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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
22, 23 and 25 September 1981

MINUTES OF MEETING

Held in the Centre William Rappard
on 22, 23 and 25 September 1981

Chairman: Mr. D.S. McPHAIL (Canada)

		Page
Subjects discussed: 1.	European Communities - Refunds on exports of sugar	1
2.	Committee on Budget, Finance and Administration - Report of the Committee	24
3.	United States - Import duty on vitamin B12	24
4.	Notification and Surveillance	24
5.	European Communities - Imports of frozen cod fillets from Canada	25

1. European Communities - Refunds on exports of sugar (C/M/149, L/5175, L/5185, L/5186, L/5189)

The Chairman recalled that this item had been before the Council at its meeting on 15 July 1981. At that meeting the Council had noted with appreciation the notification by the European Community of its new sugar regulations as well as the 1981/82 sugar intervention price (L/5175), had taken note of the statements made, had recalled its decision of 10 March 1981 concerning this item, and had decided to promptly review the situation in accordance with that decision at a meeting of the Council after the summer recess.

Subsequently, contracting parties had been invited (GATT/AIR/1747) to submit, in writing and in advance of the present meeting, any questions, comments or suggestions they would like to make. In response, communications had been sent to the secretariat by the delegations of Australia (L/5185, L/5186) and the United States (L/5189).

The representative of Australia welcomed the opportunity for an in-depth review of the situation in the light of the notification by the European Economic Community in document L/5175. He expressed regret that the present meeting was necessary some three years after Australia had first sought the intervention of the CONTRACTING PARTIES on this matter, and some eighteen months after the CONTRACTING PARTIES had concluded that the sugar régime of the Community and its application had caused serious prejudice to Australia's sugar exports and constituted a permanent source

of uncertainty in world sugar markets and a threat of prejudice in terms of Article XVI:1 of the General Agreement. He said that the purpose of the present review was to examine the new EEC sugar régime and intervention prices in the light of the conclusions of the panels on the Australian (L/4833) and Brazilian (L/5011) complaints and of the Working Party (L/5113) which had reported on discussions with the Community on the possibility of limiting its subsidization of sugar exports.

He stated that the new régime introduced by the Community in July 1981 was essentially the same as the proposed régime outlined by the representative of the European Communities in the Working Party. He recalled that after analysing the proposed régime, Australia and most of the other participants in the Working Party had concluded that the Community had advanced no meaningful proposals to change its system in a way that would limit production and export subsidies, or to remove or limit the threat of prejudice to world sugar trade. Such a régime would therefore remain open-ended in respect of production and subsidies available, and consequently would remain a source of uncertainty in world sugar markets and would continue to constitute a threat of prejudice in terms of Article XVI:1. He said that, following its entry into force, the new EEC régime had been re-examined; and his authorities had again concluded that that régime will not effectively reduce or limit either production, price or the amounts of export refunds - the key elements in the Panel's conclusions. It would therefore not remove or limit the threat of prejudice to world trade.

He drew attention to his delegation's analysis of the new régime, as compared with the old, in document L/5185), noting the following points: (i) The level of EEC production eligible for price support would remain at least at record levels, and had the potential to increase further, there being no overall limit on Community sugar production. (ii) The level of Community exports eligible for subsidy had the potential to increase significantly to some 3.7 million tonnes raw value - i.e. 1 million tonnes higher than the level which caused prejudice in 1978 and 1979. (iii) The Community support price had been increased by more than 8.5 per cent, the highest increase since 1975/76. This increase had effectively removed any impact of nominally higher levies on producers. (iv) The system allowed for the setting of whatever rate of subsidy was necessary to dispose of the EEC's eligible availability. Therefore, both the rate of subsidy per ton and the volume of total subsidy payments remained limitless.

He then referred to the questions addressed by his delegation to the EEC (L/5186) and pointed out that recent developments in relation to the EEC's production and exports of sugar, its export subsidies and world sugar prices had, in his view, highlighted the significance of the sugar Panel's findings

that the EEC's open-ended system constituted a threat of prejudice to world sugar trade. In this connexion, he cited the following developments:

(i) Despite falling world prices for sugar, and despite the knowledge that co-responsibility levy was imminent, EEC farmers had expanded sugar beet plantings by 10 per cent across-the-board in 1981.

(ii) The EEC sugar crop was estimated to reach a record 15 million tons in raw value terms in 1981/82. This was 17 per cent and 13 per cent, respectively, higher than EEC production levels in 1978 and 1979, the years on which the Panels' reports were based.

(iii) The EEC's total sugar export availability had been estimated to reach some 6 million tons in raw value terms in 1981/82. This was 67 per cent higher than the 3.6 million tons exported in both 1978 and 1979, and ranged from 215 per cent to 260 per cent over tonnages exported in previous representative periods considered by the Panels.

(iv) The EEC's total export availability for 1981/82 represented a share of approximately 30 per cent of estimated world free-market exports, compared to 18 per cent in 1978 and 1979. On the basis of total world trade, the EEC's share of 14 per cent in 1978 and 1979 would increase to over 20 per cent. This was more than double the share of the Community in any of the previous representative periods considered by the Panel, the highest of these having been 9.6 per cent.

(v) If A and B quotas were filled in 1981/82, the EEC would have an export availability, entitled to subsidies, of some 3.7 million tons in raw value terms. This was some 37 per cent higher than the 2.7 million tonnes subsidized in 1978, when prejudice had been established and ranged from 140 per cent to 225 per cent higher than subsidized exports in previous representative periods.

(vi) The EEC recommenced the subsidizing of sugar exports in April 1981. Thereafter, 1.9 million tons had been authorized, with expenditure of up to 306 million European Currency Units (ECU) on export subsidies.

(vii) At its most recent tender on 16 September 1981, the EEC subsidy had been set at 271.9 ECU per ton. This compared with average rates of subsidy of 236 ECU per ton and 276 ECU per ton in 1978 and 1979, respectively. The subsidy element represented 60 per cent of the EEC intervention price and was greater than the current world price.

(viii) If world prices remained at current levels, Australia estimated that the EEC would expend 950 million ECU to subsidize sugar from its 1981/82 crop. This compared with 639 million ECU in 1978 and

685 million ECU in 1979. The total amount expended on subsidies would have increased by some 40 per cent.

