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

Notification of an Appeal by the European Communities under  
paragraph 4 of Article 16 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 11 June 1997, sent by the European Communities to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

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Pursuant to paragraph 4 of Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures for Appellate Review, the European Community hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the four panel reports on European Communities - Regime for the Importation, Sale and Distribution of Bananas (WT/DS27/R in the four versions).

The European Community requests that the Appellate Body review a number of errors of law and certain legal interpretations developed by the Panel in its report. These errors of law and legal interpretations to be reviewed by the Appellate Body include the following:

- (a) The Panel erred in law in finding that the Complainants' panel request was sufficient to meet the requirements of Article 6.2 of the DSU.
- (b) The Panel erred in law in finding that the United States had a legal right or interest in advancing claims under the GATT.
- (c) The Panel erred in law in its interpretation of the Agreement on Agriculture and, in particular, of Articles 4.1 and 21.1 of that Agreement and their relation to the GATT, in particular its Article XIII.
- (d) In the alternative: the Panel erred in its interpretation of Article XIII of GATT, in particular paragraph 2(d) (both in relation to the allocation of country shares in the Tariff Rate Quota (TRQ)) for bananas and to the tariff quota reallocation rules of the Banana Framework Agreement (BFA).
- (e) The Panel erred in law when ruling that the erga omnes TRQ for bananas and the preferential regime for parties to the Lomé IV Convention constitute a single import regime for bananas.

- (f) The Panel erred in law in its interpretation of the scope and coverage of the Lomé IV waiver and of the requirements resting on the EC under the Lomé IV Convention.
- (g) The Panel erred in law in its interpretation of Article X:3a in finding that operator category and activity function rules should have been applied also to the traditional banana imports under the ACP preferential scheme.
- (h) The Panel erred in law in its interpretation of Article 1.3 of the Licensing Agreement, in particular in its relation to Article X:3a of GATT.
- (i) The Panel erred in law in its interpretation of Article III:4 of the GATT as applied to the EC rules on licensing for the management of the TRQ, and more particularly in its interpretation of the notion “competitive opportunities”.
- (j) The Panel erred in law in its interpretation of Article I:1 of GATT in relation to the activity function rules and the BFA export certificates.
- (k) The Panel erred in law in accepting that GATT and GATS are two mutually overlapping agreements and in finding that the measures complained of in the present case fall simultaneously under GATT and GATS.
- (l) The Panel erred in law in its application of rules on the burden of proof, more in particular under the GATS.
- (m) The Panel erred in law in applying GATS retroactively to the EC banana regime.
- (n) The Panel erred in law in its interpretation of Article II of GATS, in particular by reading elements of competitive conditions in to the article which are not there.
- (o) The Panel erred in law in its definition and application of the scope of the category “wholesale trade services”.
- (p) In the alternative: the Panel erred in law in finding that competitive conditions under Articles XVII and II of GATS were upset to the detriment of Complainants' service suppliers in respect of: operator category rules, activity function rules, BFA export certificates and hurricane licenses.
- (q) The Panel erred in law in its implicit determination that the US has suffered nullification and impairment under the GATT.
- (r) The Panel has failed in its obligation to make an objective assessment of the matter before it under Article 11 of the DSU, inter alia with respect to points (b), (i), (l) and (q) above.
- (s) The Panel has failed in its obligation to interpret the WTO and its annexed agreements in conformity with the customary rules of interpretation of public international law under Article 3.2 of the DSU, inter alia with respect to points (b) (k) and (m) above.