

TURKEY – CERTAIN IMPORT PROCEDURES FOR FRESH FRUIT

Request for the Establishment of a Panel by Ecuador

The following communication, dated 13 June 2002, from the Permanent Mission of Ecuador to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Pursuant to Articles 4.7 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU), Article XXIII:2 of the General Agreement on Tariffs and Trade (the GATT 1994), Article 19 of the Agreement on Agriculture, Article 6 of the Agreement on Import Licensing Procedures, and Article 11:1 of the Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement), Ecuador hereby requests the establishment of a panel to examine Turkey's import procedures for fresh fruit. On 10 September 2001, the Government of Ecuador requested consultations with the Government of Turkey on this matter. This request was circulated as document WT/DS237/1. The consultations were held in Geneva on 17 September 2001 but failed to settle the dispute.

This dispute concerns the application of Turkey's import procedures for fresh fruit to imports of bananas. According to these procedures, an importer must obtain a Control Certificate ("Kontrol Belgesi") issued by the Turkish Ministry of Agriculture and Rural Affairs to be able to seek the SPS clearance certificate which is a prerequisite for presentation of the goods for customs clearance. The Control Certificate is not an SPS clearance certificate but an administrative document which allows goods to be submitted to SPS control.¹

Until November 1999, importers of bananas could request Control Certificates at any time for any quantity of bananas and the Certificates were issued without undue delays. However, since November 1999 the Control Certificates are issued only for limited quantities, for limited periods of time and with considerable delays. A Control Certificate can only be used for one shipment. If a quantity less than that indicated in the Certificate is imported, it is deemed exhausted. Moreover, a new Control Certificate is issued only after the shipment for which the previous Certificate was issued has been cleared through customs. As up to two months can lapse between the application for a Control Certificate and customs clearance, this means that an importer may be able to request a Control Certificate only six times a year. The quantities for which Control Certificates are issued are not published but importers are advised orally of the quantities that will be accepted. Turkey alleged before the Committee on Sanitary and Phytosanitary Measures that it could issue Control Certificates only for limited quantities because it had limited laboratory capacity.² However, the maximum quantities for which Control Certificates were issued and the periods during which they were valid

¹ See for further details: Committee on Sanitary and Phytosanitary Measures, Turkish SPS Measures Applied to Importation of Bananas, G/SPS/GEN/275, page 1.

² Committee on Sanitary and Phytosanitary Measures, Summary of the Meeting held on 14-15 March 2001, G/SPS/R/21, para. 98.

have not varied with Turkey's laboratory capacity and, in its replies to questions by Ecuador, Turkey failed to confirm that it imposes similar requirements and limitations on domestic production

Ecuador considers for these reasons that Turkey applies its Control Certificate system in a manner that constitutes a disguised restriction on imports of bananas inconsistent with WTO law. Ecuador considers in particular that:

- The quantitative limitations on the importation of bananas made effective through the Control Certificates are inconsistent with Article 4.2 of the Agreement on Agriculture and Article XI:1 of the GATT 1994.
- The administration of the Control Certificate system – in particular the delays in issuing Control Certificates, the lack of predictability as to the quantities and the time periods for which Certificates are issued and the requirement that a Certificate must have been used before a new one is issued – cannot be reconciled with the requirements set out in Articles 1:2, 1:3 and 1:6 of the Agreement on Import Licensing Procedures and in Article 2:3 of the SPS Agreement, among them the requirements that the procedures for the application of import licenses shall be "as simple as possible" and that sanitary and phytosanitary measures shall not be "applied in a manner which would constitute a disguised restriction on international trade".
- Turkey's failure to apply to domestic bananas a testing and certification procedure equivalent to that applied to bananas from other WTO Members and to allocate access to its laboratory capacity appropriately between importers and domestic producers is inconsistent with its obligation under Article 8 and paragraph 1 of Annex C of the SPS Agreement and Article III:4 of the GATT 1994.
- Turkey's failure to publish the quantities of domestic and imported bananas that its laboratories accept for inspection and for which Control Certificates are issued violates Turkey's obligations under Article 7 and paragraph 1 of Annex B of the SPS Agreement.

I would like to request you to include Ecuador's request for the establishment of a panel in the agenda for the meeting of the Dispute Settlement Body scheduled to take place on 24 June 2002.