(ix) There was ample evidence that the EEC's expected 1981/82 export availability had already depressed world sugar prices, and that there was no guarantee that it would not further depress prices. The sugar trade was aware that, to shift total availability, the EEC would have to dispose of an average of some 65,000 tons per week, at whatever rate of subsidy was required.

He, therefore, expressed regret that the new EEC sugar régime had not, in his view, brought EEC practices into line with its international obligations under the General Agreement by limiting production and subsidies in a way that would prevent their causing further prejudice to world sugar trade. He said that the issue at stake was the viability of the GATT dispute settlement procedures, and that his delegation would continue to exercise its GATT rights until such time as Australia was satisfied that the EEC had taken steps to limit its subsidies in a way that would prevent them from causing or threatening to cause prejudice to Australian sugar trade.

The representative of Brazil said that he would refrain from making a lengthy analysis of the new EEC sugar régime because the communication by Australia (L/5185) reflected Brazil's own analysis of the situation as previously expressed in the Working Party as well as in the Council meetings in June and July 1981. He then referred to certain data gathered from various sources which complemented and reinforced what had been said by the representative of Australia, as follows: (i) The amount of subsidies paid by the EEC during the period from 1 April to 16 September 1981 had reached the order of 298 [?] million ECU. Accordingly, in less than five months the EEC had paid more than half of the refunds that had been available in 1978/79 and which had been of the order of 458 million ECU. (ii) At its most recent tender on 16 September 1981, the EEC subsidy had been set at 290.45 ECU per ton which compared with an average rate of subsidies of 236 [238?] ECU per ton in 1978, and 276 ECU per ton in 1979, as well as with 254 ECU per ton which had been the market price of sugar on 16 September 1981. (iii) While the EEC sugar production had increased from 12.8 million tons in 1978 to 13.3 million tons in 1980, their sugar exports had risen from 3.6 million tons in 1978 to 4.3 million tons in 1980. The EEC exports had risen therefore by almost 20 per cent during the last two years, and were most likely to continue to increase as EEC farmers had expanded the area under cultivation. (iv) The Community's share in total world trade had almost doubled, from 8.3 per cent in 1976 to 16.2 per cent in 1980. (v) The increasing availability of EEC sugar exports was significantly depressing world market prices. From the moment that the 1981/82 crop estimates were known in April 1981, world market

prices, which had averaged 21.38 cents per pound in March 1981 had dropped to the average price of 15.06 cents per pound. This declining trend had more recently been accentuated, with the result that market prices had dropped further to less than 11 cents per pound during the first fortnight of September 1981.

He stated that the analysis of the main effects of the sugar régime in the EEC confirmed unequivocally that in spite of the hopes expressed and the promises made by the EEC, the new sugar régime had not contributed to improve the situation created by the EEC system for granting refunds on exports of sugar. To the contrary, the situation had been seriously worsening, as had been demonstrated in particular by the figures cited by the representative of Australia, to the effect that:

(a) The Community's subsidies had been maintained.

(b) The amount of subsidies paid continued to increase.

(c) The Community's sugar production and exports continued to expand significantly.

(d) The Community's share in world sugar exports and trade continued to expand.

(e) The Community's exports of sugar continued to displace Brazil's own sugar exports.

(f) Sugar prices continued to decline in the world market.

He drew from the foregoing the following conclusions:

(a) The new régime, like the former one, was applied in a manner which contributed to depress sugar prices in the world market, which constituted a serious prejudice to Brazilian interests.

(b) The new régime, like the former one, did not comprise any pre-established effective limitations in respect either to production, price or the amounts of export refunds, and it was not being applied in a manner so as to limit effectively either exportable surpluses or the amount of refunds granted.

(c) Neither the new régime nor its application, like the former one, had prevented or would therefore prevent the EEC from having more than an equitable share in world export trade in sugar.

(d) The new régime, therefore, continued to constitute a permanent source of increasing serious uncertainty in the world sugar markets and continued to constitute a threat of serious prejudice.

(e) The EEC had not collaborated jointly with the other contracting parties to further the principles and objectives set forth in Article XXXVI of the General Agreement in conformity with the guidelines given in Article XXXVIII.

In his view, it was therefore obvious that, through the unrestrained use of massive subsidies, the EEC had turned from a net importer into a sizeable net exporter of sugar by displacing more efficient producers. It was also obvious that the inequitable share which the EEC now enjoyed in the world sugar market was made possible by use of substantial subsidies which had consistenlty exceeded the international price of sugar. He said that all this clearly violated the General Agreement. His delegation, therefore, urged the Council to take prompt action to request the EEC urgently to adopt the appropriate measures to correct this situation and to keep this measure under surveillance in the Council.

The representative of the United States stated that throughout the discussion on this subject, his delegation had been concerned with maintaining the integrity of the GATT process, and was equally disturbed over the effect of the EEC export subsidy system on the world's sugar economy, on the export earnings of developing countries and on the United States sugar industry. His delegation was also of the opinion that the Community's sugar practices seriously interfered with attempts by the International Sugar Organization to stabilize the world sugar market.

He said that his delegation had hoped for a new EEC system that would include measures to remedy the threat of serious prejudice. High domestic support prices had stimulated excess production, which had been exported without limit on the amount of subsidization. After having reviewed the modifications to the regulations, he expressed serious doubts that they had put meaningful limits on subsidization, either in terms of the amount of subsidy per unit of export or in terms of the amount of subsidized exports. He added that the United States sugar industry had registered its concern with his authorities on the extent to which the Community system could be harmful to its interests.

Noting that his delegation had submitted questions (L/5189) regarding the EEC system, he said that /while/ he would welcome a response at the present meeting from the representative of the European Communities, he also considered it desirable to have the replies in writing so that they could be studied in greater detail.

The representative of the Dominican Republic said that his delegation shared fully the concerns of Australia and Brazil because his country's balance of payments was negatively affected as a result of the destabilization of world trade in sugar. The Community's participation in world sugar trade had recently risen to more than 20 per cent as a result of its subsidy policy. This had caused prejudice to the traditional producers and exporters of sugar, most of whom were developing countries. His delegation therefore reiterated its support to the reports of the Panels and the Working Party, which had dealt with the complaints brought forward by Australia and Brazil and which had been adopted by the Council. He recalled that the conclusions reached were that the Community's régime of export refunds had depressed world sugar prices, thereby causing prejudice to Australia and Brazil.

