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**DISPUTE SETTLEMENT BODY**
**8 May 1996**

MINUTES OF MEETING

Held in the Centre William Rappard
on 8 May 1996

Chairman: Mr. Celso Lafer (Brazil)

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## 1. European Communities - Régime for the importation, sale and distribution of bananas

### - Request by Ecuador, Guatemala, Honduras, Mexico and the United States for the establishment of a panel (WT/DS27/6)

The Chairman recalled that at its meeting on 24 April, the DSB had considered the request by the Governments of Ecuador, Guatemala, Honduras, Mexico and the United States for the establishment of a panel to examine their complaint, and had agreed to revert to this matter at the present meeting.

The representative of Guatemala, speaking on behalf of Ecuador, Honduras, Mexico and the United States, reiterated their Governments' request that a panel be established to examine the Communities' régime for the importation, sale and distribution of bananas established under Regulation 404/93, as amended by subsequent legislations, regulations, and administrative measures, including the Framework Agreement on bananas. They requested that the panel find this régime to be inconsistent with the Communities' obligations under, *inter alia*, the following Agreements: (i) Articles I, II, III, X, XI, and XIII of GATT 1994; (ii) Articles 1 and 3 of the Agreement on Import Licensing Procedures; (iii) the Agreement on Agriculture; (iv) Articles II, XVI and XVII of the GATS; and (v) Article 2 of the TRIMs Agreement.

The representative of the European Communities noted the statement made by Guatemala and said that this important long-standing dispute had affected several countries, including developing countries which had a special relationship with the Communities. The régime maintained by the Communities had contributed to the stable economic and trade development of those countries. He regretted the timing of the request, since the Communities believed that the normal procedure of questions and answers in the consultation process had not been fully exhausted. Furthermore, four of the complainants, namely Guatemala, Honduras, Mexico and the United States, had not clarified, despite the Communities' insistence, whether they had withdrawn or were prepared to withdraw their request for consultations made in September 1995[1]. It was not clear whether that complaint had been terminated and replaced by the present request for a panel; such uncertainty was not productive for the WTO system. He believed that individual complainants had fundamentally different interests in this matter. For example one country did not export bananas to the Communities and had no export potential. Another country had exported small quantities of bananas in the past, and had no intention of exporting this product to the Communities in the future. These two countries' interest in requesting a panel was therefore not evident.

The Communities did not oppose the establishment of a panel at the present meeting. However, based on economic considerations, it would have been logical to establish five separate panels. The Communities would not insist on this issue and would not oppose the establishment of a single panel. He recalled that Article 9.2 of the DSU provided that a single panel established to examine multiple complaints "shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired." The Communities reserved its right to request that the panel present separate reports on this dispute.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with the provisions of Article 6 of the DSU.

The representatives of Belize, Cameroon, Colombia, Costa Rica, Côte d'Ivoire, Dominica, Dominican Republic, Ghana, Grenada, India, Jamaica, Japan, Nicaragua, the Philippines, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Thailand and Venezuela reserved their third-party rights to participate in the panel proceedings.

The representative of Saint Lucia, speaking on behalf of Belize, Dominica, Dominican Republic, Grenada, and St. Vincent and the Grenadines, said that their Governments had a special interest in this matter beyond the meaning of Article 10 of the DSU. He also stated that Cameroon, Côte d'Ivoire, Ghana, Senegal and Suriname supported this statement. The banana industry, developed after the collapse of the sugar industry, was of critical importance to their economic viability. It remained vitally important to their social and political stability. Dominica, Grenada, Saint Lucia and St. Vincent and the Grenadines (Windward Islands), relied heavily on the banana industry which accounted for three-quarters of export earnings and provided 25 per cent of direct employment. A collapse of this industry in the Caribbean countries would have disastrous economic effects and spread serious political and social instability in the region.

The Communities' market was the only outlet for Caribbean bananas. This was due to special import arrangements which had been applied by individual member States and, which had ensured both access and viable market returns for the higher production costs of Caribbean bananas. These benefits were enshrined in the Fourth Lomé Convention. Therefore, challenging the Communities' banana régime implied challenging the Lomé Convention which had been in force for a quarter of

[1]WT/DS16/1

century. Its compatibility with the WTO was now being challenged by certain dominant multinationals which claimed that they would lose their market share. Saint Lucia and the other Caribbean banana-exporting countries had continually encouraged dialogue with various parties, including the complaining Latin American banana-exporting countries and other Members which did not export bananas. However, their complaints had not taken into account the stability that this régime provided, which also benefited the complainants, following the depressed and chaotic market conditions in 1991-92. Nor had they taken into account the substantial reduction in benefits accepted by the ACP countries in favour of other exporting countries as a result of adapting their "historic rights" in national markets to the more difficult circumstances of the Communities' single market.

