

ANNEX A

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ANNEX A-1

REQUEST FOR THE ESTABLISHMENT OF A PANEL

**WORLD TRADE
ORGANIZATION**

WT/DS27/83
2 July 2007

(07-2829)

Original: English

**EUROPEAN COMMUNITIES – REGIME FOR THE IMPORTATION,
SALE AND DISTRIBUTION OF BANANAS**

Recourse to Article 21.5 of the DSU by the United States

Request for the Establishment of a Panel

The following communication, dated 29 June 2007, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 25 September 1997, the Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *European Communities – Regime for the Importation, Sale and Distribution of Bananas* (WT/DS27) ("*Bananas III*").¹ The DSB ruled that the import regime of the European Communities ("EC") for bananas was inconsistent with the EC's obligations under the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and *General Agreement on Trade in Services* ("GATS"). Accordingly, the DSB recommended that the EC bring its measure into conformity with those agreements.² An arbitrator appointed under Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") awarded the EC a "reasonable period of time" until 1 January 1999, to do so.³

The EC failed to bring its import regime for bananas into compliance with its WTO obligations by the end of the reasonable period of time, and the United States considers that the regime remains inconsistent today, nearly a decade after the DSB made its original recommendations and rulings. In particular, at the end of the reasonable period of time, the EC implemented a first set

¹ Dispute Settlement Body, Minutes of 25 September 1997 Meeting, WT/DSB/M/37 (circulated 4 November 1997).

² See Dispute Settlement Body, Minutes of 25 September 1997 Meeting, WT/DSB/M/37 (circulated 4 November 1997); *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/R/USA, para. 9.2 (22 May 1997); *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, para. 257 (9 September 1997).

³ *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/15, para. 20 (7 January 1998).

of changes to the banana import regime – through Regulation (EC) No. 1637/98⁴ and Regulation (EC) No. 2362/98⁵ – that were found to perpetuate a discriminatory tariff-rate quota ("TRQ") system and license-based system in breach of the GATT 1994 and the GATS.⁶

In November 1999, the EC announced a second attempt to reform its banana regime, which was allegedly to comprise "a two-stage process, namely, after a transitional period during which a tariff quota system would be applied with preferential access for ACP [(African, Caribbean and Pacific)] countries, a flat tariff would be introduced."⁷ The "transitional period" was to end no later than January 1, 2006.

Although the United States reluctantly permitted this lengthy delay in compliance until the end of the "transitional period,"⁸ the EC never performed the second of the steps in the "two-stage process." Instead of adopting a "flat tariff" for bananas, on 29 November 2005, the EC adopted Regulation (EC) No. 1964/2005, which establishes a preferential (zero-duty) TRQ available only to bananas originating in African, Caribbean and Pacific ("ACP") countries.⁹ Bananas of other origins have no access to this 775,000 ton TRQ. Under Regulation (EC) No. 1964/2005 such other bananas are subject instead to a duty of 176 euros/ton.¹⁰ The regulation took effect as of 1 January 2006.

The United States considers that the EC has failed to implement the DSB's recommendations and rulings, including through the changes made to its banana regime on 1 January 2006. Therefore, the regime remains inconsistent with the EC's WTO obligations. The United States considers, *inter alia*, that the EC's banana import regime:

- (1) is inconsistent with Article I of the GATT 1994 because it applies a zero tariff rate to imports of bananas originating in ACP countries in a quantity up to 775,000 tons but does not accord the same duty-free treatment to imports of bananas originating in all other WTO Members; and
- (2) is inconsistent with Article XIII of the GATT 1994 – including Articles XIII:1 and XIII:2 – because it reserves the 775,000 ton zero-duty TRQ for imports of bananas originating in ACP countries and provides no access to this preferential TRQ to

⁴ Published in the Official Journal of the European Communities (OJEC) L 120 of 28 July 1998.

⁵ Published in the Official Journal of the European Communities (OJEC) L 293/32 of 31 October 1998.

⁶ These findings were made by both a panel established under Article 21.5 of the DSU at the request of Ecuador as well as by an arbitrator appointed pursuant to Article 22.6 of the DSU to review a US request for authorization to suspend concessions. See *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/RW/ECU, paras. 6.160-6.163 (12 April 1999) and *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/ARB, paras. 5.96-5.98 (9 April 1999), respectively. The DSB adopted the report of the Article 21.5 panel on 6 May 1999, including, again, a recommendation that the EC bring its banana import regime into conformity with its obligations under the GATT 1994 and the GATS. See Dispute Settlement Body, Minutes of 6 May 1999 Meeting, WT/DSB/M/61 (circulated 30 June 1999) and *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/RW/ECU, para. 7.2.

⁷ Minutes of Meeting of the Dispute Settlement Body held on 19 November 1999, WT/DSB/M/71 (11 January 2000).

⁸ In April 2001, the EC memorialized its "two stage" compliance proposal in separate understandings with the United States and Ecuador.

⁹ Regulation (EC) No. 1964/2005, para. 2, published in the Official Journal of the European Communities (OJEC) L 316/1 of 12 December 2005 ("[e]ach year from 1 January, starting from 1 January 2006, an autonomous tariff quota of 775 000 tonnes net weight subject to a zero-duty rate shall be opened for imports of bananas (CN code 0803 00 19) originating in ACP countries.")

¹⁰ Regulation (EC) No. 1964/2005, para. 1, published in the Official Journal of the European Communities (OJEC) L 316/1 of 12 December 2005.

imports of bananas originating in non-ACP substantial or non-substantial supplying countries.

The United States understands the measures through which the EC maintains its current import regime for bananas to include:

- Regulation (EEC) 404/93 of 13 February 1993, as amended by Regulation (EC) 216/2001 of 29 January 2001;
- Regulation (EC) No. 1964/2005 of 29 November 2005; and
- for each of the regulations listed above, any amendments, implementing measures, and other related measures.

As there is "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB between the United States and the EC, the United States respectfully seeks recourse to Article 21.5 of the DSU in this matter. The United States requests that the DSB refer the matter to the original panel, if possible, pursuant to Article 21.5 of the DSU.