He expressed regret that industrialized countries, such as those forming the European Economic Community, should continue to have a trade policy which depressed sugar prices and thus nullified the efforts made by the rest of the world's sugar producers to stabilize sugar prices. This policy affected many countries which were struggling to emerge from underdevelopment.

He said that the Dominican Republic gave full support to the complaints of Australia and Brazil, and believed that the Community violated the spirit and the principles of Article XVI of the General Agreement. Furthermore, his delegation supported the request made by Australia that the relevant questions formulated at the second session of the Working Party should be answered, as well as the questions asked by the United States. His Government would continue to follow this matter very closely, since it concerned the demands of the developing countries and since in this case the credibility and effectiveness of the GATT was at stake.

The representative of Argentina said that the new sugar policy of the Community was, in his view, not very different from the previous policy. Noting that this matter had been with the GATT for eighteen months, he expressed the view that GATT had not achieved much success in the past in the field of agriculture, and he insisted that the general rules applying to world trade should also be applicable to agricultural products, including sugar. Argentina had export interests in sugar, and considered this to be a test case of what could be done effectively in GATT and how far the GATT could act to defend the trade interests of all contracting parties.

The representative of Ecuador, speaking as an observer, expressed support for the statements made by other representatives about the new sugar policy of the Community, and felt that it did not effectively contribute to solve the problems identified by the two Panels and the Working Party. She said that three years of work on these problems had not led to solutions, but that to the contrary, the situation in sugar had deteriorated because the Community's new sugar régime could cause more injury to

other sugar producers. The EEC should therefore examine its policies in the light of the analysis made, and should show proof of its political will to prevent the sugar problem from remaining a source of tension in the world trading community.

The representative of Colombia said that as a sugar producing country, Colombia supported the statements made by the representatives of Australia and Brazil. After having studied the new Community regulations on sugar, his delegation had noted some differences between the old and the new system, particularly in respect of quotas. An additional levy of 2 per cent was charged in respect of Quota B sugar, and there was an increase of 4 per cent in the support price which led to an increase in production and in the volume of C sugar. He had noted that the cost of exporting sugar was an additional charge for the Community which did not appear in the figures. It was, therefore, not clear why the EEC had stated that in respect of the costs of getting rid of surpluses there existed no financial support from the Community budget. In his view, the changes in the sugar policy of the Community did not really solve the problems. He supported those delegations which had asked for answers to the questions raised, and which considered this to be a test case in GATT in respect of defending the trade interests of the developing countries.

The representative of the Philippines expressed concern about the continuation of the Community export subsidy practices and its depressing effect on world sugar prices. He said that his country was dependent on exports of sugar and that, therefore, the practices of the Community seriously affected its trade balance. He supported the proposals made by Australia and Brazil and urged that the Community respond positively to the requests made.

The representative of Canada, in expresssing his delegation's interest in the dispute settlement system, shared with Australia and the other representatives who had spoken the wish to receive clarifications on the meaning and the impact of the new Community sugar regulations. The system appeared to him to be an open-ended one; and the changes seemed more technical than substantial in nature. He said that it was difficult to see how the new régime could limit either the total funds or the rate of subsidization for EEC sugar exports.

The representative of Cuba said that in the view of his delegation the new Community regulations went against both the spirit and the letter of Article XVI:1. As the new regulations gave support to inefficient producers in the Community, surplus production and surplus exports were being encouraged, which had led to a destabilization of the world market and to declining prices. Traditional producers were losing their share of the market; and injury was thus being caused to developing countries which were dependent on sugar exports. He proposed that the Community furnish written answers to the questions asked, and that the CONTRACTING PARTIES keep this matter under review until a final solution was found.

The representative of the European Communities welcomed the opportunity to learn about the views of other representatives with respect to the concept of each contracting party's obligations and rights under the General Agreement, as well as with respect to their views on the Community sugar policy and developments in the international sugar market. He recalled the prior stages through which this dispute had now passed, the first stage having been terminated with the adoption by the Council of the reports of the two Panels, and the second having been terminated with the adoption of a decision by the Council, according to which the EEC should notify its new sugar policy, which had been done promptly. He said that the new Community sugar policy was also included in a more general notifiation made pursuant to Article XVI:1. He noted that the Community had thus set an example which ought to be followed by other contracting parties which so far had been reluctant to observe their obligations to notify trade policy measures, citing in this connexion Brazil and the United States.

He stated that Article XVI:1 contained a second obligation, namely that when it had been determined that serious prejudice to the interests of another contracting party was caused or threatened by subsidization, the party applying the subsidy was obliged to discuss the matter. He felt that the Community had fulfilled its obligations in this respect, although he was prepared to listen to the views of other parties and discuss with them.

He found it curious that the new Community sugar policy, which had entered into force only on 1 July 1981, and thus had not yet effectively been applied, could possibly be considered to have caused any prejudice thus far. He considered it necessary, therefore, to give extensive and precise replies to different questions which had been raised, and hoped that the criticism would then subside. Furthermore, he believed that the debate would thus help to clarify problems related to the dispute settlement procedure, which had been referred to by previous speakers. He questioned whether the reproaches made to the Community could not as well be made to other contracting parties about their own respective sugar policies. He also mentioned that the Commission of the European Communities had formally asked to be represented, in an observer capacity, at the talks on renegotiation or extension of the International Sugar Agreement, 1977, but that the ISA-Executive Committee had not thus far admitted the presence of a Community observer.

The representative of Brazil acknowledged that the EEC had notifed its own sugar régime, as requested, and pointed out that the item under discussion dealt with the Community sugar policy and not the policies of other contracting parties.

The representative of the European Communities stressed that his delegation intended to participate in the review of the situation on the basis of the notification by the European Economic Community concerning its new sugar policy (L/5175). This discussion was therefore not limited to Community export refunds, a fact which was clearly demonstrated by the questions presented by Australia (L/5186) and the United States (L/5189). Furthermore, the review would necessitate references to trade policies applied by other countries affecting the sugar trade, for comparison and assessment purposes.

