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**EC COMPLIANCE WITH ALL MFN RIGHTS AND INTERESTS ON BANANAS UNDER  
THE DOHA MINISTERIAL DECISION OF 14 NOVEMBER 2001 (WT/MIN(05)/15),  
THE AWARD OF THE ARBITRATOR OF 1 AUGUST 2005 (WT/L/616),  
THE AWARD OF THE ARBITRATOR OF 27 OCTOBER 2005 (WT/L/625),  
GATT ARTICLE XIII, GATT ARTICLE XXVIII  
AND ALL OTHER WTO OBLIGATIONS**

Communication from Honduras

The following communication, dated 7 November 2005, is being circulated at the request of the Delegation of Honduras.

The 14 November 2001 Ministerial Decision, *European Communities – The ACP-EC Partnership Agreement* (the “Doha Waiver”), reached in Doha, Qatar, requires that with respect to bananas, any new EC “rebinding” installed as of 2006 must “result in at least maintaining total market access for MFN banana suppliers,” taking into account “all EC WTO market-access commitments relating to bananas.”<sup>1</sup> To uphold that standard, the Doha Waiver authorizes two rounds of special arbitration, and provides that if both arbitrations determine that the EC’s envisaged rebinding(s) fail the Doha Waiver standard, the Waiver of GATT Article I must cease to apply to bananas upon entry into force of any new EC tariff regime. Under the terms of the Doha Waiver, both the arbitration procedures and Article XXVIII negotiations must be concluded before any new EC banana regime may be put into effect.

Two Arbitration Awards have now found against the EC’s 2006 banana proposals. The first Award, issued on 1 August 2005, found that the EC’s proposed increase in the MFN banana tariff to 230 €/mt would not satisfy the Doha Waiver standard.<sup>2</sup> The second Award, issued on 27 October 2005, found that the EC’s proposed 187 €/mt MFN tariff, ACP tariff rate quota (TRQ), and zero-duty/quota-free treatment for countries covered by “Everything But Arms” (“EBA”) would fail to “rectify the matter.”<sup>3</sup> As required under the terms of the Doha Waiver, that second determination against the EC will cause the Waiver of GATT Article I on bananas to terminate upon implementation of any EC tariff-only regime. The EC has yet to clarify how it intends to proceed in light of these findings.

<sup>1</sup> WT/MIN (01)/15, 14 November 2001; WT/L/436, 7 December 2001.

<sup>2</sup> *European Communities - The ACP-EC Partnership Agreement – Recourse to Arbitration Pursuant to the Decision of 14 November 2001, Award of the Arbitrator*, WT/L/616, dated 1 August 2005.

<sup>3</sup> *European Communities - The ACP-EC Partnership Agreement – Second Recourse to Arbitration Pursuant to the Decision of 14 November 2001, Award of the Arbitrator*, WT/L/625, dated 27 October 2005.

During the second arbitration, on 7 October 2005, the EC lodged a request with the WTO to extend the existing banana waiver of GATT Article XIII through 31 December 2007 to cover a proposed enlarged ACP TRQ of 775,000 mt.<sup>4</sup> The EC has not explained how that TRQ would fit within the new 2006 regime, nor how that collective arrangement would fulfill the requirements of the Doha Waiver and Arbitration Awards.

The EC has likewise failed to explain how it will fulfill all GATT Article XXVIII obligations before any new EC banana regime takes effect, as required by the Doha Waiver and GATT Article XXVIII. The only Article XXVIII talks held by the EC thus far on the 2006 banana regime occurred in November/December of 2004, when the EC briefly discussed with Panama, Ecuador, Costa Rica, and Colombia, a tariff rate of 230 €/mt. That tariff rate has since been invalidated in arbitration.<sup>5</sup> Although Honduras properly submitted a claim of substantial supplying interest under Article XXVIII, the EC has not been willing to recognize that legitimate claim. Honduras has accordingly reserved its Article XXVIII rights and referred the non-recognition of its substantial supplying interest to the General Council, where the matter remains unresolved.<sup>6</sup>

Thus, despite repeated WTO findings against the EC's past and proposed banana policies, and a Ministerial Decision reached at the Doha Ministerial Conference that requires the EC to maintain total MFN access on bananas into the future, the EC has yet to demonstrate how it will uphold those MFN rights for the developing country banana suppliers of Latin America from 2006 forward. If a new EC banana regime is to be installed as of 1 January 2006, the EC must clarify to the MFN supplying interests how it will fully comply with the 14 November 2001 Ministerial Decision, the Arbitration Awards of 1 August and 27 October 2005, GATT Article XIII, GATT Article XXVIII, and all other WTO obligations.

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<sup>4</sup> *Request for Extension of a Waiver Under GATT Article XIII, Tariff Rate Quota for Bananas of ACP Origin*, dated 7 October 2005, G/C/W/529, circulated on 11 October 2005. The EC's existing GATT Article XIII:1 and Article XIII:2 waiver covering its 750,000 mt reserve quota for bananas originating in ACP countries lapses on 31 December 2005. *European Communities – Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas*, Decision of 14 November 2001, WT/MIN(01)/16.

<sup>5</sup> *European Communities - The ACP-EC Partnership Agreement – Recourse to Arbitration Pursuant to the Decision of 14 November 2001, Award of the Arbitrator*, WT/L/616, dated 1 August 2005.

<sup>6</sup> WT/GC/85, dated 4 December 2004 and WT/GC/90, dated 18 May 2005. The non-recognition was referred pursuant to the 1980 Procedures for Negotiations under Article XXVIII, para. 4, C/113 and Corr. 1, 10 November 1980.