

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

Second Recourse to Article 21.5 of the DSU by Ecuador

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 Ecuador*.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 findings concerning the legal effects of the Understanding on Bananas signed by Ecuador and the European Communities in 2001;
 - (c) the Panel's erroneous interpretation and application of the principle of good faith in WTO law;
 - (d) the Panel's legal errors concerning the legal effects of the Doha waiver on the European Communities' Schedule of Concessions;
 - (e) the Panel's erroneous interpretation of Article XIII of the GATT and erroneous finding of a violation of that provision;
 - (f) the Panel's legal errors in considering that a limitation imposed on the quantity of goods that can benefit from a preferential tariff lawfully granted to certain Members nullifies or impairs benefits accruing under the GATT to all other Members and the Panel's erroneous finding that Ecuador suffered nullification or impairment arising

¹ WT/DS27/RW2/ECU circulated on 7 April 2008.

from any inconsistency of the European Communities' measures with Article XIII of the GATT;

- (g) the Panel's legal errors relating to the legal effects of suggestions made by panels pursuant to Article 19.1 of the DSU and the Panel's failure to examine the European Communities' measures in the light of these suggestions.
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