ANNEX A-2

**WORKING PROCEDURES FOR THE PANEL
DATED 22 AUGUST 2007**

1. In its proceedings the Panel shall follow the relevant provisions of the Dispute Settlement Understanding (DSU). In addition, the following Working Procedures shall apply.
2. The Panel will provide the Parties¹ and Third Parties² with a timetable for its proceedings. The timetable may be modified by the Panel as appropriate, after having consulted the Parties.
3. The Panel shall meet in closed session. The Parties, and interested Third Parties, shall be present at the meetings only when invited by the Panel to appear before it. Provided satisfactory logistical arrangements can be ensured by the Secretariat, the substantive meeting of the Panel with the Parties may be open for observation by the public through closed-circuit broadcast. At any moment including during such meeting, any Party may request the Panel to suspend the broadcasting for as long as necessary in order to protect confidential information. The Panel may also decide on its own to suspend the broadcasting at any time.
4. The deliberations of the Panel and the documents submitted to it shall be kept confidential. Nothing in the DSU, nor in these Working Procedures, precludes a Party or a Third Party from disclosing statements of its own positions to the public. Parties and Third Parties shall treat as confidential information submitted by another Party or Third Party to the Panel that the latter Party or Third Party has designated as confidential. As provided in Article 18.2 of the DSU, where a Party submits a confidential version of its written submissions to the Panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public. Non-confidential summaries shall be normally submitted no later than one week after the written submission is presented to the Panel, unless a different deadline is granted by the Panel upon a showing of good cause.
5. Before the substantive meeting of the Panel with the Parties, and in accordance with the timetable approved by the Panel, the Parties shall transmit to the Panel written submissions and subsequently written rebuttals in which they present the facts of the case, their arguments and their counter-arguments, respectively. Third Parties may transmit to the Panel written submissions after the rebuttals of the Parties have been submitted, and in accordance with the timetable approved by the Panel.
6. All Third Parties shall be invited in writing to present their views during the substantive meeting of the Panel with the Parties and the Third Parties. Third Parties may be present during the entirety of that meeting.
7. At its substantive meeting with the Parties, the Panel shall ask the United States to present its case first. Subsequently, and still at the same meeting, the European Communities will be asked to present its arguments. At the same meeting, Third Parties will be asked to present their views thereafter. Parties will then be allowed an opportunity for final statements, with the United States presenting its statement first.

¹ Throughout this document, the term "Party" refers to either the United States or the European Communities, as appropriate. The term "Parties" refers to both the United States and the European Communities.

² Throughout the document, the term "Third Parties" refers to Belize, Brazil, Cameroon, Colombia, Côte d'Ivoire, the Dominican Republic, Ecuador, Jamaica, Japan, Mexico, Nicaragua, Panama and Suriname.

8. The Panel may decide to hold meetings with the Parties jointly with the Panel in the case of *European Communities – Regime for the Importation, Sale and Distribution of Bananas (Recourse to Article 21.5 of the DSU by Ecuador)*. In that case, the order in which Members will be asked to make their statements will be decided by the Panel.

9. The Panel may at any time put questions to the Parties and to the Third Parties and ask them for explanations either in the course of the substantive meeting or afterwards in writing. Replies to questions shall be submitted in writing by the dates specified by the Panel after consultation with the Parties. In addition, the Parties shall be permitted to ask questions to each other and to Third Parties. Third Parties may ask oral questions to the Parties during the course of the substantive meeting, in accordance with the rules adopted by the Panel, but Parties are under no obligation to respond to those questions.

10. Each Party shall make available to the Panel and to the other Party a written version of its oral statements no later than on the first working day following the date of the end of the meeting at which the oral statement was presented. Any Third Party that wishes to present its views shall similarly make available to the Panel and to the Parties and other Third Parties a written version of its oral statements no later than on the first working day following the date of the end of the meeting at which the oral statement was presented. Parties and Third Parties shall provide the Panel and other participants at the respective session with a provisional written version of their oral statements before these statements are made.

11. In the interests of full transparency, oral presentations shall be made in the presence of the Parties. Moreover, each Party's written submissions, including replies to questions put by the Panel, shall be made available to the other Party. Third Parties shall receive copies of the Parties' first written submissions and rebuttals as well as copies of the questions posed by the Panel to the Parties and to the other Third Parties and copies of Parties' and Third Parties' responses to such questions. Parties shall submit all factual evidence to the Panel as early as possible and no later than during the substantive meeting, except with respect to evidence necessary for the answering of questions. Exceptions will be granted by the Panel upon a showing of good cause. In such cases, the other Party shall be accorded a period of time for commenting, as appropriate.

12. Within seven (7) calendar days following the submission of a written submission or presentation of an oral statement to the Panel, the Parties shall provide the Panel with an executive summary of the submission or statement. Each summary to be provided by each Party shall not exceed ten (10) pages in length. Third Parties shall also submit an executive summary seven (7) calendar days after delivering their written submission or oral statement. Third Parties' executive summaries shall not exceed three (3) pages in length. The Panel may, in light of further developments, allow the Parties and Third Parties to submit longer summaries. These executive summaries will be used by the Panel only for the purpose of drafting a concise factual and arguments section of the Panel Report so as to facilitate timely translation and circulation of the Panel report to the Members. The Panel reserves the right to edit any executive summaries that exceed the page limits indicated above. Executive summaries shall in no way serve as a substitute for the submissions of the parties.

13. To facilitate the maintenance of the record of the dispute, and to maximize the clarity of submissions, in particular the references to exhibits submitted by Parties, Parties shall sequentially number their exhibits throughout the course of the dispute. For example, exhibits submitted by the United States should be numbered US-1, US-2, etc. If the last exhibit in connection with the first submission was numbered US-5, the first exhibit of the next submission thus should be numbered US-6. Exhibits submitted by the European Communities should be numbered EC-1, EC-2, etc.

14. The Parties and Third Parties to this proceeding have the right to determine the composition of their own delegations. Delegations may include as representatives of the government concerned, private counsel and advisers. The Parties and Third Parties shall have responsibility for all members of their delegation and shall ensure that all members of their delegation, as well as any other advisers consulted by a Party or Third Party, act in accordance with the rules of the DSU and the Working Procedures of this Panel, particularly in regard to the confidentiality of the proceedings. Parties shall provide a list of the participants of their delegation to the Secretary of the Panel and to each other no later than 5.00 pm, local Geneva time, the working day before any meeting with the Panel.

15. The Panel reserves the right to earmark its communications to enable the identification of possible breaches of confidentiality, especially the Panel's interim report and its final report before the latter's circulation to all Members.

16. Any request for a preliminary ruling (including rulings on jurisdictional issues) to be made by the Panel shall be submitted no later than in a Party's first written submission. If the United States requests any such ruling, the European Communities shall submit its response to such a request in its first written submission. If the European Communities requests any such ruling, the United States shall submit its response to such a request in its rebuttal submission. Exceptions to this procedure will be granted upon a showing of good cause. The Panel shall inform the Parties promptly of any preliminary rulings it might make in the course of the proceedings. In addition, the Panel may also choose to inform third parties of such preliminary rulings, if it deems it relevant.

17. The following procedures regarding service of documents shall apply:

- (a) Each Party shall serve its submissions directly on the other Party. Each Party shall, in addition, serve its first written submission, rebuttals, and its responses to the questions by the Panel and by the other Party on Third Parties. Each Third Party shall serve its submissions on the Parties and other Third Parties. Each Party and Third Party shall confirm in writing, at the time it provides the submission to the Secretariat, that copies have been served as required.
- (b) In the light of the particular circumstances of this case, the Panel may decide to copy, as appropriate, the complainant in the case of *European Communities – Regime for the Importation, Sale and Distribution of Bananas (Recourse to Article 21.5 of the DSU by Ecuador)* on communications directed to the Parties.
- (c) The Parties and Third Parties shall provide their written submissions to the Panel, through the Secretariat, by 5.00 p.m., local Geneva time, on the deadlines established by the Panel.
- (d) Parties and Third Parties shall provide the Secretariat with written copies of their oral statements no later than on the first working day following the date of the meeting at which the oral statement was presented.
- (e) The Parties and Third Parties shall provide the Secretariat with ten (10) paper copies of all their submissions as well as an "electronic" copy on a CD-ROM, diskette or as an e-mail attachment, in a format compatible with the Secretariat's software. Paper copies shall be delivered to the Dispute Settlement Registrar, ***** (Room 2150). Electronic copies should be sent by e-mail to ***** at DSregistry@wto.org; ***** at *****@wto.org; ***** at *****@wto.org; ***** at *****@wto.org; and ***** at *****@wto.org.

