

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

Request for the Establishment of a Panel by the European Communities

The following communication, dated 14 December 1998, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

On 25 September 1997, the Dispute Settlement Body (DSB) adopted the Appellate Body Report in *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, and the Panel Reports in WT/DS27/R/ECU, WT/DS27/R/GTM-WT/DS27/R/HND, WT/DS27/R/MEX, WT/DS27/R/USA, as modified by the Appellate Body Report, recommending that the European Communities bring the measures found to be inconsistent with the GATT 1994 and the GATS into conformity with the obligations of the European Communities under those agreements.

On 7 January 1998, the Arbitrator appointed in accordance with Article 21.3(c) DSU concluded that the reasonable period of time to implement the recommendations and rulings of the DSB in this case would expire on 1 January 1999.

On 20 July 1998, the Council of the European Union adopted Regulation (EC) No. 1637/98 amending Regulation (EEC) No. 404/93 on the common organisation of the market in bananas. This Regulation entered into force on 31 July 1998. It will apply from 1 January 1999.

On 18 August 1998 Ecuador, Guatemala, Honduras, Mexico and the United States requested consultations under Article 21.5 of the DSU (WT/DS27/18) concerning this Regulation. Consultations between Ecuador, Guatemala, Honduras, Mexico and the United States with the European Communities took place on 17 September 1998.

In the DSB meeting of 22 September 1998, the original complainants expressed their concern “about the EC’s failure to comply with the DSB’s recommendations”. They stated that “consultations had confirmed that the Community and the complaining parties could not agree on the WTO-consistency of the measures taken by the EC to comply with the DSB’s recommendations by 1 January 1999”. They emphasised that “[t]here was no doubt with regard to the existence of such a disagreement between the Community and the complaining parties”. They also stated that “they had made it clear that there was no basis for any further consultations and had no plans to hold further consultations”.

On 28 October 1998, the Commission of the European Communities adopted Regulation (EC) No. 2362/98 laying down detailed rules for the implementation of Council Regulation (EEC) No. 404/93 regarding imports of bananas into the Community. This Regulation entered into force on 1 November 1998. It will apply from 1 January 1999.

On 13 November 1998, Ecuador requested consultations (WT/DS27/30) which took place on 23 November 1998. Mexico also requested consultations and was joined as co-complainant in the same meeting. These consultations concerned the Commission Regulation 2362/98.

One of the original complainants, the United States, has officially announced that it will make a unilateral determination that the EC implementing measures fail to implement the DSB recommendations, and that it will, despite the absence of any multilateral determination that the EC implementing measures fail to comply with the DSB recommendations and rulings, introduce trade sanctions against EC exports in the near future.

The European Communities strongly rejects this unilateral approach which is a blatant violation of the explicit obligations that the United States has accepted in Article 23, paragraph 2(a) of the DSU. Given this fact, any approach by the United States to seek DSB authorisation for suspension of concessions on the basis of such a unilateral determination would equally be inadmissible and any proposal in this sense (as the United States has announced will be made on January 21st) will in itself put at risk the future of the WTO dispute settlement system. The European Communities has in this context already on 25 November 1998 requested dispute settlement consultations with the United States regarding the Section 301 procedure of the 1974 Trade Act, which is the domestic legal basis for these unilateral US actions.

The European Communities submits that Article 23 of the DSU confirms that there is a general principle in the WTO agreements that measures taken by WTO Members are in conformity with their rules unless they have been challenged under the appropriate dispute settlement procedures and proven not to conform. Since none of the original complainants has continued to pursue the procedures under Article 21.5, they must presently be deemed to be satisfied with the way in which the European Communities has brought its measures into conformity with the recommendations and rulings of the DSB in this case.

Within this legal context, the European Communities requests the establishment of a panel under Article 21.5 of the DSU with the mandate to find that the above-mentioned implementing measures of the European Communities must be presumed to conform to WTO rules unless their conformity has been duly challenged under the appropriate DSU procedures.
