

2 March 1984

UNITED STATES - IMPORTS OF SUGAR FROM
NICARAGUA

*Report of the Panel adopted on 13 March 1984
(L/5607 - 31S/67)*

1. Introduction

1.1 In a communication dated 11 May 1983 Nicaragua requested consultations with the United States under Article XXIII:1 on the announcement by the United States Government of a reduction in the sugar import quota allocated to Nicaragua. That communication was circulated to the CONTRACTING PARTIES on 16 May 1983 (L/5492).

1.2 The consultations were held on 8 June 1983. As no satisfactory settlement was reached Nicaragua, in a communication dated 27 June 1983, requested the CONTRACTING PARTIES to establish a panel to examine the matter under Article XXIII:2. This was circulated to the CONTRACTING PARTIES on 1 July 1983 (L/5513).

1.3 At its meeting on 12 July 1983, having heard the representatives of the two parties and a number of other speakers, the Council agreed to establish a panel, and authorized its Chairman to draw up terms of reference in consultation with the parties concerned and with other interested contracting parties, and to designate the Chairman and members of the Panel in consultation with the parties concerned (C/M/170).

1.4 At the meeting of the Council on 18 October 1983 (C/M/171), the Chairman of the Council announced that, following consultations, the Panel's composition and terms of reference had been agreed as follows:

A. Composition

Chairman: Mr. R.E.B. Peren
Members: Mr. H. Villar Sarraillet
Mr. C. Manhusen

B. Terms of Reference

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Nicaragua, relating to the measures taken by the United States concerning imports of sugar from Nicaragua (L/5492 and L/5513), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided in Article XXIII."

2. Factual Aspects

2.1 On 5 May 1982 the President of the United States established by Proclamation No. 4941 a quota on imports of certain sugars, syrups, and molasses (items 155.20 and 155.30) pursuant to the authority in headnote 2 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States. The relevant part of this headnote reads as follows:

"(i) ... if the President finds that a particular rate not lower than such January 1, 1968, rate, limited by a particular quota, may be established for any articles provided for in items 155.20 or 155.30, which will give due consideration to the interests in the United States sugar market of domestic

producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation, ..."

(ii) ... any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations; ..."

The above headnote is also contained in the GATT schedule of concessions of the United States (Schedule XX). It was included in 1967, following the Kennedy Round negotiations, as note 2 in Chapter 10 of that schedule.

2.2 Presidential Proclamation No. 4941, by modifying headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States, provided, *inter alia*, for a country-by-country allocation of the total import quota. The share of each country generally corresponded to its average exports to the United States during 1975-1981, excluding the years in which the largest and smallest volumes of exports were recorded. Accordingly, Nicaragua was allocated a share of 2.1 per cent of the total import quota, which in the fiscal year 1982/83 (1 October 1982/30 September 1983) amounted to 58,000 short tons. The provisions of this Proclamation became effective on 11 May 1982.

2.3 On 10 May 1983 the President of the United States announced that Nicaragua's share of the total sugar import quota would be reduced to 6,000 short tons for the fiscal year ending 30 September 1984. The amount of the reduction in Nicaragua's allocation was to be distributed to El Salvador, Honduras and Costa Rica, so that the level of the total import quota would not be reduced. The President stated that the additional quotas for these three countries were likely to represent a total of US\$14 million in foreign exchange per year, and that by denying Nicaragua this benefit he hoped to reduce the resources available to that country for financing its military build-up, and its support for subversion and extremist violence in the region.

2.4 The President implemented his decision by Proclamation No. 5104 of 23 September 1983, pursuant to the authority in headnote 2 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States. In paragraph 4 of this Proclamation the President stated: "I find the additional modifications of the quantitative limitations ... give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade." The measure became effective on 26 September 1983.

3. Main Arguments

A. Nicaragua's Arguments

3.1 Nicaragua requested the Panel to find that the restrictions applied by the United States to imports of sugar from that country were in violation of the provisions of Articles II, XI and XIII and Part IV of the General Agreement.

Article XI

3.2 Nicaragua claimed that the system of quotas to regulate imports of sugar into the United States, introduced on 5 May 1982 by Presidential Proclamation No. 4941, constituted a restriction within the meaning of Article XI:1. Since 1955 the United States had enjoyed a waiver under Article XXV:5 which allowed it to derogate, *inter alia*, from its obligations under the provisions of Article XI to the extent necessary to apply the restrictions provided for by Section 22 of the Agricultural Adjustment Act, as amended. However, the quota system had not been established under Section 22 authority, but under headnote 2 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States.