- (f) The Panel will provide Parties with an electronic version of the descriptive sections of its draft report, the interim report and the final report, as well as of other documents, as appropriate. When the Panel transmits to the Parties or Third Parties both paper and electronic versions of a document, the paper version shall constitute the official version for the purposes of the record of the dispute.

18. These Working Procedures may be modified by the Panel as appropriate, after having consulted the Parties.

ANNEX B

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ANNEX B-1

NOTIFICATION OF A MUTUALLY AGREED SOLUTION

**WORLD TRADE
ORGANIZATION**

WT/DS27/58
2 July 2001

(01-3276)

Original: English

**EUROPEAN COMMUNITIES – REGIME FOR THE IMPORTATION,
SALE AND DISTRIBUTION OF BANANAS**

Notification of Mutually Agreed Solution

The following communication, dated 22 June 2001, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 3.6 of the DSU.

The European Communities (EC) wish to notify the Dispute Settlement Body (DSB) that they have reached, with the United States of America and Ecuador, a mutually satisfactory solution within the meaning of Article 3.6 of the DSU regarding the implementation by the EC of the conclusions and recommendations adopted by the DSB in the dispute "Regime for the importation, sale and distribution of bananas" (WT/DS27).

Please find attached the text of the Understandings reached between the EC and the United States and between the EC and Ecuador, respectively on 11 April 2001 and 30 April 2001, which constitute a mutually agreed solution to the bananas dispute.

I would be grateful if you could circulate a copy of this letter with its enclosures to the WTO Members.

Enclosure 1: Understanding on Bananas between the EC and the United States of 11 April 2001

- A. The European Commission and the United States have identified the means by which the long-standing dispute over the EC's banana import regime can be resolved.
- B. In accordance with Article 16(1) of Regulation No. (EC) 404/93 (as amended by Regulation No. (EC) 216/2001), the European Communities (EC) will introduce a Tariff Only regime for imports of bananas no later than 1 January 2006.
- C. In the interim, the EC will implement an import regime on the basis of historical licensing as follows :
1. Effective 1 July 2001, the EC will implement an import regime on the basis of historical licensing as set out in Annex 1.
 2. Effective as soon as possible thereafter, subject to Council and European Parliament approval and to adoption of the Article XIII waiver referred to in paragraph E, the EC will implement an import regime on the basis of historical licensing as set out in Annex 2. The Commission will seek to obtain the implementation of such an import regime as soon as possible.
- D. With respect to the United States' imposition of increased duties applied to certain EC products as of 19 April 1999 covering trade in an amount of US\$191.4 million per year (the "increased duties"):
1. Upon implementation of the import regime described in paragraph C(1), the United States will provisionally suspend its imposition of the increased duties.
 2. Upon implementation of the import regime described in paragraph C(2), the United States will terminate its imposition of the increased duties.
 3. The United States may reimpose the increased duties if the import regime described in paragraph C(2) does not enter into force by 1 January 2002.
- E. The United States will lift its reserve concerning the waiver of Article I of the GATT 1994 that the EC has requested for preferential access to the EC of goods originating in ACP states signatory to the Cotonou Agreement; and will actively work towards promoting the acceptance of an EC request for a waiver of Article XIII of the GATT 1994 needed for the management of quota C under the import regime described in paragraph C(2) until 31 December 2005.
- F. The EC and the United States have informed Ecuador and will cooperate in seeking the agreement of all parties.

Annex I

Phase I

1. A bound tariff-rate quota (TRQ) designated as quota "A" will be set at 2,200,000 tonnes. An autonomous TRQ designated as quota "B" will be set at 353,000 tonnes. These TRQs will be managed as one, with the total quota being 2,553,000 tonnes. There is no expectation of allocation of shares of either of these TRQs among country suppliers, and the Commission will not seek to convene a meeting to that effect of the principal supplying countries except upon the joint request of all such countries. The tariff applied to bananas imported in the "A" and "B" quotas shall not exceed 75 euro/tonne.
2. A TRQ designated as quota "C" will be set at 850,000 tonnes.
3. Import licenses for 83% of the "A" and "B" TRQs will be distributed to "traditional" operators based on each qualified "traditional" operator's 1994-96 average annual final reference volume ("reference volume") for the "A/B" quotas. Qualified "traditional" operators will be identified on the basis of the distribution of licenses that occurred under Regulation 404, Article 19.1(a) and Regulation 1442, Article 3.1(a) for "Category A subfunction (a)". Importers will not need to produce new evidence.
4. Licenses for TRQ "C" are intended to be distributed broadly in accordance with the principles to be utilized in managing of licenses for TRQ's "A" and "B" and on the basis of imports of ACP-origin bananas. The European Commission and the United States will consult again within 4 weeks with a view to finalizing the licensing principles for TRQ "C".
5. Within each TRQ, licenses may be used to import bananas from any source. Licenses to import bananas into TRQ "C" cannot be used to import bananas into TRQs "A" or "B", and vice versa.
6. A "non-traditional" operator category will be created with respect to 17% of the quantity of the "A and B" TRQs. Non-traditional operators cannot become traditional operators in subsequent periods. Management of non-traditional imports will be done by simultaneous examination.
7. The licensing regime will be administered in good faith and on a non-discriminatory basis.
8. The Commission will provide the United States as soon as possible the verified statistics confirming the implementation of this phase, taking into account the protection of business confidential information.

Annex II

Phase II

1. During Phase II, the provisions applying to Phase I will continue, except as provided in this Annex.
2. In Phase II, TRQ "B" will be 453,000 tonnes (an increase of 100,000 tonnes). The total for the "A" and "B" TRQs will be 2,653,000 tonnes.
3. The TRQ "C" will be 750,000 tonnes and will be reserved for bananas of ACP origin.
4. The share of import licenses to "traditional" operators for the "A" and "B" TRQs will be allocated in accordance with the procedure in Annex I. Import licenses will be distributed based on each qualified "traditional" operator's 1994-96 reference volume through 31 December 2003. Thereafter, the share of import licenses to "traditional" operators for the "A" and "B" TRQs will be allocated based only on usage of licenses issued under Phase II of this Understanding, through credible documentation.
5. The Commission will provide the United States as soon as possible the verified statistics confirming the implementation of this phase, taking into account the protection of business confidential information.