Turning to the communication from Australia in document L/5185, he pointed out that no conclusions as referred to in paragraphs 1, 2 and 3 had been made and that the references were inaccurate. He did not contest that the Community sugar beet area had been extended in 1981/82, as stated in paragraph 4 of L/5185, and that this would result in a good crop. He noted, however, that the decision to plant had been taken while prices were still high and before the decline in prices had come about. He pointed out that sugar producers in other countries as well had tried to increase the output, and had apparently succeeded in doing so, e.g., Australian production might exceed that of the previous year by 20 per cent. Even if it might be possible that an exportable Community surplus could reach 6 million tons in 1981/82, it was not likely that this would actually occur, because Community producers now had to bear the entire loss on sugar exports (as was the case for Australian and Brazilian producers), and because the Community producers had decided to take measures to stop the price decline caused by speculators. He said that, hopefully, this would give results.

In reply to remarks made that other parties had accepted to limit their exports under the International Sugar Agreement, to which the Community had not yet acceded, he mentioned that, for instance, Australia had been allowed to export more than the initial basic quota allocated to it as a result of a redistribution of shortfalls. He did not find it reasonable to ask the Community to limit production when such limitations were not practised by other countries.

He said that it was true that the Community again had granted export refunds on sugar in 1981, as world market prices had fallen below the Community price level. There were a number of reasons for this fall in prices, which were beyond the control of the Community. However, the cost of the refund would be entirely covered by production levies. He mentioned that the Community had recently made a complete notification pursuant to Article XVI:1 of all common agricultural policies and regulations, and repeated that, for instance, Brazil and the United States had not made similar notifications of systems applied by them, although they had a clear obligation to do so. He also referred to information which he had obtained, to the effect that Australia had received loans on favourable terms from the International Monetary Fund to store sugar, and expressed the view that this constituted a subsidy to Australian sugar production in terms of Article XVI, although he could see no evidence that it had been notified.

He recalled that the Community had proposed to collaborate in the determination of world market prices, but had seen no response to this proposal from other parties. The Community offer to establish such collaboration was maintained, and the Community was always ready to discuss the parameters used as a basis for fixing the refunds.

He drew the attention of the Council to the fact that there was occasionally a significant difference between public quotations and prices at which transactions actually took place. Furthermore, the Community had acceded to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT. He added that if any other party produced evidence that the Community had infringed Article 10 of that Agreement, the Community would take corrective action.

He felt that the figure given in L/5185 of an average of 65,000 tons per week authorized to be exported with maximum refund, was exaggerated, saying that he expected this average to be 40-50,000 tons. He regretted the situation referred to by Australia, namely that at present white sugar was quoted at a discount compared to raw sugar. This was, unfortunately, something that occasionally happened because the quantity physically available of white sugar was known, while that of raw sugar remained unknown.

With respect to the statements made in paragraph 5 of L/5185, he said that these were unfounded, as he could not see how anything which was not yet effectively applied could cause prejudice. He invited the representative of Australia to provide a concrete proof for his allegation on this point, adding that if this were done, the Community would not be opposed to applying usual GATT procedures. He said that it was exaggerated to urge the Community to change a system that had hardly come into operation. He hoped, however, that it was known that the Community sugar producers had recently proposed steps to be taken, to which he would revert.

In commenting in detail on the points raised in the annex to the communication submitted by Australia in document L/5185, the representative of the European Communities confirmed that the figures presented by Australia for "A" quotas were exact. He could not agree, however, that the possibility of member States transferring up to 10 per cent of their respective "A" quotas between producers would necessarily result in a significant increase in production. The principal advantage of the transfer of quotas was that it would facilitate structural reforms. With respect to the allocation of a new quota to Greece, he pointed out that this quota had been calculated along the same principles as those used for calculating basic export tonnages under the International Sugar Agreement, 1977, and constituted indeed a very small fraction of total Community production benefiting from price guarantees. He also confirmed the figures given in L/5185 for "B" quotas, but stressed that the way "B" quotas had been determined resulted, nevertheless, in a reduction in the maximum quota subject to price guaranty.

He could not agree that a reduction in guaranteed quotas amounting to 600,000 tons could be described as nominal; it was significant, at least for Community producers. He admitted that no measures would effectively limit Community sugar production, but since this was not in any way different from the situation elsewhere, it was not reasonable to impose an obligation on the Community which was not imposed on anyone else. Moreover, there was no such obligation in the General Agreement. With respect to C-sugar, he confirmed that such sugar would either have to be exported within a certain delay, or would be charged against the basic quota for the following campaign. In any case, it was up to the producers to decide how much C-sugar they would produce, in the light of the situation on external markets. He summarized the situation as follows: no limitation had been established on Community sugar production, but a limit had been fixed for the quantity benefiting from a guaranty, and under the new policy this quantity had been reduced. There were no GATT obligations that required the Community to go further than that.

He made no remarks on the comments in L/5185 concerning export refunds, but contested the assertion that Community sugar consumption had declined steadily, although he admitted that there was a stagnation. Without going into the reasons for this, he mentioned that isoglucose was now covered by the Community regulations, and enquired whether any other contracting party had done anything to control the market for substitutes for sugar. In this context he referred to retail prices in Australia and the United States, as well as in the Community. He did not contest the statement that as much as 3.7 million tons of sugar could be entitled to export refunds, but stressed that a considerable part of this was made up of sugar imported from ACP countries.

In explaining the system of financing of refunds, he confirmed that sugar produced within the quantities of maximum quotas available for export, was entitled to refunds. Tenders were usually made on a weekly basis, a maximum quantity that could be exported with refunds being fixed each time. Without going into all the details, he said that the money spent was to be entirely recuperated from producers at the end of each marketing year, except for the first year when the amount might be collected some two months later. To contend that any shortfalls would be met by FEOGA was entirely wrong. For comparison, he referred to the systems of pricing applied in other countries, e.g., the Queensland Sugar Board and the Canadian Wheat Board.