Although this headnote, which authorized the President to establish and modify under certain conditions quota limitations on sugars, syrups, and molasses (items 155.20 and 155.30), had been incorporated into the United States schedule of concessions, that in no way changed the obligations of the United States under provisions of the General Agreement other than Article II.

Article II

3.3 Nicaragua argued that the reduction of its sugar quota by Presidential Proclamation No. 5104 of 23 September 1983 was contrary to Article II since it entailed treatment less favourable than that provided for in the United States schedule of concessions. According to the relevant part of this schedule (cf. paragraph 2.1 above) any modification of quota limitations could be made only if due consideration was given, *inter alia*, to the interests of materially affected contracting parties in the United States sugar market. Since the sugar import quota of Nicaragua had been reallocated to three non-contracting parties and for non-economic reasons the United States had failed to give due consideration to the interests of the contracting parties in general and Nicaragua in particular.

Article XIII

3.4 Nicaragua stated that, on the basis of its past export performance, it had initially been allocated a quota of 2.1 per cent of the total volume of imports of sugar into the United States. The total import quota for the fiscal year 1983/84 had been fixed at 2,950,000 short tons. Accordingly the share of Nicaragua should have been 61,950 short tons. The 6,000 short tons in fact allocated to it for that fiscal year thus represented less than 10 per cent of the quota to which it was entitled. Since the quota of 6,000 short tons out of a total of 2,950,000 short tons did not correspond to the share of trade which Nicaragua might be expected to obtain in the absence of any restrictions, the reduction of its quota for the fiscal year 1983/84 violated the provisions of Article XIII:2. Nicaragua added that besides being arbitrary and discriminatory towards Nicaragua, the United States action was inequitable towards the other contracting parties which had a substantial supplying interest, since the 55,950 short tons withdrawn from Nicaragua were allocated to three countries which were not parties to the General Agreement, for reasons of a non-economic nature.

3.5 Nicaragua considered that it had a substantial interest in supplying sugar to the United States. Evidence of that was provided by the fact that Nicaragua had been included among the countries to which the United States had originally allocated a quota proportional to its share of the total volume of imports. Furthermore sugar represented a large percentage of Nicaraguan exports, and most of it went to the United States market. The amount granted for the fiscal year 1983/84 did not correspond to the share due to Nicaragua on the basis of the reference period, from which it had actually benefitted in the previous fiscal year. The United States could not invoke any special factor justifying this reduction, since Nicaragua had met all its commitments regarding the supply of sugar to the United States and had a rapidly expanding sugar industry. The measure taken by the United States therefore constituted a violation of Article XIII:2(d).

3.6 Nicaragua further claimed that the United States had violated the provisions of Article XIII:4. In spite of the requests made on various occasions by Nicaragua the United States had unilaterally reduced that country's quota and had so far failed to discuss the measure in a constructive spirit; moreover, that measure had not even been duly notified to the CONTRACTING PARTIES.

Part IV

3.7 Nicaragua considered that the measures applied by the United States to imports of sugar from Nicaragua should also be examined in the light of the provisions of Part IV of the General Agreement,

in particular the objectives and commitments stated in paragraphs 1(a), (b), (d) and (e), 2, 3, 4 and 9 of Article XXXVI and paragraphs 1(b) and 2(a) of Article XXXVII.

3.8 Nicaragua claimed that the sugar policy of the United States, relating to both the quantity of sugar exportable to that country and the level of sugar prices in the international market, had had a negative impact on its economy, which was already weakened by the international economic crisis. Nicaragua further claimed that the expected loss of revenue due to the reduction of its sugar quota represented over 40 per cent of the value of its sugar exports in 1982-83. Nicaragua therefore believed that, far from complying with the principles and objectives set out in Part IV, the quota system applied by the United States to sugar imports, and in particular the reduction of the sugar quota allocated to Nicaragua, violated the commitments assumed by the United States under Part IV of the General Agreement.

Ministerial Declaration of 1982

3.9 Nicaragua also referred to the fact that the United States had explained the introduction of this measure in terms of foreign policy and security considerations. Nicaragua believed that it was a fundamental principle that no contracting party should use trade measures to exert pressure for the purpose of solving non-economic problems. This principle had been embodied in paragraph 7(iii) of the Ministerial Declaration of November 1982 (BISD 29S/15).