Enclosure 2: Understanding on Bananas between the EC and Ecuador of 30 April 2001

- A. The European Commission and Ecuador have identified the means by which the long-standing dispute over the EC's banana import regime can be resolved.
- B. In accordance with Article 16(1) of Regulation No. (EC) 404/93 (as amended by Regulation No. (EC) 216/2001), the European Communities (EC) will introduce a Tariff Only regime for imports of bananas no later than 1 January 2006. GATT Art XXVIII negotiations shall be initiated in good time to that effect, recognizing Ecuador as the principal supplier in these negotiations.
- C. In the interim, the EC will implement an import regime on the basis of historical licensing as follows :
 - 1. Effective 1 July 2001, the EC will implement an import regime on the basis of historical licensing as set out in Annex 1.
 - 2. Effective as soon as possible thereafter, subject to Council and European Parliament approval and to adoption of the Article XIII waiver referred to in paragraph F, the EC will implement an import regime on the basis of historical licensing as set out in Annex 2. The Commission will seek to obtain the implementation of such an import regime as soon as possible.
- D. Ecuador takes note that the European Commission will examine the trade in organic bananas and report accordingly by 31 December 2004.
- E. Upon implementation of the import regime described in paragraph C, Ecuador's right to suspend concessions or other obligations of a level not exceeding US\$201.6 million per year vis-à-vis the EC will be terminated.
- F. Ecuador will lift its reserve concerning the waiver of Article I of the GATT 1994 that the EC has requested for preferential access to the EC of goods originating in ACP states signatory to the Cotonou Agreement; and will actively work towards promoting the acceptance of an EC request for a waiver of Article XIII of the GATT 1994 needed for the management of quota C under the import regime described in paragraph C(2) until 31 December 2005.
- G. The EC and Ecuador consider that this Understanding constitutes a mutually agreed solution to the banana dispute.

Annex I

Phase I

1. A bound tariff-rate quota (TRQ) designated as quota "A" will be set at 2,200,000 tonnes. An autonomous TRQ designated as quota "B" will be set at 353,000 tonnes. These TRQs will be managed as one, with the total quota being 2,553,000 tonnes. There is no expectation of allocation of shares of either of these TRQs among country suppliers, and the Commission will not seek to convene a meeting to that effect of the principal supplying countries except upon the joint request of all such countries. The tariff applied to bananas imported in the "A" and "B" quotas shall not exceed 75 euro/tonne.
2. A TRQ designated as quota "C" will be set at 850,000 tonnes.
3. Import licenses for 83% of the "A" and "B" TRQs will be distributed to "traditional" operators based on each qualified "traditional" operator's 1994-96 average final reference volume ("reference volume") for the "A/B" quotas. Qualified "traditional" operators will be identified on the basis of the distribution of licenses that occurred under Regulation 404, Article 19.1(a) and Regulation 1442, Article 3.1(a) for "Category A subfunction (a)". Importers will not need to produce new evidence.
4. Licenses for TRQ "C" are intended to be distributed broadly in accordance with the principles to be utilized in managing of licenses for TRQ's "A" and "B" and on the basis of imports of ACP-origin bananas.
5. Within each TRQ, licenses may be used to import bananas from any source. Licenses to import bananas into TRQ "C" cannot be used to import bananas into TRQs "A" and "B", and vice versa.
6. A "non-traditional" operator category will be created with respect to 17% of the quantity of the "A and B" TRQs. Non-traditional operators cannot become traditional operators in subsequent periods.
7. Management of non-traditional operators will be done by simultaneous examination, respecting the following conditions:
 - (a) the activity period to consider for registration shall be 2 years;
 - (b) the minimum annual customs value of imports into the EU to qualify shall be 1.2 million €;
 - (c) traditional importers in Quota C may only qualify as non-traditional importers in Quota A/B when they prove that they imported bananas from third countries other than ACP in the relevant period;
 - (d) in application for licenses, the maximum requested quantities for each non-traditional operator shall be not higher than 12.5% of the quantity reserved for non-traditional operators;
 - (e) a security of 150€/t shall be required;

- (f) a non-traditional operator shall be required to be responsible for shipping bananas to the EU;
 - (g) simultaneous examination shall be conducted in a pro-rata basis;
 - (h) dissuasive penalties shall apply in the event that a traditional operator be found to be controlling a non-traditional operator within the same Quota;
 - (i) transmissibility of licenses between non-traditional operators will be permitted.
8. The licensing regime will be administered in good faith and on a non-discriminatory basis.

Annex II

Phase II

1. During Phase II, the provisions applying to Phase I will continue, except as provided in this Annex.
2. In Phase II, TRQ "B" will be 453,000 tonnes (an increase of 100,000 tonnes). The total for the "A" and "B" TRQs will be 2,653,000 tonnes.
3. The TRQ "C" will be 750,000 tonnes and will be reserved for bananas of ACP origin.
4. The share of import licenses to "traditional" operators for the "A" and "B" TRQs will be allocated in accordance with the procedure in Annex I. Import licenses will be distributed based on each qualified "traditional" operator's 1994-96 reference volume through 31 December 2003. Thereafter, the share of import licenses to "traditional" operators for the "A" and "B" TRQs will be allocated based only on usage of licenses issued under Phase II of this Understanding, through credible documentation.
5. The Commission will provide regularly the verified statistics on the importation of bananas from Ecuador.

ANNEX B-2

COMMUNICATION FROM THE UNITED STATES

**WORLD TRADE
ORGANIZATION**

WT/DS27/59
G/C/W/270
2 July 2001
(01-3275)

Original: English

**EUROPEAN COMMUNITIES – REGIME FOR THE IMPORTATION,
SALE AND DISTRIBUTION OF BANANAS**

Communication from the United States

The following communication, dated 26 June 2001, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

For the information of all Members, please find attached the text of the Understanding reached between the European Communities (EC) and the United States on 11 April 2001.

We have received and reviewed the EC's separate notification of 22 June 2001, to the Dispute Settlement Body (DSB) of our Understanding on bananas. As we have explained to the EC during bilateral discussions last week and indicated at meetings of the DSB, the Understanding identifies the means by which the long-standing dispute over the EC's banana import regime can be resolved, but, as is obvious from its own text, it does not in itself constitute a mutually agreed solution pursuant to Article 3.6 of the DSU. In addition, in view of the steps yet to be taken by all parties, it would also be premature to take this item off the DSB agenda.

The United States very much looks forward to the prospect of a resolution to this long-standing dispute, and we will of course continue to be pleased to consult with the Commission and other interested parties as the EC proceeds with implementing its regulations in accordance with the Understanding.