He stressed that, apart from refunds paid on re-exports of ACP sugar, no refunds were financed out of public funds. Estimates showed that under present price conditions, the amounts collected from production levies would be sufficient to cover the expenses. Hopefully, the action suggested recently by Community producers would be followed by actions by others; and it might therefore not be necessary to make full use of all possibilities under the regulations.

In his remarks on the comment in L/5185 that the price increase of 8.5 per cent for 1981/82 was the highest since 1975/76, he recalled that the producers had requested an increase of 17.5 per cent. He said that the costs of most efficient producers had risen by 14 per cent and average production costs by 11.5 per cent, and that a high rate of inflation persisted. An increase in the intervention price for white sugar of 8.5 per cent could, therefore, not stimulate sugar production. The actual Community price would fall in the middle of the price range established under the International Sugar Agreement and would be lower than, for example, the support price for sugar adopted by the United States. He contested the statement in L/5185 that the co-responsibility levy would not discourage surplus production, and read out the text of an official communiqué issued by the federations of sugar beet producers and manufacturers of sugar, as follows:

> "After examining the world statistical situation, the beet growers and sugar manufacturers of the Community, anxious to promote stabilization of the world sugar market, have decided to take the necessary measures to limit the amounts which may be exported by the Community in the 1981/82 marketing year. To this end, they have agreed to stock and carry over to the following marketing year part of their production of 'C' sugar, which will mean a corresponding reduction in the beet-growing area in the spring of 1982. They also urge that the Commission should make arrangements to reconstitute the quota sugar stocks. They stress the need for parallel efforts on the part of the other sugar-exporting countries on the world market."

He said that the logical consequences of the producers' withholding C-sugar would be that areas under sugar beets would be reduced in 1982, and that a replenishment of Community intervention stocks would, at least, halt the decline in world market prices. He called particular attention to the last sentence of the communiqué stressing the necessity of parallel efforts to be made by other exporting countries, and suggested that this appeal should be addressed to all countries, and not only exporting countries. He felt that it would be discouraging if the measures taken by the producers, with the consent of the Commission of the European Communities, were not appreciated by other parties. In his view, the whole file could now be closed, and the complaints by Australia and Brazil ought to be withdrawn.

The representative of the European Communities then turned to the questions submitted by Australia in document L/5186. As to the first point, he said that a reduction in guaranteed quotas would tend to discourage an expansion in the production, but that everything would, of course, depend on developments in world markets. In reply to whether the Community could give an assurance that its system would not act to depress world prices, he

stated that neither the Community as such, nor the Community sugar producers, had an interest in depressed world market prices. Nor did the Community want sky-rocketing prices, firstly because a number of importers were developing countries, and secondly because very high prices might be an incentive to an undesired surplus production.

In reply to questions 3 and 4 of L/5186 concerning production quotas he confirmed that quotas A and B would only be modified according to the provisions stipulated in the regulations. He doubted that the General Agreement obliged a contracting party to give an assurance that such quotas should not be modified in the future. He mentioned that in establishing total A and B quotas, the Community had followed principles of calculation similar to those adopted for determining basic export tonnages under the International Sugar Agreement. If quotas for the individual countries had been determined, strictly according to those principles, several member countries would have been allotted greater maximum quotas than those actually set. Briefly, in reply to question 5, he repeated that these quotas would remain at their present level until 1983/84. He did not want to give any assurances that the quotas would not then be increased, as he did not feel that the General Agreement in any way obliged him to give such an assurance.

He confirmed that the new régime instituted no limitation of sugar produced in excess of quotas (C-sugar). He would not contest that the prices obtained by producers for A and B-sugar would enable them to operate a certain equalization, or compensate for lower prices for C-sugar. However, even if this were so, it would correspond to the systems of price equalization operated in other countries, e.g., Australia, where 75 per cent of sugar exports were made under long-term contracts. He said that he was not opposed to an examination of various systems of price equalization operating in different countries.

With regard to the annual export volume eligible for refunds in the future, he considered the figures advanced by Australia (3.4 and 3.7 million tons) as excessive. He confirmed that necessary funds to subsidize exports of 1.4 million tons of sugar (i.e., a quantity corresponding to imports under ACP Protocols) would be made available by the FEOGA. The FEOGA would not, however, provide any funds for the subsidization of sugar exports in excess of that quantity. He believed he could give an assurance that the funds collected from producers would be sufficient to cover losses on exports.

In reply to the question whether the new system established a ceiling on total funds or on the rate of subsidy, he said that there was a limit to what could be collected from producers, and there was a limit to the rate at which refunds could be paid. He stressed that the Community only followed the prices in the world market, and gave the assurance that the Community would observe the provisions of Article 10:3 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT, when granting export refunds. Therefore, if concrete proof were produced that the Community was

undercutting prices of other exporters /in a particular market/, the Community would not hesitate to take corrective action and make an appropriate limitation of the export refund.

He admitted that the increase in the intervention price for white sugar of 8.5 per cent in 1981/82 was the highest since 1975/76, in absolute terms. However, in real terms this was not true, as the increase did not compensate for inflation and increased costs. Furthermore, the value of the increase was also reduced by the introduction of the production levies. Neither the new price nor the levies had been known to producers at the time of planting in 1981 and could not have had any influence on the area planted with sugar beets.

He could neither ascertain nor deny whether the incidence of production levies could be passed on to Community consumers, but noted that retail prices for sugar were lower in the Community than in Australia and maybe in other countries as well.

He abstained from making any comments regarding the size of the Community sugar crop in 1981/82, but nevertheless recalled that the measures advanced by the producers were based on the assumption of a good crop.

With respect to the allegations made in certain trade reports that the expectations of a large Community crop, and correspondingly increased export availabilities in 1981/82, were depressing world market prices, he recalled the language used in the Panel reports, namely "contributed to depress sugar prices". He would not contest that this might once more be the case, but at the same time he stressed that this obviously meant that also other exporting countries might be contributing to depress prices; and outlooks for increased crops in other countries had also contributed to depress prices.

As to the questions submitted by the United States in document L/5189, the representative of the European Communities considered that these were, to a large extent, covered by comments already made, and that only a few supplementary remarks appeared to be needed. He repeated that the Community sugar production was not limited, but as maximum quotas (A and B) had been reduced, he could reply that the production eligible for price guarantees had been reduced. For comparison, he mentioned that United States sugar production was not limited by the regulations. He contested that funds available to finance export refunds were unlimited, as the new Community system was based on co-responsibility; and export refunds would always be limited by the difference between the intervention price and the world market price.