The Caribbean banana-exporting countries had hoped that, in light of these circumstances and with the Communities' flexible approach, any difficulties would have been resolved at the meeting on 9 April 1996 in Miami. The Caribbean banana-exporting countries had attended that meeting in good faith, but had been informed that a panel would be requested to examine this matter. He recalled that pursuant to the Decision of 9 December 1994[2], a waiver for tariff preferences had been granted to the Communities and the ACP countries until 29 February 2000. In accordance with this Decision, "parties to the Convention would, upon request, promptly enter into consultations with any interested party with respect to any difficulty or matter that may arise as a result of the implementation of the preferential treatment for products originating in the ACP countries". Such consultations had never been sought. Therefore, requesting a panel without first seeking consultations with the ACP countries was not in accordance with the spirit of this Decision. It was possible that panel recommendations on the Communities' banana régime could have serious economic and social consequences for the Caribbean countries, including implications for other developing countries. He requested full rights to participate in the panel proceedings, including the right of oral intervention during such proceedings.

The representative of India said that his country was the world's largest banana producer and had a vital interest in this matter.

The representative of Côte d'Ivoire said that in the context of the diversification process aimed at diminishing market uncertainty for its main export products, namely coffee and cocoa, Côte d'Ivoire had also become a producer of bananas. At present, the production of bananas amounted to about 300,000 tonnes, and a substantial part of its population derived its earnings from exports of this product. Trade in bananas was extremely important for the economy and for maintaining the social and political balance of her country. Although not all possibilities for a solution had been exhausted, a panel on this matter was established. Supporting the statement made by Saint Lucia she said that as a third party, her country wished to have special status enabling it to participate fully in the work of this panel, including the right to participate in the panel proceedings.

The representative of Cameroon supported the statement made by Saint Lucia. Members were aware that banana exports were important for Cameroon's economy and her country wished to request full participation in the panel proceedings, including the right to be heard by the panel.

The representative of Ghana said that his country wished to be associated with the statement made by Saint Lucia. As a banana producer, Ghana wished to be accorded third-party status which would enable it, not only to participate in the panel proceedings, but also to have the right of oral intervention during such proceedings.

The representative of Jamaica said that because of the critical importance of the banana industry to its economy and its substantial interest in this matter, her country reserved its third- party rights

[2]L/7604

to participate in the panel in accordance with Article 10.2 of the DSU. In order to pursue this matter in a transparent manner, Jamaica further requested that its participation include the following: (i) the right to make written submissions; (ii) attendance at all meetings of the panel, and the opportunity to receive all submissions of parties to the panel; (iii) the opportunity to be heard by the panel, to ask questions and to respond to questions raised by other parties regarding its submissions. Jamaica had a substantial interest in this matter since the production and export of bananas were of vital importance to its economy, particularly in terms of employment and foreign exchange earnings. Under successive Lomé Conventions, the Communities and its member States had undertaken an obligation with regard to bananas in Article 1 of Protocol 5 of the Convention: "in respect of its banana exports to the Communities' markets, no ACP State shall be placed, as regards access to its traditional markets and its advantages on those markets, in a less favourable situation than in the past or at present." It was Jamaica's understanding that since the inception of the Communities' banana import régime in 1993, the non-ACP banana-exporting countries had benefited from higher prices and increased volume of exports. The Communities' enlargement had also provided a larger market. She further noted that one of the complaining parties was not a bananas-exporter and had no supplier interest. These facts would be clearly determined by the panel in the course of its deliberations. Jamaica would have preferred that in this dispute a mutually satisfactory solution be reached to enable the concerned parties continuing to derive benefits. She regretted that this had not been the case, and confirmed her country's wish to reserve its third-party rights to participate in the panel deliberations.

The representative of Dominican Republic said that his country, as in the past under the GATT, wished to participate fully as a third party in the panel proceedings. He supported the statement made by Saint Lucia since the production of bananas was of vital importance to his country.

The representative of Costa Rica said that his country, as a signatory of the Framework Agreement on bananas and having a substantial trade interest in this matter, wished to reserve its third-party rights to participate in the panel proceedings. Considering the request by Saint Lucia and other delegations, his government wished to request that its participation in the panel be the same as that granted to other countries.

