XII. Findings and Conclusions

346.   For the reasons set forth in this Report, the Appellate Body:

(a)   <u>upholds</u> the Panel's finding, in paragraph 7.37 of the Panel Reports, that the alleged "payments", within the meaning of Article 9.1(c) of the *Agreement on Agriculture*, in the form of low-priced sales of C beet to sugar producers, fell within the Panel's terms of reference;

(b)   <u>upholds</u> the Panel's finding, in paragraphs 7.191, 7.198, 7.222, and 8.1(a) of the Panel Reports, that Footnote 1 to Section II, Part IV of the European Communities' Schedule does not enlarge or otherwise modify the European Communities' commitment levels specified in that Schedule;

(c)   <u>upholds</u> the Panel's finding, in paragraph 7.292 of the Panel Reports, that the alleged payments in the form of low-priced sales of C beet to sugar producers are "financed by virtue of governmental action", within the meaning of Article 9.1(c) of the *Agreement on Agriculture*;

(d)   <u>upholds</u> the Panel's finding, in paragraph 7.334 of the Panel Reports, that the production of C sugar receives a "payment on the export financed by virtue of governmental action", within the meaning of Article 9.1(c) of the *Agreement on Agriculture*, in the form of transfers of financial resources through cross-subsidization resulting from the operation of the European Communities' sugar regime;

(e)   <u>upholds</u>, as a result of its findings under (c) and (d) above, the Panel's finding, in paragraph 8.1(f) of the Panel Reports, that there is *prima facie* evidence that the European Communities has been providing export subsidies, within the meaning of Article 9.1(c) of the *Agreement on Agriculture*, to its exports of C sugar since 1995;

(f)   <u>upholds</u>, as a result of its findings under (b), (c), (d), and (e) above, the Panel's finding, in paragraphs 7.340 and 8.3 of the Panel Reports, that the European Communities, through its sugar regime, acted inconsistently with its obligations under Articles 3.3 and 8 of the *Agreement on Agriculture*;

(g)   <u>upholds</u> the Panel's finding, in paragraphs 7.374 and 8.4 of the Panel Reports, that the European Communities' violations of the *Agreement on Agriculture* nullified or impaired the benefits accruing to the Complaining Parties under the *Agreement on Agriculture*;

(h)   <u>upholds</u> the Panel's finding, in paragraph 7.74 of the Panel Reports, that the Complaining Parties acted in good faith, under Article 3.10 of the DSU, in the initiation and conduct of the present dispute settlement proceedings and, assuming *arguendo* that estoppel applies, have not been estopped, through their actions or silence, from alleging that the European Communities' exports of C sugar are in excess of its export subsidy reduction commitments;

(i)   <u>finds</u> that the Panel erred, in paragraph 7.387 of the Panel Reports, in exercising judicial economy, and thereby failed to discharge its obligation under Article 11 of the DSU with respect to the Complaining Parties' claims under Article 3 of the *SCM Agreement*, but is not in a position, and therefore <u>declines</u>, to complete the legal analysis and to examine the Complaining Parties' claims under the *SCM Agreement* left unaddressed by the Panel; and

(j)   <u>finds</u> that the European Communities' Notice of Appeal satisfies the requirements of Rule 20(2)(d) of the *Working Procedures for Appellate Review*.

347.   The Appellate Body <u>recommends</u> that the Dispute Settlement Body request the European Communities to bring Council Regulation (EC) No. 1260/2001, as well as all other measures implementing or related to the European Communities' sugar regime, found in this Report, and in the Panel Reports as modified by this Report, to be inconsistent with the *Agreement on Agriculture*, into conformity with its obligations under that Agreement.

Signed in the original at Geneva this 9th day of April 2005 by:

_____

A.V. Ganesan

Presiding Member

_____   _____

Merit E. Janow   Yasuhei Taniguchi

Member   Member