He reconfirmed that the entire amount spent on export refunds for Community sugar had to be covered by the producers, and that the system itself would therefore definitely not encourage producers to export. The application of co-responsibility effectively modified the nature of the subsidization. In this connexion he raised the question whether a system not involving

governmental payments, but where the rôle of the government was merely limited to the administration of funds collected from other sources, would constitute a system of subsidization in terms of Article XVI. He did not consider that the question about the effect of the new régime on internal prices was relevant to the matter under consideration.

He reconfirmed that exports of ACP sugar were subsidized via the Community budget, as a part of the Community policy to provide real and effective assistance to developing countries. With respect to C-sugar, he admitted that sugar beets used for such sugar might, in fact, benefit from a system of equalization of prices, but no minimum purchase price was fixed for sugar beets used to produce C-sugar. The control of payments of refunds was exercised through export certificates; and export certificates for C-sugar did not qualify for export refunds.

In reply to the question whether production levies would cover all subsidies paid to Community sugar producers, he explained that when ACP sugar was re-exported after having been refind in the Community, losses on such re-exports were covered from the Community budget, and would not be covered by receipts from production levies. On the other hand, losses on exports of quota sugar produced within the Community were entirely covered by production levies; and the funds were to be collected at the latest around the end of the marketing year.

He regretted not having had sufficient time to prepare a reply to the question posed by the United States about how much per-unit support would be reduced if the maximum levy imposed on producers was operated per unit of output, the per-unit support being payments for intervention and for export subsidies.

After having concluded his responses to the questions submitted by Australia and the United States, the representative of the European Communities recalled that he had raised a number of questions on sugar policies of other countries. He felt that the questions presented to the Community could also be presented to Australia, Brazil, the United States and others, as he could not see that there were fundamental differences betweeen the policies of different countries, with regard to production, exports and prices. Concerning imports, he wondered how the Australian prohibition of imports of sugar was related to Australian rights and obligations under the General Agreement.

He reiterated that the Community had notified its new sugar régime as promised thus demonstrating its goodwill and he expressed the hope that others would do likewise. He noted that only a handful of other countries had made notifications pursuant to Article XVI:1.

In reply to the intervention of the representative of Brazil, concerning the subject under discussion in the Council, the representative of the European Communities repeated that the Community had fulfilled its obligations. The reports of the Panels and the Working Party had been approved by the Council; and the Community had shown its goodwill by notifying, and engaging in a thorough examination of, its new sugar policy. He could not accept that the Community could be accused a priori on the basis of its new policy. It was now up to Brazil to provide proof of prejudice or threat thereof, and, if appropriate, have recourse to the procedures under Article XXII or XXIII. Regarding a possible Community participation in the International Sugar Agreement, he reiterated that the Commission of the European Communities had sought observer status in the discussions on the future of that Agreement, but this had not been accepted by the ISA Executive Committee. He also mentioned that while Brazil had notified its sugar régime to the International Sugar Council, no notification had yet been made to the GATT, either pursuant to Article XVI:1 or pursuant to other relevant provisions.

The representative of Cuba expressed appreciation for the explanations given by the representative of the European Communities, and asked for written replies to the questions. He said that only after careful study of the explanations given by the Community would he be able to confirm whether or not his delegation's doubts had been removed. In connexion with remarks made by the representative of the European Communities about Cuba's sugar policy, he pointed out that this was in line with Cuba's position as a developing country, and that 85 per cent of Cuba's exports consisted of sugar. He agreed that the Community had the right to enquire about the sugar policies of other countries if they violated the provisions of the General Agreement. However, he insisted that at the present meeting the Council should deal only with the Community's sugar policy.

The representative of the United States said that the questions raised by his authorities in document L/5189 were ones that had been raised in the Working Party. He said that the responses given by the representatives of the European Communities had not allayed the concerns expressed by his delegation earlier in the meeting. He requested that the Community provide replies to all the Questions in writing. As to the points in question 1 of document L/5189, his delegation interpreted the Community reply as follows: (i) there was still no limit on the production of sugar; (ii) there still had been no practical reduction on production eligible for subsidies; (iii) there still was no limit on funds available to finance subsidies; and (iv) there still was no effective limit on the total amount of subsidization. He said that these points were fundamental to the United States, and added that if he had misunderstood the new system, the representative of the European Communities could clarify matters in its written responses.

The representative of Australia, after expressing appreciation to the representative of the European Communities for the responses given, said that Australia had shown patience and tolerance during the past three years in this matter. Following the explanations on the Community sugar régime, Australia remained deeply concerned. He considered that the present Council meeting was part of a continuing process. He recalled that when the Working Party Report had been adopted by the Council in March 1981, it had been noted that the complaints of Australia and Brazil were maintained. Furthermore, it had been noted that the Community would notify its new sugar regulations, and it had been decided to review the situation when such notification was received.

He stated that, in his opinion, the Community had confirmed that its new sugar régime did not include any meaningful limits on production, exports and subsidization. In his view, the régime remained open-ended, and in terms of the Panels' Reports it continued to be a source of uncertainty in world sugar markets and a threat of prejudice under Article XVI:1.

Concerning the reference made by the Community representative to Australian policies, he stated that the Council was not examining systems of other countries which had not been found to depress prices and cause prejudice. Nevertheless, he noted that production in Australia was controlled, unlike the open-ended EEC system. There was no guaranteed export price for Australian producers: returns whether from spot sales or under contract, were subject to world market forces; and Australia's domestic price was not set at levels out of touch with world market developments. Indeed, he added, average producer returns from domestic sales in Australia had been lower than average export returns for the past seven years.