The representative of Colombia said that her country, as a signatory of the Framework Agreement having a substantial trade interest in this dispute and being a major banana exporter into the Communities, wished to reserve its third-party rights to participate in the panel proceedings. Furthermore, in view of the requests made by some delegations she requested that Colombia also be granted any special status to be extended to other Members.

The representative of Nicaragua said that his country had a substantial interest in this matter and therefore wished to reserve its rights to participate in the panel as a third party. In addition, it also considered that for transparency and equity purposes, Nicaragua would also enjoy the same special treatment enabling it to participate in the panel proceedings.

The representative of Venezuela said that his country, as a signatory of the Framework Agreement, wished to reserve its third-party rights to participate in the panel proceedings. He supported the request made by certain countries on this matter, and requested that any status granted to them also be extended to Venezuela.

The representative of Canada said that, although his country did not produce nor export bananas and had not participated in consultations on this matter, the question of reserving its third-party rights to participate in the panel proceedings was under consideration. The Secretariat would be informed of Canada's decision within ten days. Canada had a systemic interest in this matter and believed that a number of issues of systemic interest could be raised in the panel proceedings. One such issue was whether or not the GATS was relevant to this matter. Any conclusions by the panel on this might

affect products other than bananas. Another issue related to the rights of parties to invoke the provisions of Article XXIII of GATT 1994 with regard to a matter subject to a waiver. In this context, the Uruguay Round decision on waivers may be open to different interpretations. He recognized that conclusions reached by panels may not be relevant to other disputes even if the same issues were addressed. However, there was also a jurisprudence developing in the WTO in which the contrary appeared to be the case. He sought guidelines which could enable Canada to present its views on the above-mentioned matters without formally reserving its third-party rights. He recognized that if every delegation wished to reserve its third-party rights on every panel because of potential systemic implications, this would create difficulties with regard to the determination of the panel's composition and other practical considerations. However, this matter was of interest to Canada as well as to other delegations.

The representative of the European Communities said that one would have to consider positive and negative aspects associated with Canada's request. The Communities fully supported requests made by the ACP countries and by Costa Rica, Colombia, Nicaragua and Venezuela regarding their third-party participation in the panel proceedings which were more than justified by economic considerations.

The representative of the United States said that his delegation noted the interest of certain Members to participate in the panel proceedings in a more extensive manner than that provided for in Article 10.2 of the DSU. On behalf of the complaining parties in this dispute, his delegation wished to express their understanding that this request was addressed to the parties to the dispute and not to the DSB for decision or action. He noted the Communities' request for five separate panel reports. As this was a dispute initiated by a single panel request about a single set of measures, there was no basis for five separate reports.

The representative of the European Communities reiterated that, pursuant to Article 9.2 of the DSU, "the single panel shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned." On the basis of this, the Communities would make a formal request for separate panel reports.

The DSB took note of the statements.

## 2. European Communities - Measures concerning meat and meat products (Hormones) - Request by the United States for the establishment of a panel (WT/DS26/6)

The Chairman drew attention to the communication from the United States contained in WT/DS26/6.

The representative of the United States said that his authorities were requesting the establishment of a panel to help resolve a long-standing dispute with the European Communities. There was no legitimate basis for the Communities' ban on the importation of meat from animals treated with certain growth-promoting hormones, which nullified or impaired benefits accruing to the United States under the WTO. The United States believed that the new WTO rules would be instrumental in resolving a dispute that had remained unresolved under the GATT 1947 because of deficiencies in the rules under the GATT 1947, the Tokyo Round Codes, and the Communities' refusal in 1987 to hold a multilateral review of its Hormone Directive.

The representative of the European Communities said that his delegation believed that this request was premature. Although this was a long-standing dispute, the recent initiation of this dispute under the WTO had not given the Communities the time to fully clarify a number of points and exhaust all avenues for consultations. Therefore, the Communities would not agree to the establishment of a panel at the present meeting. He informed the DSB of the Communities' request for consultations with the United States[3] on the unilateral measures taken by the latter to compensate for alleged damage assessed unilaterally by the United States and hoped to hold these consultations at an early date.

The representative of Argentina said that he did not have instructions concerning this matter, but wished to indicate that Argentina, as a beef exporter, was closely following this issue. He emphasized the importance of observing the disciplines of the Agreement on the Application of Sanitary and Phytosanitary Measures by the parties concerned, which could permit a mutually agreed solution to this matter.

The DSB took note of the statements and agreed to revert to this matter at its next meeting.

