

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

Recourse by the United States to Article 22.2 of the DSU

The following communication, dated 14 January 1999, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*, the United States requests authorization from the Dispute Settlement Body (DSB) to suspend the application to the European Communities (EC), and member States thereof, of tariff concessions and related obligations under the *General Agreement on Tariffs and Trade 1994 (GATT)*, covering trade in an amount of US\$520 million. This level of suspension is equivalent to the level of nullification or impairment of benefits accruing to the United States that results from the EC's failure to bring its regime for the importation, sale and distribution of bananas (banana regime) into compliance, by 1 January 1999, with the *GATT* and the *General Agreement on Trade in Services (GATS)* or to otherwise comply with the recommendations and rulings of the DSB in *EC - Regime for the Importation, Sale and Distribution of Bananas*.

**The EC's Failure to Implement the DSB's Recommendations and Rulings**

On 8 May 1996, the DSB established a panel at the request of Ecuador, Guatemala, Honduras, Mexico and the United States, to examine the EC banana regime. Both the panel and the Appellate Body in this dispute found the EC banana regime in violation of the *GATT* and the *GATS*. On 25 September 1997, the DSB adopted the report of the panel, as modified by the Appellate Body. The resulting DSB recommendations and rulings include, *inter alia*, the recommendation that the EC bring the measures found to be inconsistent with the *GATT* and the *GATS* into conformity with its obligations under those agreements. (WT/DS27/AB/R, para. 257; WT/DS27/R, para. 9.2). A WTO-appointed arbitrator subsequently determined that the "reasonable period of time" for the EC to implement the DSB recommendations and rulings would expire by 1 January 1999.

On 20 July 1998, the EC Council of Agriculture Ministers formally approved amendments to the banana regime and on July 28, those amendments were published in the *EC Official Journal* (EC 1637/98; "Regulation 1637"). On 31 October 1998, the European Commission published additional implementing provisions concerning the administration of import licenses for bananas (EC 2362/98; "Regulation 2362"). Regulations 1637 and 2362 became effective on 1 January 1999. These regulations perpetuate discriminatory aspects of the EC banana regime that were identified in the DSB's recommendations and rulings as inconsistent with WTO agreements. Therefore, these amendments fail to bring the EC's banana regime into conformity with the EC's WTO obligations within the reasonable period of time, as required by the DSB recommendations and rulings, thus perpetuating the nullification or impairment of benefits accruing to the United States, directly and

indirectly, under the *GATT* and the *GATS*, that was found by the panel and the Appellate Body in this dispute. The United States thus is entitled to redress under Article 22 of the DSU.

### **U.S. Recourse to Article 22.2 of the DSU**

Article 22.1 of the DSU provides that “full implementation” of the recommendations and rulings of the DSB is the preferred conclusion to a dispute. In the event that implementation is not achieved within the established “reasonable period of time,” the parties to a dispute may attempt to negotiate mutually acceptable compensation, if requested by the prevailing party, or the prevailing party may be authorized by the DSB to suspend concessions and obligations. Article 22.2 of the DSU provides that, within 20 days after the “reasonable period” expires, a prevailing party may request DSB authorization to suspend the application of concessions and obligations to the party that has failed to implement the DSB recommendations and rulings. Article 22.6 requires the DSB to grant such authorization within 30 days of the expiry of that period, unless there is consensus to reject the request. If the party that has failed to implement the DSB recommendations and rulings requests arbitration on the level of the suspension proposed by the prevailing party, the matter shall be referred to arbitration under Article 22.6. The text of the DSU is clear that such rights are to be exercised within the time frames set forth in Article 22.

The EC’s failure to bring its regime for the importation, sale and distribution of bananas into compliance with the *GATT* and the *GATS*, or to otherwise comply with the recommendations and rulings of the DSB in this matter results in a loss in U.S. exports of US\$520 million, including lost U.S. exports of goods and services used in the production of Latin American bananas for the European market and lost profits of U.S. service suppliers on the distribution and sale of Latin American bananas in the European market. In accordance with the schedule established in Article 22.2, the United States requests authorization from the DSB, at its meeting on 25 January 1999, to suspend the application to the EC, and member States thereof, of tariff concessions and related obligations under the *GATT*, covering trade in an amount of US\$520 million.

In considering what concessions to suspend, the United States applied the principles and procedures set forth in Article 22.3 of the DSU, and makes this request pursuant to Article 22.3(a). As required by Article 22.4 of the DSU, the level of suspension proposed is equivalent on an annual basis to the nullification or impairment of benefits accruing to the United States, resulting from the EC’s failure to comply with the DSB’s recommendations and rulings. The United States intends to implement this suspension of tariff concessions and related obligations under the *GATT* by directing the U.S. Customs Service to impose duties in excess of bound rates on the products listed in the attachment to this request.

### LIST OF PRODUCTS

The imposition of increased duties would apply to products that are both: (1) classified in the subheadings of the Harmonized Tariff Schedule of the United States listed below; and (2) the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom. The product descriptions that are provided below are for the convenience of the reader and are not intended to delimit in any way the scope of the products that would be subject to increased duties.

| HTS Number | Product Description   |
|------------|---|
| 02101900   | Meat of swine, other than hams, shoulders, bellies (streaky) and cuts thereof, salted, in brine, dried or smoked                                      |
| 04069057   | Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating  |
| 19053000   | Sweet biscuits; waffles and wafers  |
| 33073050   | Bath preparations, other than bath salts  |
| 34060000   | Candles, tapers and the like  |
| 39202000   | Nonadhesive plates, sheets, film, foil and strip, noncellular, not reinforced or combined with other materials, of polymers of propylene              |
| 42022215   | Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics   |
| 42023210   | Articles of a kind normally carried in the pocket or handbag, with outer surface of reinforced or laminated plastics                                  |
| 48055000   | Uncoated felt paper and paperboard in rolls or sheets   |
| 48192000   | Folding cartons, boxes and cases of noncorrugated paper or paperboard   |
| 49090040   | Printed cards (except postcards) bearing personal greetings, messages or announcements, with or without envelopes or trimmings                        |
| 49119120   | Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation                                   |
| 61101010   | Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, wholly of cashmere                                   |
| 63022190   | Bed linen, not knit or crochet, printed, of cotton, not containing any embroidery, lace, braid, edging, trimming, piping or applique work, not napped |
| 85072080   | Lead-acid storage batteries other than of a kind used for starting piston engines or as the primary source of power for electric vehicles             |
| 85167100   | Electrothermic coffee or tea makers, for domestic purposes  |
| 94051080   | Chandeliers and other electric ceiling or wall lighting fittings (other than used for public spaces), not of base metal                               |