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EUROPEAN COMMUNITIES - CUSTOMS CLASSIFICATION
OF CERTAIN COMPUTER EQUIPMENT

Notification of an Appeal by the European Communities under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 24 March 1998, sent by the European Communities to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to paragraph 4 of Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures on Appellate Review, the European Communities hereby notify their decision to appeal to the Appellate Body certain issues of law covered in the panel report on *European Communities - Customs Classification of Certain Computer Equipment* (WT/DS26/R, WT/DS67/R, WT/DS68/R).

The European Communities request that the Appellate Body review a number of errors of law and certain legal interpretations developed by the Panel in its report. The errors of law and legal interpretations to be reviewed include the following:

1. The Panel erred where it found that the measures under dispute and the products affected by such measures were identified sufficiently specifically by the United States to include measures other than Commission Regulation (EC) No. 1165/95 as far as it concerns Local Area Network (LAN) adapter cards.
2. The Panel erred where it considered that the meaning of a particular position in the Schedule of a tariff concessions of a WTO Member should be read in the light of the "legitimate expectations" of an exporting Member outside the context of nullification and impairment claims in the absence of a violation of a GATT provision (so-called non-violation claims) and where it considered that Article II.5 of the GATT 1994 was, on the one hand, confirming this view and, on the other hand, was not relevant to the present case.
3. Subordinately, the Panel erred, where it considered that the "legitimate expectations" of the exporting Member with regard to the interpretation of a tariff concession should be based on the classification practices for individual importers and individual

consignments, or on the subjective perception of a number of exporting companies of that exporting Member and not on the importing Member's Schedule of concessions, its published legislation and its customs nomenclature. By so doing, it confused in particular the legally separate issues of customs classification, on the one hand, and the tariff treatment required under a Member's Schedule of tariff concessions, on the other hand.

4. Finally, the Panel erred where it considered that, in any case, the onus of clarifying the scope of a tariff concession during a multilateral tariff negotiation under the auspices of the GATT/WTO shall necessarily be put on the side of the importing Member. By so doing, the Panel has created and applied a new rule on the burden of proof in the dispute settlement procedure which is outside its terms of reference and is beyond the powers of a panel.

The above errors in law and legal interpretations affect, *inter alia*, the following findings of the Panel that the EC requests the Appellate Body to revise and reverse:

8.9, 8.10, 8.23, 8.28, 8.30 to 8.31, 8.33, 8.35 to 8.62, 8.69 to 8.70, 9.1 and 9.2.
