECU)	II Receipts from Levies (million ECU)	III Proportion % II/I
1975/76	No production levy was fixed		
1976/77	108.8	146.8	134.9
1977/78	450.0	224.8	50
1978/79	458.4	232.3	51
1979/80	157.9	215.6	136.5

¹ Excluding re-exports of ACP sugar

ANNEX IV

LIST OF REPRESENTATIVES - LISTE DES REPRESENTANTS
LISTA DE REPRESENTANTES

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Président:
Presidente:

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Misión Permanente ante La Oficina
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Misión Permanente ante La Oficina
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Special Trade Delegate,
Permanent Mission to the Office
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Department of Trade and Resources

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Office of the High Commissioner in London

Mr. E.R.J. Hall
Assistant Secretary,
Department of Trade and Resources

Mr. C.G. O'Hanlon
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Mr. P. Hussin
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Mr. P.G. Douglas
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Permanent Mission to the Office
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Representante Permanente Alterno ante
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Sr. Carlos Osorio
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Misión Permanente ante La Oficina
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