

**EUROPEAN COMMUNITIES – REGIME FOR THE IMPORTATION,
SALE AND DISTRIBUTION OF BANANAS**

Statement by Ecuador

The following statement, delivered by Ecuador at the Dispute Settlement Body meeting of 25 September 2001 under Item 1(a) (Surveillance of Implementation of Recommendations Adopted by the DSB), is circulated at the request of that delegation.

Thank you, Mr. Chairman. Ecuador has taken note of the status report submitted by the European Communities.

In its written report, the EC states that it is continuing to work actively on the legal instruments that are required for the management of the tariff quota system on which its new banana import regime is based. The EC also states that these legal instruments are in full compliance with the understandings on bananas reached with Ecuador and the United States. I would like to recall that under Article 21.6 of the DSU, one of the functions of this Body is to keep under surveillance the implementation of the obligations arising from the adopted recommendations or rulings. As has become customary at each meeting of the DSB, Ecuador is once again seeking to ensure that this is done in respect of the banana dispute.

We remind the EC that for Ecuador, the Understanding reached with the EC is a solution which reflects a difficult balance between different positions and interests. That balance, which is the fruit of intensive negotiations, must be respected. We assume that the EC has a particular interest in ensuring that this balance is maintained and that the implementation of the said Understanding will reflect the various elements agreed upon by those who negotiated it.

When it mentions the legal instruments that it is preparing, the EC is undoubtedly referring to Commission proposal "COM(2001) 4077 final" reforming Council Regulation (EEC) No. 216/2001 of 29 January 2001 amending Regulation (EEC) No. 404/93 on the common organization of the market in bananas.

I would like to make the following comments with respect to this proposal, which the Commission has submitted to the member States of the EC and the European Parliament for consideration:

1. While the Commission's proposal addresses the commitment to transfer 100 thousand tons from quota C to quotas A and B and to reserve quota C exclusively for the ACP countries, it establishes a system of preferences for the ACP countries which goes beyond what was decided by the European Council on 29 January 2001 as well as the provisions of the Annex entitled "Trade Regime Applicable During the Preparatory Period" of the Partnership Agreement concluded in

Cotonou on 29 January 2001, of which Article 1 refers to merely to importation "free of customs duties".

2. Council Regulation (EC) No. 216/2001 currently in force establishes a most-favoured-nation tariff of EUR 75 per tonne for quotas A and B, whereas the new proposal of the Commission alters this situation by adding that imports from the ACP countries shall be subject to a "zero duty" under those quotas. In our view, this element does not respect the balance reached in the Understanding concluded with the EC.

3. The Proposal of the Commission reserves quota C, with a zero duty, exclusively for the ACP countries, as agreed with Ecuador and the United States. It also seeks to apply an additional tariff preference of EU 300 per tonne to imports from the ACP countries, which would constitute a double preference scheme that was never agreed upon. To accept the Commission's Proposal would ultimately amount to granting a zero tariff for all quotas, and not only quota C, plus a tariff preference of EU 300 per tonne which the Cotonou Agreement does not call for. This would merely create a new imbalance in the Understanding concluded between Ecuador and the EC, and raises serious doubts in our mind as to whether the EC is actually interested in ending the banana dispute.

4. The EC should appreciate that the negotiations that produced its current banana regime ended five months ago and what remains to be done is merely to implement what was agreed. By introducing new elements the EC is not only undermining what has been negotiated, but it is also seeking to obtain advantages in negotiations that have not yet begun on the tariff level to be introduced as of 2006.

5. The system of preferences that the Commission is proposing affects the decision of the EU Council in Article 1 of Council Regulation (EC) No. 216/2001, which states that a Tariff Only regime shall be introduced "no later than 1 January 2006", in that it prejudices the tariff level that will be applied under that regime in accordance with negotiations under Article XXVIII of the GATT and the decision to be taken by the European Council itself in that respect.

6. The EC and its member States must ensure that the changes in the banana regime that it is under obligation to introduce do not alter the agreements with Ecuador and the United States and that they do not go beyond the Cotonou Agreement or the decisions taken by the Council itself of 29 January 2001.

7. Ecuador considers it appropriate to recall the importance of maintaining the negotiated balance. Accordingly, in order to settle this dispute the EC needs only to take a decision to transfer 100,000 tonnes from quota C to quota B and to transfer quota C to the ACP countries exclusively, at zero tariff. This is in keeping with what was agreed, and above all, it is fully consistent with the implementation of the Partnership Agreement concluded in Cotonou in that it broadly guarantees the market access conditions traditionally maintained with the ACP countries.

Thank you Mr. Chairman.