Turning to the question of whether or not, because the Community export restitutions were now financed by producer levies, those restitutions constituted subsidies in terms of Article XVI:1, he said that according to the representative of the European Communities the only public funds used were those to finance restitutions for exports of ACP sugar. However, ACP sugar was not exported by the Community; what was exported was 1.4 million tonnes of EEC sugar equivalent to the amount of the Community's ACP imports. This amount of EEC sugar was exported with subsidies financed from the Community budget. Thus, restitutions under the new sugar régime were fully financed from public funds in respect of 1.4 million tonnes. In this context, he referred to paragraph 2 of the Notes and Supplementary Provisions to Article XVI in Annex I to the General Agreement (BISD, Vol.IV, p.68), which stated that stabilization systems which are wholly or partly financed out of government funds in addition to funds collected from producers shall be subject to the provisions of Article XVI:3 and he said that these constituted export subsidy systems.

Referring to the announcement of the Community sugar producers that they would stockpile C-sugar, he said that Australia welcomed this initiative by EC producers. It seemed to constitute a recognition by them of the price-depressing effects of record production and export availabilities brought about by EC sugar policies. He pointed out that the European press had itself been of the opinion that these measures were at best a palliative: while they may have short-term beneficial effects on world sugar prices, they did not represent a long-term solution to the problems.

The representative of New Zealand said that much of the discussion and many questions had focussed on the practical effects of the Community sugar system. However, there was also the question of principle relating to the new feature of the system, namely the co-responsibility levy. He expressed concern that this new feature could also be considered for other market systems under the Common Agricultural Policy in the future. His authorities had thus far not taken a position on whether the co-responsibility levy was or was not compatible with the provisions of the General Agreement. He considered that it would be helpful in this context to have written answers explaining the Community system.

The representative of Brazil felt that the situation had not improved since the Council had adopted the report of the two Panels. In his view, both the prejudice and threat of prejudice still existed, and they were even more serious than before. He said that a good analysis of the new régime had already been made in the Working Party. In his view there were no guarantees in the system which could put to rest Brazil's concern that the system could be a constant threat to sugar prices and to the international sugar market.

He said that his delegation was interested in continuing the analysis of the system and felt that a description of the system, based on the answers given in the Council, would be useful. He sought further clarification on the following points: (i) the Council had been told that the money paid as refunds to sugar producers in the Community had to be recovered by the national authorities of the member States. He said that these funds were thus lent to producers, and he enquired about the terms and conditions of these loans, (ii) in respect of ACP sugar, whose purchase was a Community assistance to developing countries, it was his understanding that the Community had a contractual obligation to buy this sugar, but no obligation to sell it in the world market at a subsidized price. ACP sugar, once refined in the Community, became entitled to export subsidies financed from the EEC budget. He enquired, therefore, whether, once ACP sugar had been refined, this sugar became Community sugar. If such were the case, he felt that it should not be entitled to subsidies from the EEC budget.

The representative of the European Communities, in replying to the statements made by previous speakers, said in respect of stockpiling of Quota C sugar by the producers, that the opinions expressed by journalists, who considered this as a palliative, did not correspond to the opinions of his authorities. He expressed satisfaction that the matters foreseen by the producers met the approval of the delegation of Australia and of the other delegations.

Turning to the functioning of the restitution system of the Community, he said that a refund was fixed within the framework of the procedure which he had already explained. In a recent decision, the Community had reduced from five months to three months the period for refunds based on export certificates. This had been done to reduce the possibility of speculation. The level of refunds was decided by the Management Committee and the exporters carried out their operations on the basis of this refund. He explained that when the goods left the Community, the exporters had to present their export certificates, and when the goods arrived at their destinations, the export certificates had to be stamped by the consular authorities of the countries of destination. The certificates would then have to be presented to the intervention authorities of each of the member States to obtain the refund. There was thus a certain time period between the moment when the amount of the refunds were fixed and the moment when they were actually paid to the exporters.

He pointed out that according to the provisions, in particular of Articles 28 and 29 of the basic regulations, which had been notified, a balance had to be drawn up before the end of the marketing year in order to determine how much should be recovered, and the amount of the refund for each ton of sugar exported under A and B Quotas. He added that it could happen that the member States did not dispose of the necessary funds. In this case, they had to obtain the funds from the Community. However, this was only possible after discussion with the Community Budget Committee. If advances could not be agreed upon in favour of the intervention organisms of the member States, refunds could not be paid to the exporters. In theory, advances on the refunds were possible by the intervention organisms of the member States. In practice, such payments were possible for a period of two to three months at most. This money was recovered from the exporters, not as previously at the end of the next campaign, but during the first two months of the next campaign.

He also pointed out that when the Community drew up a balance of total sugar expenditure, account had to be taken of the interest due on the amounts earmarked in the sugar budget. Consequently, the interest which was due on these amounts would be recovered from the producer-exporters of A and B sugar.

Turning to ACP sugar, he said that from the moment when the intervention body or the agents of such a body had bought this sugar, according to the provisions of Article 34 of the Community regulations, this sugar became free-trade sugar. This meant that it had the same characteristics as sugar produced within the Community. However, certain ACP countries exported refined sugar which was directly re-exported by Community operators. The amounts involved were relatively small, ranging between 30,000 to 50,000 tons according to the year.

He then expressed regret that some delegations were still of the view that the new sugar regulations were a threat, while others, like the United States, referred to it as a source of concern. He said that during the preceding weeks, a new awareness had arisen inside the Community that it had to play a rôle in respect of the stabilization of the markets. This had led to the initiative by producers, to a statement of intention, and would lead in due course to concrete measures. All this showed that the sugar producers of the Community did not like to be criticized permanently and that they were willing to act in a responsible way.

The representative of Brazil said that the explanations given by the representative of the European Communities on the treatment of ACP sugar was contradictory. [He said that his question on the loan made by the Community authorities to producers and exporters of sugar demonstrated the need for a paper that could explain systematically these procedures.] He pointed out, as an example, that it appeared to him that the advances or loans made to the exporters were subject to negative interest rates, which implied that these loans were subsidized.

It was also his understanding that there were two aspects under discussion, namely the situation which had developed since the Council had made decisions based on the Reports of the two Panels, and the situation as it was derived from the new sugar régime.

The representative of Argentina felt that the representative of the European Communities had presented the new system in detail. In his view, that it was not necessary to repeat old debates, but rather to consider the effects in the future and in other fields of agricultural policy. It appeared to him that there was not a clear break between the past and the present, as was shown by the fact that the original complaints had not been withdrawn.