Understanding on Bananas

- A. The European Commission and the United States have identified the means by which the long-standing dispute over the EC's banana import regime can be resolved.
- B. In accordance with Article 16(1) of Regulation No. (EC) 404/93 (as amended by Regulation No. (EC) 216/2001), the European Communities (EC) will introduce a Tariff Only regime for imports of bananas no later than 1 January 2006.
- C. In the interim, the EC will implement an import regime on the basis of historical licensing as follows :
1. Effective 1 July 2001, the EC will implement an import regime on the basis of historical licensing as set out in Annex 1.
 2. Effective as soon as possible thereafter, subject to Council and European Parliament approval and to adoption of the Article XIII waiver referred to in paragraph E, the EC will implement an import regime on the basis of historical licensing as set out in Annex 2. The Commission will seek to obtain the implementation of such an import regime as soon as possible.
- D. With respect to the United States' imposition of increased duties applied to certain EC products as of 19 April 1999 covering trade in an amount of US\$191.4 million per year (the "increased duties"):
1. Upon implementation of the import regime described in paragraph C(1), the United States will provisionally suspend its imposition of the increased duties.
 2. Upon implementation of the import regime described in paragraph C(2), the United States will terminate its imposition of the increased duties.
 3. The United States may reimpose the increased duties if the import regime described in paragraph C(2) does not enter into force by 1 January 2002.
- E. The United States will lift its reserve concerning the waiver of Article I of the GATT 1994 that the EC has requested for preferential access to the EC of goods originating in ACP states signatory to the Cotonou Agreement; and will actively work towards promoting the acceptance of an EC request for a waiver of Article XIII of the GATT 1994 needed for the management of quota C under the import regime described in paragraph C(2) until 31 December 2005.
- F. The EC and the United States have informed Ecuador and will cooperate in seeking the agreement of all parties.

Annex I

Phase I

1. A bound tariff-rate quota (TRQ) designated as quota "A" will be set at 2,200,000 tonnes. An autonomous TRQ designated as quota "B" will be set at 353,000 tonnes. These TRQs will be managed as one, with the total quota being 2,553,000 tonnes. There is no expectation of allocation of shares of either of these TRQs among country suppliers, and the Commission will not seek to convene a meeting to that effect of the principal supplying countries except upon the joint request of all such countries. The tariff applied to bananas imported in the "A" and "B" quotas shall not exceed 75 euro/tonne.
2. A TRQ designated as quota "C" will be set at 850,000 tonnes.
3. Import licenses for 83% of the "A" and "B" TRQs will be distributed to "traditional" operators based on each qualified "traditional" operator's 1994-96 average annual final reference volume ("reference volume") for the "A/B" quotas. Qualified "traditional" operators will be identified on the basis of the distribution of licenses that occurred under Regulation 404, Article 19.1(a) and Regulation 1442, Article 3.1(a) for "Category A subfunction (a)". Importers will not need to produce new evidence.
4. Licenses for TRQ "C" are intended to be distributed broadly in accordance with the principles to be utilized in managing of licenses for TRQ's "A" and "B" and on the basis of imports of ACP-origin bananas. The European Commission and the United States will consult again within 4 weeks with a view to finalizing the licensing principles for TRQ "C".
5. Within each TRQ, licenses may be used to import bananas from any source. Licenses to import bananas into TRQ "C" cannot be used to import bananas into TRQs "A" or "B", and vice versa.
6. A "non-traditional" operator category will be created with respect to 17% of the quantity of the "A and B" TRQs. Non-traditional operators cannot become traditional operators in subsequent periods. Management of non-traditional imports will be done by simultaneous examination.
7. The licensing regime will be administered in good faith and on a non-discriminatory basis.
8. The Commission will provide the United States as soon as possible the verified statistics confirming the implementation of this phase, taking into account the protection of business confidential information.

Annex II

Phase II

1. During Phase II, the provisions applying to Phase I will continue, except as provided in this Annex.
2. In Phase II, TRQ "B" will be 453,000 tonnes (an increase of 100,000 tonnes). The total for the "A" and "B" TRQs will be 2,653,000 tonnes.
3. The TRQ "C" will be 750,000 tonnes and will be reserved for bananas of ACP origin.
4. The share of import licenses to "traditional" operators for the "A" and "B" TRQs will be allocated in accordance with the procedure in Annex I. Import licenses will be distributed based on each qualified "traditional" operator's 1994-96 reference volume through 31 December 2003. Thereafter, the share of import licenses to "traditional" operators for the "A" and "B" TRQs will be allocated based only on usage of licenses issued under Phase II of this Understanding, through credible documentation.
5. The Commission will provide the United States as soon as possible the verified statistics confirming the implementation of this phase, taking into account the protection of business confidential information.

ANNEX B-3

**UNDERSTANDING ON BANANAS
BETWEEN ECUADOR AND THE EC**

**WORLD TRADE
ORGANIZATION**

WT/DS27/60
G/C/W/274
9 July 2001
(01-3398)

Original: English

**EUROPEAN COMMUNITIES - REGIME FOR THE IMPORTATION,
SALE AND DISTRIBUTION OF BANANAS**

Understanding on Bananas between Ecuador and the EC

The following communication, dated 3 July 2001, from the Permanent Mission of Ecuador to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

For the information of all WTO members, please find attached the text of the Understanding on Bananas reached by Ecuador and the European Communities on 30 April 2001.

After a careful analysis on how best to present this Understanding to the membership of the Organization, having reviewed the separate notification made unilaterally by the EC on 22 June 2001 (WT/DS27/58), and bearing in mind the subsequent discussions maintained with the EC after the Understanding was reached, Ecuador considers it necessary to put forward the following comments for the Members' consideration.

1. The Understanding identifies means by which a long-standing dispute can be resolved. However, the Understanding also comprises of the execution of two phases and requires the implementation of several key features, which demands the collective action of the WTO membership. As Ecuador has expressed during the last two meetings of the DSB, it will remain vigilant that these phases and elements be fully implemented and executed.
2. Once the EC has amended its banana import regime - which was found to be WTO inconsistent by the original panel that reviewed the case as a result of Ecuador's recourse to Article 21.5 of the DSU (WT/DS27/RW/ECU) - Ecuador notes that the Understanding reached with the EC refers to the current banana import regime in force as of 1 July 2001 as one of a transitory nature since, beginning at the latest on 1 January 2006, a new and definitive Tariff Only regime will be in force.
3. Since the new EC banana import regime which is currently in force still requires that several steps be taken in the context of the DSB and other WTO bodies, it would be premature to take

this item off the DSB agenda which considers this issue at every regular meeting pursuant to Article 21.6 of the DSU.

In light of the above and although Ecuador sees the Understanding as an agreed solution which can contribute to an overall, definite and universally accepted solution, it must be made clear that the provisions of Article 3.6 of the DSU are not applicable in this case.

We request that you please circulate a copy of this letter with its attachment to all WTO Members and request that the Secretariat provide a copy of these documents to the Council of Trade in Goods.