3. US draft bill concerning the definition of "domestic industry" in the area of safeguards
   - Statement by Mexico

The representative of Mexico, speaking under "Other Business", recalled his delegation's statement made at the meeting of the Council for Trade in Goods on 29 January 1996 concerning a draft bill approved by the US Senate under which the definition of "domestic industry", contained in the United States' legislation on safeguards would be redefined. This would enable the United States to apply a safeguard measure in contravention of Article 4.1(c) of the Agreement on Safeguards. Under the new definition if a perishable product was produced in two different States, and one State produced it in winter and the other in summer, the United States could implement a safeguard measure to protect winter producers without taking into account the output of the State producing the product in the summer when determining the existence of injury or threat of injury. Despite many statements denouncing this draft bill at that meeting on 29 January, and unfortunately for Members and US exporters of perishable agricultural products, the intention to change the definition of "domestic industry" continued to be actively considered by the US Congress. The draft bill redefining the term "domestic industry" was now being associated with another bill, namely the Israel-Gaza Strip Bill, currently under consideration by the Finance Committee of the US Senate and scheduled to be submitted for approval by the Senate prior to Memorial Day recess, i.e., 25 May. This package, negotiated in the US Congress, in which trade-related considerations of the bill had been diluted, would increase its chances of success. Mexico understood that if the Israel-Gaza Strip Bill was adopted by the Senate, it would then be forwarded to the joint Conference Committee of the Senate and the House of Representatives in the course of this month, or in early June, since the initiative had already been approved by the House of Representatives. In light of the above, and the likelihood of imminent approval of a new definition of "domestic industry" by the US Congress, his delegation wished to reiterate its comments made on 29 January. This was not a bilateral matter. If the draft bill became law and other Members followed the same path, there was a serious danger that similar safeguard measures could be applied against exports of perishable agricultural products. Mexico reserved the right to raise this issue in any relevant body, including the DSB, and to assert its rights under the WTO if necessary. It hoped that the US Congress would review this matter in light of the United States' obligations under the WTO and decide that the section of the bill relating to the new definition of "domestic industry" was not only inappropriate but ran counter to the interests of its own exporters of perishable agricultural products.

[3]WT/DS39/1

The representative of Canada thanked Mexico for bringing this matter to the attention of the DSB. His delegation had expressed its views on this matter at the meeting of the Council for Trade in Goods on 29 January. Canada had a direct interest in this matter as an exporter and importer of perishable products. It also had a systemic interest and believed that this legislation was inconsistent with the United States' obligations under the WTO. Canada hoped that the United States would provide Members with more details regarding this legislation.

The representatives of Argentina, Australia, Brazil, Chile, Costa Rica, Dominican Republic, Guatemala, Honduras, New Zealand, Nicaragua, Peru, Philippines, on behalf of ASEAN countries and Uruguay shared the concerns expressed by Mexico on this matter.

The representatives of Colombia, Costa Rica, Dominican Republic, El Salvador, Honduras, Nicaragua, Peru, Philippines, on behalf of ASEAN countries and Uruguay expressed the hope that the US Administration would examine the implications of this legislation in order to review it and bring it into conformity with the United States' obligations under the WTO.

The representative of Argentina said that his country, as an exporter of perishable products to the US market, could be affected if the draft bill was adopted. He reiterated the suggestion made by Argentina at the meeting on 29 January, that at this stage, Members could call upon the US Executive Branch to make all necessary efforts to prevent the adoption of this draft bill which was inconsistent with the WTO.

The representative of New Zealand said that in February 1996, New Zealand had joined other CAIRNS Group countries in making a representation to the US Administration on this issue. New Zealand had also made a bilateral representation. If the proposed amendments to the Trade Act of 1974 were adopted, the United States would be in conflict with its international obligations under the WTO, in particular the Agreement on Safeguards. His country understood that the US Administration considered this legislation to be consistent with its WTO obligations. However, few countries outside of the United States shared this view. He therefore urged the United States to review its position so as to avoid any dispute settlement actions.

The representative of Egypt said that his country had a systemic interest in this matter. He questioned the need for Mexico to raise this issue since Article XVI:4 of the WTO Agreement stated that "each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements".

The representative of Norway expressed his concerns with the tendency to discuss under "Other Business" important policy matters affecting many countries. He noted that more time was being devoted to matters raised under "Other Business" than to issues under the main agenda.

The representative of Mexico thanked Members for their statements. Referring to the comment made by Norway, he said that this matter had been raised under "Other Business" for information. It concerned a proposed legislation not an actual measure and could not therefore be inscribed on the agenda.

The DSB took note of the statements.