At the end of the discussion on this item and following informal contacts between the Chairman and the principally interested delegations, the Council adopted the following text:

"The Council:

Recalling its earlier discussions and its decisions on this matter;*

Noting the statements made by representatives;

Noting that the complaints by Australia and Brazil are maintained, while the EEC maintains that it has fulfilled its obligations under Article XVI:1;

Decides, without prejudice to the rights and obligations of contracting parties under the General Agreement, to establish a Working Party to conduct a review of the situation, and to report to the Council not later than 1 March 1982."

The Council took note of the Chairman's understanding that the members of the Working Party, in the review of the situation, may raise any element having a bearing on the consideration of this matter relating to sugar.

The representative of Australia, stating that he did not wish to interpret the decision just adopted by the Council, summarized his delegation's position, as follows:

(i) Australia did not consider that the EEC had fulfilled its obligations. It was Australia's view that the Community had presented no measure which would remove the prejudice established by the GATT Panels and that the evidence suggested that the new EEC régime would ensure that the prejudice would continue.

(ii) It was irrelevant to Australia whether or not any other country subsidized its sugar exports. Australia did not do so. Only the EEC subsidies system had been examined by GATT Panels and been found to depress prices and cause prejudice. Australia considered itself an injured party and was therefore interested in examining only the EEC régime and its implications.

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*C/M/135 (discussion and decision adopting the Panel Report in document L/4833); C/M/138, 139 and 143 (discussions); C/M/144 (discussion and decision adopting the Panel Report in document L/5011); C/M/146 (discussion and decision adopting the Working Party Report in document L/5113); C/M/148 (discussion); and C/M/149 (discussion and decision).

(iii) There was, in Australia's view, no question of whether or not the EEC régime was causing prejudice. This conclusion had been reached by two GATT Panels. Australia and other Council members believed it to be apparent that nothing had been advanced under the new régime to remove that prejudice.

(iv) Australia was of the opinion that production decisions in the EEC, which would lead to a massive EEC crop and export availability in 1981/82, were taken in full knowledge of the key elements of the planned new régime.

He said that against this background, Australia considered that its complaint under Article XVI:1 remained unresolved and that it had made it clear that is was up to the EEC to take measures which would remove the cause of prejudice.

The representative of Brazil expressed his appreciation for agreement having been reached on a Council decision. He pointed out that Brazil's position had been made clear in previous Council meetings, and that this position was reflected in the decision just adopted by the Council.

The representative of the European Communities also expressed his appreciation for the agreement reached, adding that his statement should in no way be considered as an interpretation of the decision just adopted. He said that the Community did not share the views expressed by the representatives of Australia and Brazil. The Community's position was embodied in the reports, Council decisions and the minutes of the Council. The fact that the Community had agreed to the adoption of the decision should in no way be interpreted as a departure from the initial position of substance. The Community was convinced of its own good faith and was ready to approach this matter with objectivity. He expressed the hope, taking as a starting point the decision just adopted, that the parties concerned would find a way of understanding each other and arriving at a co-existence.

The representative of Cuba expressed satisfaction at the results reached and pointed out that Australia and Brazil had not been the only countries to express concern, but that other sugar exporting countries had also done so.

The representative of Argentina expressed the hope that the problems related to this matter, which was of concern to many contracting parties, could be overcome in a spirit of co-existence.

The Council agreed that membership of the Working Party should be open to all contracting parties interested and wishing to serve on it, and authorized the Chairman of the Council to designate the Chairman of the Working Party in consultation with delegations principally concerned.

2. Committee on Budget, Finance and Administration - Report of the Committee (L/5170)

The Chairman recalled that at the meeting of the Council on 11 June 1981 the Director-General had stated that the Budget Committee expected to meet again shortly in order to take a decision in respect of the Zimbabwe contribution. As indicated in the Report of the Committee (L/5170), the Committee had met on 6 July and had decided to recommend to the Council that the amounts due to GATT from Southern Rhodesia in respect of arrears of contributions, i.e. US$48,950 for the period 1966-1972 and Sw F 272,510 for the period from 1 January 1973 to 17 April 1980, should be cancelled, on the understanding that an amount of Sw F 32,990 would be paid by Zimbabwe for the period from 18 April to 31 December 1980. He said that in the meantime this payment had been made.

The Council approved the specific recommendation of the Committee in paragraph 5 of document L/5170 and adopted the Report.

3. United States - Import duty on vitamin B-12 - Composition of the Panel (C/121)

The Chairman recalled that in June 1981 the Council had agreed to establish a Panel to examine the complaint by the European Economic Community, and had authorized him, in consultation with the parties concerned, to draw up appropriate terms of reference and to nominate the chairman and members of the Panel. At its meeting in July 1981 the Council had taken note of the terms of reference of the Panel.

He now confirmed that, as communicated in document C/121, the Panel would have the following composition:

Chairman: Ambassador E. Nettel, Austria.

Members: Mr. M. Pullinen, First Secretary, Permanent Mission of Finland.
Dr. J. Yeabsley, Counsellor, Permanent Mission of New Zealand.

The Council took note of this information.

4. Notification and Surveillance

The Chairman recalled that in May 1981 the Council had met at a session specially called for the purpose of conducting a review on Notification and Surveillance as provided in the Proposal adopted in March 1980. At the end of that meeting the Council had agreed that delegations should reflect on the arrangements that would be appropriate for the next review, in the light of experience gained, and had authorized the Chairman to set the date and make arrangements for the next review, after consultations with delegations.

He informed the Council of his intention to engage in such consultations in the near future and to keep representatives abreast of the developments concerning the arrangements for the next review.

The Council took note of the announcement.

5. European Communities - Imports of frozen cod fillets from Canada

The representative of Canada, speaking under "Other Business", informed the Council that, by Regulation No. 2156/81 of 28 July 1981, the EEC had suspended imports into the United Kingdom and Ireland of frozen cod fillets which were offered at prices below certain reference prices. Canada, being an exporter of these products, had an interest in this matter and expected that the EEC action would be notified to the GATT with reference to the GATT article under which the action had been taken.

The representative of the European Communities stated that in the near future the EEC intended to inform the CONTRACTING PARTIES about the measures taken by the EEC in this field.

The Council took note of the statements.