Understanding on Bananas

- A. The European Commission and Ecuador have identified the means by which the long-standing dispute over the EC's banana import regime can be resolved.
- B. In accordance with Article 16(1) of Regulation No. (EC) 404/93 (as amended by Regulation No. (EC) 216/2001), the European Communities (EC) will introduce a Tariff Only regime for imports of bananas no later than 1 January 2006. GATT Art XXVIII negotiations shall be initiated in good time to that effect, recognizing Ecuador as the principal supplier in these negotiations.
- C. In the interim, the EC will implement an import regime on the basis of historical licensing as follows :
1. Effective 1 July 2001, the EC will implement an import regime on the basis of historical licensing as set out in Annex 1.
 2. Effective as soon as possible thereafter, subject to Council and European Parliament approval and to adoption of the Article XIII waiver referred to in paragraph F, the EC will implement an import regime on the basis of historical licensing as set out in Annex 2. The Commission will seek to obtain the implementation of such an import regime as soon as possible.
- D. Ecuador takes note that the European Commission will examine the trade in organic bananas and report accordingly by 31 December 2004.
- E. Upon implementation of the import regime described in paragraph C, Ecuador's right to suspend concessions or other obligations of a level not exceeding US\$201.6 million per year vis-à-vis the EC will be terminated.
- F. Ecuador will lift its reserve concerning the waiver of Article I of the GATT 1994 that the EC has requested for preferential access to the EC of goods originating in ACP States signatory to the Cotonou Agreement; and will actively work towards promoting the acceptance of an EC request for a waiver of Article XIII of the GATT 1994 needed for the management of quota C under the import regime described in paragraph C(2) until 31 December 2005.
- G. The EC and Ecuador consider that this Understanding constitutes a mutually agreed solution to the banana dispute.

Annex I

Phase I

1. A bound tariff-rate quota (TRQ) designated as quota "A" will be set at 2,200,000 tonnes. An autonomous TRQ designated as quota "B" will be set at 353,000 tonnes. These TRQs will be managed as one, with the total quota being 2,553,000 tonnes. There is no expectation of allocation of shares of either of these TRQs among country suppliers, and the Commission will not seek to convene a meeting to that effect of the principal supplying countries except upon the joint request of all such countries. The tariff applied to bananas imported in the "A" and "B" quotas shall not exceed 75 euro/tonne.
2. A TRQ designated as quota "C" will be set at 850,000 tonnes.
3. Import licenses for 83% of the "A" and "B" TRQs will be distributed to "traditional" operators based on each qualified "traditional" operator's 1994-96 average final reference volume ("reference volume") for the "A/B" quotas. Qualified "traditional" operators will be identified on the basis of the distribution of licenses that occurred under Regulation 404, Article 19.1(a) and Regulation 1442, Article 3.1(a) for "Category A subfunction (a)". Importers will not need to produce new evidence.
4. Licenses for TRQ "C" are intended to be distributed broadly in accordance with the principles to be utilized in managing of licenses for TRQs "A" and "B" and on the basis of imports of ACP-origin bananas.
5. Within each TRQ, licenses may be used to import bananas from any source. Licenses to import bananas into TRQ "C" cannot be used to import bananas into TRQs "A" and "B", and vice versa.
6. A "non-traditional" operator category will be created with respect to 17% of the quantity of the "A and B" TRQs. Non-traditional operators cannot become traditional operators in subsequent periods.
7. Management of non-traditional operators will be done by simultaneous examination, respecting the following conditions:
 - (a) the activity period to consider for registration shall be 2 years;
 - (b) the minimum annual customs value of imports into the EU to qualify shall be 1.2 million €;
 - (c) traditional importers in Quota C may only qualify as non-traditional importers in Quota A/B when they prove that they imported bananas from third countries other than ACP in the relevant period;
 - (d) in application for licenses, the maximum requested quantities for each non-traditional operator shall be not higher than 12.5% of the quantity reserved for non-traditional operators;
 - (e) a security of 150€/t shall be required;
 - (f) a non-traditional operator shall be required to be responsible for shipping bananas to the EU;

- (g) simultaneous examination shall be conducted in a pro-rata basis;
 - (h) dissuasive penalties shall apply in the event that a traditional operator be found to be controlling a non-traditional operator within the same Quota;
 - (i) transmissibility of licenses between non-traditional operators will be permitted.
8. The licensing regime will be administered in good faith and on a non-discriminatory basis.

Annex II

Phase II

1. During Phase II, the provisions applying to Phase I will continue, except as provided in this Annex.
2. In Phase II, TRQ "B" will be 453,000 tonnes (an increase of 100,000 tonnes). The total for the "A" and "B" TRQs will be 2,653,000 tonnes.
3. The TRQ "C" will be 750,000 tonnes and will be reserved for bananas of ACP origin.
4. The share of import licenses to "traditional" operators for the "A" and "B" TRQs will be allocated in accordance with the procedure in Annex I. Import licenses will be distributed based on each qualified "traditional" operator's 1994-96 reference volume through December 31, 2003. Thereafter, the share of import licenses to "traditional" operators for the "A" and "B" TRQs will be allocated based only on usage of licenses issued under Phase II of this Understanding, through credible documentation.
5. The Commission will provide regularly the verified statistics on the importation of bananas from Ecuador.

ANNEX B-4

THE ACP-EC PARTNERSHIP AGREEMENT
DECISION OF 14 NOVEMBER 2001

**WORLD TRADE
ORGANIZATION**

WT/MIN(01)/15
14 November 2001

(01-5786)

MINISTERIAL CONFERENCE
Fourth Session
Doha, 9 - 14 November 2001

EUROPEAN COMMUNITIES – THE ACP-EC PARTNERSHIP AGREEMENT

Decision of 14 November 2001

The Ministerial Conference,

Having regard to paragraphs 1 and 3 of Article IX of the Marrakech Agreement Establishing the World Trade Organisation (the "WTO Agreement"), the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956 (BISD 5S/25), the Understanding in Respect to Waivers of Obligations under the General Agreement on Tariffs and Trade 1994, paragraph 3 of Article IX of the WTO Agreement, and Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93);

Taking note of the request of the European Communities (EC) and of the Governments of the ACP States which are also WTO members (hereinafter also the "Parties to the Agreement") for a waiver from the obligations of the European Communities under paragraph 1 of Article I of the General Agreement with respect to the granting of 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 (hereinafter also referred to as "the Agreement")¹;

Considering that, in the field of trade, the provisions of the ACP-EC Partnership Agreement requires preferential tariff treatment by the EC of exports of products originating in the ACP States;

Considering that the Agreement is aimed at improving the standard of living and economic development of the ACP States, including the least developed among them;

Considering also that the preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the Agreement is designed to promote the expansion of trade and economic development of beneficiaries in a manner consistent with the

¹ As contained in documents G/C/W/187, G/C/W/204, G/C/W/254 and G/C/W/269).

objectives of the WTO and with the trade, financial and development needs of the beneficiaries and not to raise undue barriers or to create undue difficulties for the trade of other members;

Considering that the Agreement establishes a preparatory period extending until 31 December 2007, by the end of which new trading arrangements shall be concluded between the Parties to the Agreement;

Considering that the trade provisions of the Agreement have been applied since 1 March 2000 on the basis of transitional measures adopted by the ACP-EC joint institutions;

Noting the assurances given by the Parties to the Agreement that they will, upon request, promptly enter into consultations with any interested member with respect to any difficulty or matter that may arise as a result of the implementation of the preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the Agreement;

Noting that the tariff applied to bananas imported in the "A" and "B" quotas shall not exceed 75 €/tonne until the entry into force of the new EC tariff-only regime.

