EUROPEAN COMMUNITIES - REFUNDS ON EXPORTS OF SUGAR

Article XVI:1 Discussions

Report to the Council
(Draft)

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.

\(^1\)"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).
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 II) are annexed to the present report.

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. He stated that attention should be given to preparing for an eventual drop in world market prices. In this context, he believed that the stimulus to sugar production that followed the period 1974/1975 would not be repeated.

4. 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.

5. The EEC representative stated that, subject to a final EEC Council decision on the EEC sugar régime for 1981/1982-1985/1986, there would be no increase in the EEC maximum guaranteed quotas ("A" and "B" quotas). He explained that "A" quota and a portion of "B" quota sugar together covered, in practice, 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 fell below the EC 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.

6. As regards the EEC support prices for sugar, the EEC representative stated that it was not probable that these would be fixed out of line with the general evolution of EEC agricultural support prices in general. He believed that the Community price policy on sugar would remain prudent. A final decision by the EEC Council in this regard would come sometime later in the spring of 1981.

7. The EEC representative explained that the amount of the EEC export subsidy on sugar was intended to cover the difference between the EEC intervention price on the one hand and the lowest world market price on the other. In determining the latter, he stated that the EEC relied on average price quotations on the Paris Exchange. 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 or subsidizing below world market levels and consequently disrupting trade.

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.
10. 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. 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. 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). The representatives of Australia, Brazil, Cuba and the United States raised specific points and questions on the matter of possibilities for limiting subsidization of Community exports of sugar and thus removing the threat of prejudice which had been found to exist. An illustrative list of points and questions raised is annexed to this report (Annex III).
11. At the second meeting of the Working Party, the EEC presented a document (Spec(81)5) elaborating further the EEC position. In this document (Anrex III), which is annexed to the present report, the EEC noted that the only real possibilities for influencing the amount of the EEC export refunds on sugar 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. 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. As for the possibility of limiting the quantities for which an export refund might be granted the EEC pointed out that the B quota had been reduced from 35 per cent to 27.5 per cent of the A quota since the 1978/79 marketing year. The EEC 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.

12. 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 not been replied to by the Community representative. The representatives of Argentina, Colombia, Cuba, the Dominican Republic, and Nicaragua shared this view.

13. The representative of the EEC elaborated on the financial responsibility of EEC producers for covering the expenses 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 sugar quota 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 have been granted and consequently production levies have not been applied.

14. 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 the re-exports of ACP sugar, there would be no net outgoings from Community budgetary funds involved. The EEC representative gave the following description of how the system would operate inter alia, in response to specific questions raised by the representatives of Brazil and the
United States. This description was based on the EC Commission proposals to the EEC Council and was subject to a final Council approval of the modalities. 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 sugar quota production. Towards the end of the marketing season, if actual experience were to show that receipts from the first tranche were insufficient to have covered real costs of export subsidies, a second levy tranche would be made on B quota production up to a maximum of 37.5 per cent of the intervention price. 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 subsidies, the shortfall would be carried forward to be met 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. The EEC representative explained that the proposed maximums on 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, under the current price situation of the Community, 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 exportable
surplus in the Community since with increases in export subsidies, there would be increases in production levies, thus affecting the returns of 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.

15. The representatives of Australia and Brazil expressed the view that the co-responsibility scheme outlined by the EEC representative, although shifting a greater financial burden for subsidization onto producers, contained no built-in mechanism to limit the subsidies and, therefore would not go far enough in eliminating the prejudice and/or threat of prejudice caused by EEC subsidization to the trade of other sugar exporters. They considered that the scheme would not result in limiting the subsidization either as regards the amount of Community sugar to be exported with a subsidy, or the amount of the export subsidy itself. It was not the source of the subsidization that was important, according to the representative of Australia, but rather its nature and extent. In his assessment, 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 at the time. He stated that the proposed scheme would provide more funds available to finance EEC export subsidies. The representative of Australia also questioned the likelihood that the EEC Council would approve the present Commission proposal as described.

16. The representatives of Australia and Brazil did not accept the EEC position that ACP sugar was a separate issue. 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 EEC subsidized 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 no ACP sugar was in fact re-exported as it went exclusively to the United Kingdom market and was consumed there. He questioned the value of the EEC commitment to the ACP countries under the Lomé Convention, if EEC produced sugar was exported by member States to make up for ACP imports.

17. Concerning a 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.

18. 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).

19. 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 International Sugar Agreement, 1977 (ISA). However, it was still uncertain whether the
proposal would be approved and implemented, or whether the EEC would join the ISA, and the ISA itself might be terminated in 1982.

20. A number of delegations 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.

21. The EEC representative expressed the opinion that in addition to the measures taken in the field of prices and quotas, the EEC common market organization for sugar contained a new fundamental element constituted by the total financial responsibility of producers for export refunds and this gave a sufficiently large response to the request put to the EEC within the terms of Article XVI, paragraph 1.

22. The Australian representative expressed the view that in the discussions, the EEC representative had not produced any meaningful possibilities of limiting the EEC subsidization of sugar. The Community régime for both production and subsidies available remained an open-ended one, and continued to constitute a threat of prejudice in terms of Article XVI:1.

23. The representatives of Brazil and Cuba also felt that apart from possibilities that might arise from the offer to co-operate with other sugar exporting countries about the determination of market prices, the EEC representative had not come forward with any real means of limiting its subsidization on exports of sugar and that there remained a prejudice or threat of prejudice in terms of Article XVI:1. Indeed, this offer would have any real meaning in
GATT only if 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 cause prejudice and/or threat of prejudice to other sugar exporting contracting parties.

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

25. In concluding the discussions, the Director-General noted that the participants in the Working Party held differing views as to the concrete results of the discussions regarding the possibilities of limiting EEC subsidization of sugar exports. However, these discussions had offered to interested contracting parties the possibility of discussing the details of the policy of one contracting party in a specific sector. This report puts the views of delegations on record as concisely and precisely as possible, so as to enable the Council to consider whatever further action may be appropriate.
ANNEX

I. Background documentation - (Spec(81)6 except pt. 14)
II. List of representatives (to be completed)
III. List of points and questions (18.12.80)
IV. Community submission (Spec(81)5)