

ANNEX A

Request for Enhanced Third-Party Rights

Decision of the Panel

7 May 2003

1. On 31 March 2003, 11 third parties in this case (Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru and Venezuela, hereafter referred to collectively as "the Applicants") requested that the Panel accord them enhanced third-party rights. Specifically, the Applicants request permission: to attend all the Panel meetings; to present their points of view at such meetings; to receive copies of all submissions to the Panel; to make submissions to the Panel at its second meeting; and to review the draft summary of arguments in the descriptive part of the Panel report. In support of their request, the Applicants argue that their substantial interest is of special importance in this dispute, since the measure at issue determines the conditions of access of their exports to the European market as beneficiaries of the tariff preference scheme established by the European Communities ("EC").

2. On 8 April 2003, the Panel invited the parties and the seven third parties other than the Applicants to comment, by 17 April 2003, on the Applicants' request for enhanced third-party rights. India and the EC, along with third parties Brazil, Cuba, Mauritius, Pakistan, Paraguay and the United States ("US"), each submitted comments by the 17 April deadline. No comments were received from Sri Lanka.

3. In their request, the Applicants draw a parallel between their interest in the present case and the interest of the beneficiary African, Caribbean and Pacific ("ACP") developing countries in the WTO dispute on *EC – Bananas III (WT/DS27)*. The Applicants claim that as beneficiaries of the tariff preferences under the EC's Drug Arrangements, they are very similarly situated to the ACP countries benefiting from EC preferences under the Lomé Waiver. They point out that in *EC – Bananas III*, that panel granted certain additional rights to third parties.

4. In its comments to the Panel, India first argues that it considers the interests of the Applicants and other third parties to be amply protected by the rights provided under the DSU and the Working Procedures adopted in this dispute. However, India considers that, should the Panel grant the Applicants' request, it should limit the additional rights to those provided in *EC – Bananas III* and extend them to *all developing country* third parties in this case, not only to the Applicants, but should not extend such rights to third party US because, as asserted by India, the US has not advanced sufficient justification therefor. India also cautions the Panel not to permit a blurring of the procedural rights accorded to parties with those accorded to third parties.

5. In its comments, the EC supports the granting of enhanced rights to *all the beneficiaries of the Drug Arrangements* (Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Pakistan and Peru), arguing that these countries are in a special situation analogous to that of the ACP countries in *EC – Bananas III*. While the EC does not consider that the circumstances invoked by Brazil, Paraguay and the US, if considered alone, justify the granting of additional rights to those WTO Members, the EC indicates that it would not object to the Panel granting enhanced rights also to the third parties who are not beneficiaries of the Drug Arrangements. The EC expresses no opinion in relation to third parties Cuba, Mauritius, Sri Lanka and Venezuela.

6. In its comments, Pakistan states that as a third party having both systemic and trade concerns, it "joins" the Applicants in requesting enhanced third-party rights. Third parties Brazil, Cuba, Mauritius, Paraguay and the US all indicate that while they take no position on whether or not

additional third-party rights are justified in this case, they all request that, should the Panel decide to grant enhanced rights, it should grant such rights to all third parties.

7. Having carefully considered the arguments of the parties and third parties in this case, the Panel considers as follows:

- (a) There are significant similarities between this case and that of *EC – Bananas III (WT/DS27)* in terms of economic impact of the preference programmes on third-party developing countries. Both those third parties that are beneficiaries under the EC's Drug Arrangements and those that are excluded have a significant economic interest in the matter before this Panel.
- (b) The outcome of this case could have a significant trade-policy impact on the US as a preference-giving country.
- (c) As a matter of due process, it is appropriate to provide the same procedural rights to all third parties in this dispute.
- (d) In granting any additional rights to third parties, it is important to guard against an inappropriate blurring of the distinction drawn in the DSU between parties and third parties.

8. Accordingly, the Panel *decides* that, beyond those rights already provided for in the DSU and in the Working Procedures adopted for this Panel, the following additional rights are granted to *all* third parties in this case:

- observe the first substantive meeting with the parties;
- receive the second submissions of the parties;
- observe the second substantive meeting with the parties;
- make a brief statement during the second substantive meeting with the parties;
- review the summary of their respective arguments in the draft descriptive part of the panel report.

9. The Panel wishes to make clear that it does not expect third parties to submit additional written material other than responses to any questions posed to them by the Panel.

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