B. United States Arguments

3.10 The United States stated that it was neither invoking any exceptions under the provisions of the General Agreement nor intending to defend its actions in GATT terms. The reduction in Nicaragua's sugar imports was not solely motivated by trade considerations, nor did this action secure any economic or trade benefit for the United States or for the sugar producers or any other industry of the United States. The action of the United States did of course affect trade, but was not taken for trade policy reasons.

3.11 The United States held that its action in reducing the Nicaraguan quota was fully justified in the context in which it was taken. The United States was of the view that attempting to discuss this issue in purely trade terms within the GATT, divorced from the broader context of the dispute, would be disingenuous. The resolution of that dispute was certainly desirable, and would also result in the lifting of the action which Nicaragua had challenged before the Panel, but the United States did not believe that the review and resolution of that broader dispute was within the ambit of the GATT.

3.12 The United States had reviewed the arguments presented by Nicaragua before the Panel. Consistent with its stated position, the United States did not wish to enter into an analysis of such arguments. However, the United States noted that certain assertions had been made by Nicaragua regarding the United States' overall sugar programme in terms of Article XI of the GATT. The United States maintained, as it consistently had, that the regulation of its domestic sugar market was entirely valid under the GATT. Nicaragua's assertions on this point had been made completely outside the agreed terms of reference of the Panel. The United States, therefore, reserved its rights and arguments on this issue.

4. Findings and Conclusions

4.1 The Panel noted that the measures taken by the United States concerning sugar imports from Nicaragua were but one aspect of a more general problem. The Panel, in accordance with its terms of reference as set out in paragraph 1.4, examined those measures solely in the light of the relevant GATT provisions, concerning itself only with the trade issue under dispute.

4.2 Nicaragua claimed that the United States sugar quota system was contrary to Article XI of the General Agreement and not covered by the decision of the CONTRACTING PARTIES of 5 March 1955 which waived, inter alia, the obligations of the United States under this Article to permit actions under Section 22 of the Agricultural Adjustment Act (BISD 3S/32). The Panel noted that its terms of reference defined the matter before it as "the measures taken by the United States concerning imports of sugar from Nicaragua", and referred to document L/5492 in which Nicaragua had asked for consultations under Article XXIII:1 on "the announcement by the United States Government of the modification regarding the allocation of the sugar import quota to Nicaragua". The Panel concluded, therefore, that the task assigned to it by the Council was to examine not the United States sugar quota system as such but the reduction in the quota allocated to Nicaragua within that system, and that any consideration of the sugar quota system in the light of Article XI fell outside its terms of reference.

4.3 Nicaragua argued that the United States measures were inconsistent with the provisions of Article XIII of the General Agreement and in particular with paragraph 2 of that Article, according to which "in applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions, ...". The Panel noted that under the sugar quota system established by the United States on 5 May 1982 the share of each supplying country corresponded to its share in the total sugar imports of the United States during a previous representative period, and that Nicaragua had, on this basis, been allocated 2.1 per cent of the total import quota, which amounted in the fiscal year 1982/83 to 58,000 short tons. Nicaragua's quota for the fiscal year 1983/84 had been reduced to 6,000 short tons, or about one-tenth of its prior allocation, and this reduction had not been motivated by any factor which might have affected or might be affecting trade in sugar. The Panel therefore concluded that the sugar quota allocated to Nicaragua for the fiscal year 1983/84 was inconsistent with the United States' obligations under Article XIII:2.

4.4 The Panel noted that the United States had not invoked any of the exceptions provided for in the General Agreement permitting discriminatory quantitative restrictions contrary to Article XIII. The Panel therefore did not examine whether the reduction in Nicaragua's quota could be justified under any such provision.

4.5 Having found the reduction of the quota to be inconsistent with the obligations of the United States under Article XIII, the Panel did not deem it necessary to examine whether the action was also inconsistent with any other obligations on quota allocations which the United States might have assumed under Article II in its schedule of concessions.

4.6 Moreover, having found the quota reduction to be inconsistent with a specific obligation of the United States under Part II of the General Agreement, the Panel saw no need to pursue the question whether the action was also contrary to the United States' more general commitments under Part IV.

4.7 For the reasons set out above the Panel concluded that in allocating to Nicaragua for the fiscal year 1983/84 an import quota of 6,000 short tons the United States had failed to carry out its obligations under the General Agreement. The Panel suggests that the CONTRACTING PARTIES recommend that the United States promptly allocate to Nicaragua a sugar import quota consistent with the criteria set out in Article XIII:2.