

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 In light of the findings above, the Panel rejects the preliminary issue raised by the European Communities that Ecuador is prevented from challenging the European Communities' current import regime for bananas, including the preference for ACP countries, because of the Understanding on Bananas, signed by both Members in April 2001.

8.2 Accordingly, and after having examined the substantive claims raised by Ecuador as well as the defences invoked by the European Communities, the Panel concludes that:

- (a) The preference granted by the European Communities to an annual duty-free tariff quota of 775,000 mt of imported bananas originating in ACP countries constitutes an advantage for this category of bananas, which is not accorded to like bananas originating in non-ACP WTO Members, and is therefore inconsistent with Article I:1 of GATT 1994;
- (b) With the expiration of the Doha Waiver from 1 January 2006 as it applied to bananas, there is no evidence that, during the period that is relevant for this Panel's findings, that is, from the time of the establishment of the Panel until the date of this Report, any waiver from Article I:1 of GATT 1994 has been in force to cover the preference granted by the European Communities to the duty-free tariff quota of imported bananas originating in ACP countries;
- (c) The European Communities' current banana import regime, in particular its preferential tariff quota reserved for ACP countries, is inconsistent with Article XIII:1, with the chapeau of Article XIII:2, and with Article XIII:2(d) of the GATT 1994;
- (d) The tariff applied by the European Communities to MFN imports of bananas, set at €176/mt, without consideration of the tariff quota for 2.2 million mt bound at an in-quota tariff rate of €75/mt, is an ordinary customs duty in excess of that set forth and provided for in Part I of the European Communities' Schedule. This tariff is therefore inconsistent with the first sentence of Article II:1(b) of the GATT 1994; and,
- (e) It is unnecessary, for the resolution of this dispute, to make a separate finding on Ecuador's claim under Article II:1(a) of the GATT 1994.

8.3 In consequence, the Panel concludes that, through its current regime for the importation of bananas, established in Council Regulation (EC) No. 1964/2005 of 29 November 2005, including the duty-free tariff quota for bananas originating in ACP countries and the MFN tariff currently set at €176/mt, the European Communities has failed to implement the recommendations and rulings of the DSB.

8.4 Under Article 3.8 of the DSU, in cases where there is infringement of obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. The European Communities has failed to rebut this presumption. Accordingly, we conclude that to the extent that the European Communities has maintained measures inconsistent with different provisions of the GATT 1994, it continues to nullify or impair benefits accruing to Ecuador under that Agreement.

8.5 The Panel recommends that the Dispute Settlement Body request the European Communities to bring the inconsistent measures into conformity with its obligations under the GATT 1994.
