

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

Recourse to Article 21.5 of the DSU by the United States

Notification of an Appeal by the European Communities
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 28 August 2008, from the Delegation of the European Commission, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17 of the DSU and to Rule 20.1 of the Working Procedures for Appellate Review, the European Communities submits its Notice of Appeal on certain issues of law and certain legal interpretations developed by the Panel in the Report on *European Communities' regime for the importation, sale and distribution of bananas – Recourse to Article 21.5 of the DSU by the United States of America*.¹
2. The European Communities seeks review by the Appellate Body of the following issues of law and legal interpretations in the Report of the Panel:
 - (a) The Panel's erroneous interpretation and application of Article 9.3 of the DSU;
 - (b) the Panel's erroneous finding that the banana import regime that the European Communities had in place between January 1, 2006 and December 31, 2007 was a "measure taken to comply" with the rulings and recommendations adopted by the DSB in 1997;
 - (c) the Panel's erroneous findings concerning the legal effects of the Understanding on Bananas signed by the United States and the European Communities in 2001;
 - (d) the Panel's erroneous interpretation and application of the principle of good faith in WTO law;
 - (e) the Panel's erroneous interpretation of Article XIII of the GATT and its erroneous finding of a violation of that provision;

¹ WT/DS27/RW/USA circulated on 19 May 2008.

- (f) the Panel's erroneous finding that the United States suffered "nullification or impairment" as a result of the banana import regime that the European Communities had in place between January 1, 2006 and December 31, 2007;
 - (g) the Panel's failure to take into consideration the repeal of the contested measure.
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