WORLD TRADE ORGANIZATION

WT/DS27/81
15 March 2007

(07-1090)

Original: French

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

Recourse to Article 21.5 of the DSU by Ecuador

Communication from Cameroon

The following communication, dated 8 March 2007, from the delegation of Cameroon to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

By letter dated 23 February 2007, the Permanent Mission of Ecuador to the WTO requested, on the basis of Article 21.5 of the DSU, that the consistency with GATT Articles I, II and XIII:1 and 2 of the European Communities' regime for the importation of bananas be referred for review to the original Panel, if possible.

On behalf of my Government, I should like to make the following comments:

1. **The agreement reached in April 2001 between the United States and Ecuador, on the one hand, and the European Communities, on the other, as reflected in the Doha Ministerial Decision of 14 November 2001, defined a new specific procedure in the search for a solution to any dispute concerning bananas.** It was pursuant to this new procedure that negotiations were held early in 2005 with Members exporting to the European Union on an MFN basis. These negotiations were carried forward by arbitration in the course of the summer of the same year, and the arbitrators were required to consider whether *"the [...] rebinding of the EC tariff on bananas would result in at least maintaining total market access for MFN banana suppliers, taking into account the [...] EC commitments"*.

This is therefore a very different procedure from the one hitherto followed by panels, and the request submitted by Ecuador on the basis of Article 21.5 of the DSU is therefore legally groundless.

Moreover, the steps taken by Ecuador since the end of arbitration in the autumn of 2005 consisted in requesting consultations under the normal Article 4 procedure, possibly leading to the Article 6 procedure (reference was also made to these provisions in the letter of 23 February 2007), whereas Article 21.5 does not provide for consultations.

2. We emphasize that **recourse to Article 21.5 is justified only *"where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings"*.**

The agreement in which Ecuador played a decisive part, as reproduced in the Doha *"Ministerial Decision"*, particularly the annex thereto, stipulates that: *"If the arbitrator determines*

that the rebinding would not result in at least maintaining total market access for MFN suppliers, the EC shall rectify the matter".

The arbitrators decided initially that the level of the tariff which the European Union intended to adopt would be too high to achieve that objective. The Communities modified that level. The same verdict was rendered on the new proposed tariff. The Communities decided for the third time to adopt a new tariff, at 176 €/t, which was introduced on 1 January 2006. The European Communities did, therefore, comply with the recommendations and rulings of the arbitrator.

A monitoring system was established for the joint review of trends in imports throughout 2006. It confirmed that the new customs tariff introduced by the European Communities did not have the effect of impeding total MFN access to the Community market; on the contrary, the overall volumes increased substantially. In fact, one again, recourse to Article 21.5 is not justified.

3. **Finding no way to attack the duty level of €176 per tonne, Ecuador seeks to shift the discussion by challenging the preferential regime granted to the ACP countries** on the ground that "the modified regime violated GATT Articles I and XIII".

However, Ecuador negotiated and approved the Doha Decision which, in the Annex relating specifically to bananas, contains the following sentence: "*In the case of bananas, the waiver* [of Article I, paragraph 1] *will also apply until 31 December 2007, subject to the following* [that is, the commitment to enter into consultations and to submit to arbitration and follow the arbitrator's recommendations]".

This is therefore unacceptable. Indeed, I do not see how the DSB can accept a Member's request to modify a ministerial decision. Clearly, by means of Article 21.5, Ecuador is seeking to circumvent that ministerial decision.

If, by some unlikely chance, the decision were taken to establish a panel, and since it would be the task of that panel to discuss only the ACP preferential regime, then, Mr Chairman, **my Government would never agree to being granted third party status** in the panel's proceedings, as in the past, **and would demand officially to be made a full party.**