

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

Recourse to Article 21.5 of the DSU

The following communication, dated 18 December 1998, from the Permanent Mission of Ecuador 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 adopted the Reports of the Panel and the Appellate Body in "European Communities – Regime for the Importation, Sale and Distribution of Bananas" (document WT/DS27/12).

Reports WT/DS27/R/ECU and WT/DS27/AB/R established the inconsistency of the European Communities' banana regime with their obligations under the General Agreement on Tariffs and Trade 1994, the General Agreement on Trade in Services and the Agreement on Import Licensing Procedures.

Subsequently, on 23 December 1997, the Arbitrator appointed by the WTO Director-General to set a reasonable period of time for the implementation of the recommendations and rulings of the Panel and the Appellate Body concluded (document WT/DS27/15) that the European Communities should implement the recommendations and rulings of the Dispute Settlement Body within a period of 15 months and one week i.e. by 1 January 1999.

In July and October 1998, the European Communities adopted the following regulations which, in Ecuador's view, are at odds with the basic principles and multilateral rules governing the World Trade Organization (WTO):

- Council Regulation (EC) No. 1637/98 of 20 July 1998 amending Regulation 404/93 on the common organization of the market in bananas, published in the Official Journal of the European Communities OJ.1998.L 210 of 28 July 1998;
- Commission Regulation (EC) No. 2362/98 of 28 October 1998 laying down detailed rules for the implementation of Council Regulation (EEC) No. 404/93 regarding imports of bananas into the Community, published in Official Journal L 293 of 31 October 1998.

Since the Commission of the European Communities submitted its proposal in January 1998 to amend the contested banana regime, Ecuador has repeatedly stated its views, before the Dispute

Settlement Body and directly to the authorities of the Commission, regarding the inconsistency of the proposed amendments with WTO regulations.¹

Later on, when the amendments were adopted, Ecuador, acting jointly and severally with other Members of the WTO, stated its disagreement therewith at the DSB meetings of 23 July, 22 September, 21 October and 25 November 1998, and expressed its conviction that this conflict should be settled in conformity with Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), i.e. it should be brought before the Panel that originally examined the case.

Ecuador, acting jointly and severally with the other complaining parties in the case, requested consultations (document WT/DS27/18) on 18 August 1998, without prejudice to its rights under Article 21.5 and on the understanding that the application of this Article would not assume or require the holding of prior consultations.

The consultations were held on 17 September 1998, and resumed at the request of Ecuador on 23 November 1998. Neither these consultations nor the two additional meetings held on 6 August and 21 September 1998 under the auspices of the Chairman of the Dispute Settlement Body were able to settle the differences and disagreements between the parties. This is not new for the European Communities, and there are now sufficient elements to justify submitting the issue to the Panel that originally heard the case. However, Ecuador reserves the right to raise other issues of law and fact in the course of the procedure initiated.

For the above reasons, Ecuador requests the WTO Dispute Settlement Body, at today's meeting, to call for the re-establishment of the Panel that originally heard the case in order to resolve the conflict with the European Communities concerning the consistency of its measures to implement the recommendations and rulings of the Dispute Settlement Body of 25 September 1997.

Ecuador requests that the Panel, in examining the regulations of the European Communities, consider and verify whether its own recommendations and rulings and those of the Appellate Body adopted by the Dispute Settlement Body on 25 September 1997 denouncing the inconsistencies with the GATT 1994, the General Agreement on Trade in Services and the Agreement on Import Licensing Procedures, have been effectively implemented by the European Communities, and if not, that it call for the immediate amendment of the Community regulations without the right to another reasonable period of time.

The Panel should also examine Council Regulation (EC) No. 1637/98 and Commission Regulation (EC) No. 2362/98 and find that these measures are inconsistent with the European Communities' obligations under the following provisions:

1. The General Agreement on Tariffs and Trade (GATT) 1994, and in particular, although not necessarily exclusively:
 - Article I of the GATT 1994, in that Regulation 1637/98 discriminates in favour of traditional and non-traditional ACP bananas;
 - Article II of the GATT 1994 as regards the creation of a tariff quota described as an autonomous quota following the expansion of the Community market through the accession of new members, violating their obligations, including bindings offered in their Schedule of Concessions;

¹ DSB meetings held in 1998: 22 January, 13 February, 25 March, 22 April, 22 June, 23 July, 22 September, 21 October and 25 November.

- Article XIII of the GATT 1994, which requires the non-discriminatory administration of quantitative restrictions and stipulates that the parties should aim at a distribution of trade in such product (bananas) approaching as closely as possible the shares which the various parties might be expected to obtain in the absence of such restrictions, particularly in establishing a quota for bananas from the ACP countries;
 - Paragraph 1 of Article XIII of the GATT 1994, which stipulates that no restriction shall be applied on the importation of any products of the territory of any other contracting party unless the importation of the like product of all the third countries is similarly restricted;
 - paragraph 2(d) of Article XIII of the GATT 1994, which establishes how a quota should be allocated among supplying countries having a substantial interest in supplying the product concerned;
 - Paragraph 5 of Article XIII of the GATT 1994, which confirms the mandatory application of the provisions of Article XIII to any tariff quota instituted or maintained by any contracting party;
2. The General Agreement on Trade in Services (GATS), in particular, although not necessarily exclusively:
- Article II, which lays down the obligation to accord to services and service suppliers of any other Member treatment no less favourable than that accorded to like services or service suppliers of any other country;
 - Article XVII, and in particular paragraph 3, which lay down provisions for granting national treatment to service suppliers of other Members and contain comments regarding the modification of the conditions of competition in favour of foreign services or service suppliers;
3. The Agreement on Import Licensing Procedures, in particular, although not necessarily exclusively, Article 3 thereof.

Finally, Ecuador considers that it is necessary to invoke Article 19 of the Understanding on Rules and Procedures Governing the Settlement of Disputes to ensure that the Panel, in addition to issuing its rulings, suggests how the European Communities might implement its recommendations.
