

**EUROPEAN COMMUNITIES – THE ACP-EC PARTNERSHIP AGREEMENT**

Recourse to Arbitration Pursuant to the Annex to the Decision of 14 November 2001<sup>1</sup>

*Communication from Guatemala*

Addendum

The following communication, dated 30 March 2005, is being circulated at the request of the Delegation of Guatemala.

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On 14 November 2001, the Ministerial Conference adopted the Decision on the ACP-EC Partnership Agreement (WT/MIN(01)/15, WT/L/436, herein referred to as the "Waiver Decision"), paragraph 1 of which provides:

Subject to the terms and conditions set out hereunder, Article I, paragraph 1 of the General Agreement shall be waived, until 31 December 2007, to the extent necessary to permit the European Communities [the "EC"] to provide preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the ACP-EC Partnership Agreement,\* without being required to extend the same preferential treatment to like products of any other member (\*footnote omitted).

The Waiver Decision likewise provides that with respect to bananas, the additional provisions in the Annex thereto shall apply. The Annex contemplates arbitration proceedings to determine "whether the envisaged rebinding of the EC tariff on bananas would result in at least maintaining total market access for MFN banana suppliers, taking into account the [EC's commitments specified in the Waiver Decision]"; that should it be determined that the envisaged rebinding does not so maintain and that the EC has failed to rectify the matter, the waiver shall cease to apply to bananas upon entry into force of the new EC tariff only regime on 1 January 2006.

The EC has notified the Members that it intends "to replace its concessions on item 08030019 (bananas) included in Schedule CXL of the European Communities annexed to the General Agreement with a bound duty of 230€t", and that "[t]he methodology used to calculate the new bound duty is based on the provisions of the Attachment to Annex V to the Agreement on Agriculture."<sup>2</sup>

On 17 February 2005, on behalf of the parties to the ACP-EC Partnership Agreement, the EC invited Members exporting bananas to the EC on an MFN basis (interested parties) to hold

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<sup>1</sup> WT/L/436 (also circulated as a Ministerial Conference document as WT/MIN(01)/15).

<sup>2</sup> G/SECRET/22/Add.1.

consultations in order to "... provide in particular an opportunity to answer any question which interested parties may have concerning the methodology used for the rebinding of the EC tariff on bananas."<sup>3</sup> These consultations were held on 22 February 2005.

In the course of those consultations, and to date, the EC has not provided information or an explanation as to how the envisaged rebinding of the tariff on bananas of 230€t "... would result in at least maintaining total market access for MFN banana suppliers ..." In Guatemala's view, the EC has failed to demonstrate that the envisaged rebinding of the tariff on bananas of 230€t "... would result in at least maintaining total market access for MFN banana suppliers ..."

In any event, in Guatemala's view the envisaged rebinding of the tariff on bananas of 230€t would not "... result in at least maintaining total market access for MFN banana suppliers ..."

Accordingly, pursuant to the Annex to the Waiver Decision and without prejudice to Guatemala's rights under Article XXVIII of the GATT regarding the intended modification of these concessions by the EC, Guatemala requests arbitration proceedings with the EC to determine "... whether the envisaged rebinding of the EC tariff on bananas would result in at least maintaining total market access for MFN banana suppliers ... "

Considering the legal and economic complexities involved, Guatemala considers it appropriate that a group of three arbitrators be established. Accordingly, pursuant to the Waiver Decision, should the EC and Guatemala fail to agree on the composition of the group of three arbitrators within ten days from the date hereof, Guatemala would request the Director-General to appoint three Members of the Appellate Body as arbitrators.

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<sup>3</sup> WT/L/602.