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Disclosure of Confidential Information

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

1.2 General

1. In *EC – Bananas III*, the Panel referred to Article IIIbis in the context of concluding that information provided by the complainants sufficiently established that entities of complainants' origin control subsidiaries established in the European Communities that provide wholesale trade services in bananas in and to the European Communities:

"As to the second point, i.e., whether these non-EC companies control subsidiaries that supply wholesale trade services in bananas and are commercially present in the EC, the Complainants submitted a list entitled 'Principal banana wholesaling companies established in the EC that were owned or controlled by the Complainants' services suppliers, 1992'. The EC notes that no formal records of shareholders and company registrations were submitted by the Complainants. However, we recall that, according to Article IIIbis of GATS, 'nothing in GATS requires any Member to provide confidential information, the disclosure of which ... would prejudice legitimate commercial interests of particular enterprises'. According to the Complainants, their information was limited in part based on confidentiality concerns. Nonetheless, we believe that the Complainants' evidence is sufficient to establish that there are non-EC companies that control subsidiaries that supply wholesale trade services in bananas and that are commercially present in the EC. In this regard, we note that while the EC argued that more evidence should have been submitted by the Complainants, it did not present information that would cast doubt on the evidence presented by the Complainants. As a consequence, we must assess whether that evidence is sufficiently credible to be accepted by us. In making our objective assessment (Article 11 of the DSU), we are persuaded that the Complainants have sufficiently established that entities of Complainants' origin control subsidiaries established in the EC that provide wholesale trade services in bananas in and to the EC."¹

Current as of: June 2022

¹ Panel Reports, *EC – Bananas III*, para. 7.331.