Noting that the implementation of the preferential tariff treatment for bananas may be affected as a result of GATT Article XXVIII negotiations;

Noting the assurances from the Parties to the Agreement that any re-binding of the EC tariff on bananas under the relevant GATT Article XXVIII procedures should result in at least maintaining total market access for MFN banana suppliers and their willingness to accept a multilateral control on the implementation of this commitment.

Considering that, in light of the foregoing, the exceptional circumstances justifying a waiver from paragraph 1 of Article I of the General Agreement exist;

Decides as follows:

1. 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 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,² without being required to extend the same preferential treatment to like products of any other member.
2. The Parties to the Agreement shall promptly notify the General Council of any changes in the preferential tariff treatment to products originating in ACP States as required by the relevant provisions of the Agreement covered by this waiver.
3. The Parties to the Agreement will, upon request, promptly enter into consultations with any interested member with respect to any difficulty or matter that may arise as a result of the implementation of the preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the Agreement; where a member considers that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of such implementation, such consultations shall examine the possibility of action for a satisfactory adjustment of the matter.

² Any reference to the Partnership Agreement in this Decision shall also include the period during which the trade provisions of this Agreement are applied on the basis of transitional measures adopted by the ACP-EC joint institutions.

- 3bis With respect to bananas, the additional provisions in the Annex shall apply.
4. Any member which considers that the preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the Agreement is being applied inconsistently with this waiver or that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of the implementation of the preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the Agreement and that consultations have proved unsatisfactory, may bring the matter before the General Council, which will examine it promptly and will formulate any recommendations that they judge appropriate.
 5. The Parties to the Agreement will submit to the General Council an annual report on the implementation of the preferential tariff treatment for products originating in ACP States as required by Article 36.3, Annex V and its Protocols of the Agreement.
 6. This waiver shall not preclude the right of affected members to have recourse to Articles XXII and XXIII of the General Agreement.

ANNEX

The waiver would apply for ACP products under the Cotonou Agreement until 31 December 2007. In the case of bananas, the waiver will also apply until 31 December 2007, subject to the following, which is without prejudice to rights and obligations under Article XXVIII.

- The parties to the Cotonou Agreement will initiate consultations with Members exporting to the EU on a MFN basis (interested parties) early enough to finalize the process of consultations under the procedures hereby established at least three months before the entry into force of the new EC tariff only regime.
- No later than 10 days after the conclusion of Article XXVIII negotiations, interested parties will be informed of the EC intentions concerning the rebinding of the EC tariff on bananas. In the course of such consultations, the EC will provide information on the methodology used for such rebinding. In this regard, all EC WTO market-access commitments relating to bananas should be taken into account.
- Within 60 days of such an announcement, any such interested party may request arbitration.
- The arbitrator shall be appointed within 10 days, following the request subject to agreement between the two parties, failing which the arbitrator shall be appointed by the Director-General of the WTO, following consultations with the parties, within 30 days of the arbitration request. The mandate of the arbitrator shall be to determine, within 90 days of his appointment, 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 above-mentioned EC commitments.
- If the arbitrator determines that the rebinding would not result in at least maintaining total market access for MFN suppliers, the EC shall rectify the matter. Within 10 days of the notification of the arbitration award to the General Council, the EC will enter into consultations with those interested parties that requested the arbitration. In the absence of a mutually satisfactory solution, the same arbitrator will be asked to determine, within 30 days of the new arbitration request, whether the EC has rectified the matter. The second arbitration award will be notified to the General Council. If the EC has failed to rectify the matter, this waiver shall cease to apply to bananas upon entry into force of the new EC tariff regime. The Article XXVIII negotiations and the arbitration procedures shall be concluded before the entry into force of the new EC tariff only regime on 1 January 2006.

ANNEX B-5

TRANSITIONAL REGIME FOR THE EC AUTONOMOUS
TARIFF RATE QUOTAS ON IMPORTS OF BANANAS
DECISION OF 14 NOVEMBER 2001

**WORLD TRADE
ORGANIZATION**

WT/MIN(01)/16
14 November 2001

(01-5787)

MINISTERIAL CONFERENCE
Fourth Session
Doha, 9 – 14 November 2001

**EUROPEAN COMMUNITIES – TRANSITIONAL REGIME FOR THE EC
AUTONOMOUS TARIFF RATE QUOTAS ON IMPORTS OF BANANAS**

Decision of 14 November 2001

The Ministerial Conference,

Having regard to the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956, the Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994, and paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter "WTO Agreement");

Taking note of the request of the European Communities for a waiver from its obligations under paragraphs 1 and 2 of Article XIII of the GATT 1994 with respect to bananas;

Taking note of the understandings reached by the EC, Ecuador and the United States that identify the means by which the longstanding dispute over the EC's banana regime can be resolved, in particular their provision for a temporary global quota allocation for ACP banana supplying countries under specified conditions;

Taking into account the exceptional circumstances surrounding the resolution of the bananas dispute and the interests of many WTO Members in the EC banana regime;

Recognizing the need to afford sufficient protection to the ACP banana supplying countries, including the most vulnerable, during a limited transition period, to enable them to prepare for a tariff-only regime;

Noting assurances given by the EC that it will, upon request, promptly enter into consultations with any interested member with respect to any difficulty or matter that may arise as a result of the implementation of the tariff rate quota for bananas originating in ACP States;

Considering that, in light of the foregoing, the exceptional circumstances justifying a waiver from paragraphs 1 and 2 of Article XIII of the GATT 1994 with respect to bananas exist;

Decides as follows:

1. With respect to the EC's imports of bananas, as of 1 January 2002, and until 31 December 2005, paragraphs 1 and 2 of Article XIII of the GATT 1994 are waived with respect to the EC's separate tariff quota of 750,000 tonnes for bananas of ACP origin.
2. The EC will, upon request, promptly enter into consultations with any interested member with respect to any difficulty or matter that may arise as a result of the implementation of the separate tariff rate quota for bananas originating in ACP States covered by this waiver; where a Member considers that any benefit accruing to it under the GATT 1994 may be or is being impaired unduly as a result of such implementation, such consultations shall examine the possibility of action for a satisfactory adjustment of the matter.
3. Any Member which considers that the separate tariff rate quota for bananas originating in ACP States covered by this waiver is being applied inconsistently with this waiver or that any benefit accruing to it under the GATT 1994 may be or is being impaired unduly as a result of the implementation of the separate tariff rate quota for bananas originating in ACP States covered by this waiver and that consultations have proved unsatisfactory, may bring the matter before the General Council, which will examine it promptly and will formulate any recommendations that they judge appropriate.
4. This waiver shall not preclude the right of affected members to have recourse to Articles XXII and XXIII of the GATT 1994.

ANNEX C

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ANNEX C-1

ARTICLE XXIV:6 NEGOTIATIONS
ENLARGEMENT OF THE EUROPEAN UNION
COMMUNICATION FROM THE EUROPEAN COMMUNITIES

**WORLD TRADE
ORGANIZATION**

No. _____

G/SECRET/20
30 January 2004

(04-0350)

Original: English

ARTICLE XXIV:6 NEGOTIATIONS

Enlargement of the European Union

Communication from the European Communities

The following communication, dated 19 January 2004, is being circulated at the request of the Delegation of the European Communities.

Notification
by the European Communities to
the World Trade Organization and its Members
concerning decisions to enter into a customs union, resulting from the

Enlargement of the European Union

by the accession of

The Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic;

Pursuant to the Understanding on the Interpretation of Article XXIV GATT 1994, paragraph 4, incorporating the Guidelines adopted on 10 November 1980 (BISD 27S/26-28), paragraph 1 (the "Guidelines").

Following, *inter alia*, the decision of 14 April 2003 of the Council of the European Union on the admission to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and pending the finalisation of ratification procedures, the European Communities have the honour to notify the WTO and its Members that these states have decided to become members of the European Union on

1 May 2004. The Treaty of Accession is published in the *Official Journal of the European Union* L 236 of 23 September 2003. A version subject to a legal disclaimer is published at:
http://europa.eu.int/comm/enlargement/negotiations/treaty_of_accession_2003/index.htm.

Accordingly, the European Communities hereby notifies, within the framework of procedures laid down in Article XXIV GATT 1994, and in particular paragraph 6 thereof, the withdrawal on 1 May 2004 of the commitments in Schedule XCII Czech Republic, Schedule CXLIV Republic of Estonia, Schedule CVII Republic of Cyprus, Schedule CXLIII Republic of Latvia, Schedule CL Republic of Lithuania, Schedule LXXI Republic of Hungary, Schedule CXVII Republic of Malta, Schedule LXV Republic of Poland, Schedule XCVI Republic of Slovenia, Schedule XCIII Slovak Republic and Schedule CXL¹ of the European Communities of 15.

The European Communities is ready to enter into Article XXIV and XXVIII GATT 1994 procedures including tariff negotiations or consultations to address compensatory adjustments provided for under Article XXIV.6 GATT 1994.

The data² necessary for the purposes of applying Article XXIV.6 GATT 1994, as provided for in the Guidelines, paragraph 2, first and second sentences, is included in the Annex of this notification. In accordance with the Guidelines, paragraph 2, third sentence, and paragraph 3, any proposed modifications or compensatory adjustments will be circulated and communicated separately.

The EC intends to communicate further data in the near future to members having negotiation rights.

Pending the completion of the Article XXIV and XXVIII GATT 1994 procedures and the creation of a new schedule valid for the European Communities of 25, the commitments in the European Communities Schedule CXL will be fully respected. The new members of the European Union intend to align their Schedules with those of the European Communities on 1 May 2004.

Pursuant to the Guidelines, paragraph 1, the European Communities transmits this notification to the Secretariat, and requests the Secretariat to distribute this notification to all other Members in a secret document.

The above-mentioned data are available in **electronic form only** on the WTO Members' Homepage (<http://members.wto.org>), go to WTO Resources, then Market Access Schedules on Goods (login), and then to Other. Download the zipped database and open using MS Access, choose your country to print the applicable data.

¹ This schedule is a total of the tariff and other commitments of the European Communities of 15 circulated under cover of WTO document G/L/65/Rev.1 of 19 March 1996. It has subsequently been modified by G/MA/TAR/RS/16 of 2 April 1997 (certified WT/Let/156), G/MA/TAR/RS/30 of 13 May 1997 (certified WT/Let/178), G/L/65/Rev.1/Add.2 of 21 October 1997, G/MA/TAR/RS/47 of 10 February 1998 (certified WT/Let/261), G/L/65/Rev.1/Add.2/Corr.1 of 10 February 1998, G/L/65/Rev.1/Add.3 of 23 November 1998, G/L/65/Rev.1/Add.4 of 1 July 1999, and G/L/65/Rev.1/Add.5 of 22 February 2000.

² Please see the bottom of the page for more information on how to obtain the data. The data are available in English only.

ANNEX C-2

ARTICLE XXIV:6 NEGOTIATIONS
ENLARGEMENT OF THE EUROPEAN UNION
COMMUNICATION FROM THE EUROPEAN COMMUNITIES

**WORLD TRADE
ORGANIZATION**

No. _____

G/SECRET/26
28 September 2006

(06-4638)

Original: English

ARTICLE XXIV:6 NEGOTIATIONS

Enlargement of the European Union

Communication from the European Communities

The following communication, dated 27 September 2006, has been received from the delegation of the European Communities.

Notification
by the European Communities to
the World Trade Organization and its Members
concerning decisions to enter into a customs union, resulting from the

Enlargement of the European Union

by the accession of
the Republic of Bulgaria and Romania;

Pursuant to the Understanding on the Interpretation of Article XXIV GATT 1994, paragraph 4, incorporating the Guidelines adopted on 10 November 1980 (BISD 27S/26-28), paragraph 1 (the "Guidelines").

Following, *inter alia*, the decision of 25 April 2005 of the Council of the European Union on the admission to the European Union of the Republic of Bulgaria and Romania and pending the finalisation of ratification procedures, leading to the entry into force of the Treaty of Accession, the European Communities have the honour to notify the WTO and its Members that these states have

decided to become members of the European Union on 1 January 2007. The Treaty of Accession is published in the *Official Journal of the European Union* L 157 of 21 June 2005.¹

Accordingly, the European Communities hereby notifies, within the framework of procedures laid down in Article XXIV GATT 1994, and in particular paragraph 6 thereof, the modification of the Schedule of the European Communities in order to cover these new members of the European Union.

The new members of the European Union will be subject to the Schedules of the European Communities on 1 January 2007. Consequently, the commitments in Schedule CXXXIX of the Republic of Bulgaria and Schedule LXIX of Romania are withdrawn on 1 January 2007.

The data necessary for the purposes of applying Article XXIV.6 GATT 1994, as provided for in the Guidelines, paragraph 2, first and second sentences, is included in the Annex of this notification.² In accordance with the Guidelines, paragraph 2, third sentence, and paragraph 3, any proposed modifications or compensatory adjustments will be circulated and communicated separately.

The European Communities is ready to enter into Article XXIV and XXVIII GATT 1994 procedures including tariff negotiations or consultations to address compensatory adjustments provided for under Article XXIV.6 GATT 1994.

The European Communities requests the Secretariat to inscribe an item concerning these notifications on the agenda of the next Council meeting, subject to the rules on inclusion of items on the agenda, so that the Council may take any appropriate actions in this respect.

Pursuant to the Guidelines, paragraph 1, the European Communities transmits this notification to the Secretariat, and requests the Secretariat to distribute this notification to all other Members in a secret document.

Annex: Data for applying Article XXIV.6².

¹ <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2005:157:SOM:EN:HTML>

² The data are available in electronic format and in English only.

ANNEX D

SECTION VIII (CONCLUSIONS AND RECOMMENDATIONS) OF THE PANEL REPORT ON *EC – BANANAS III (ARTICLE 21.5 – ECUADOR II)*

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.
