

# **WORLD TRADE ORGANIZATION**

RESTRICTED

**G/C/W/267**

3 July 2001

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**Council for Trade in Goods  
5 July 2001**

Original: English/  
Spanish

## **REQUEST FOR A WTO WAIVER**

### New ACP-EC Partnership Agreement

The following communication, dated 22 June 2001, has been received from the Permanent Delegation of Ecuador.

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Attached hereto is a copy of Ecuador's contribution towards initiating the examination of the waiver request which was first submitted on 29 February 2000 by the European Communities and the ACP countries signatories to the ACP-EC Partnership Agreement, and which was circulated as document G/C/W/187 on 2 March 2000.

Ecuador's contribution consists of a draft decision that could be adopted by the General Council in accordance with Article IX of the WTO Agreement once the proper procedure for processing such requests has been completed.

The attached draft decision does not prejudge the position of the interested parties, nor does it condition such future contributions by Ecuador as may be made in the course of the waiver request examination.

## EUROPEAN COMMUNITIES - THE ACP-EC PARTNERSHIP AGREEMENT

### Addendum

#### Draft Decision of [date of decision]

The General Council,

HAVING REGARD TO paragraphs 1 and 3 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (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);

CONDUCTING the function of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

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 treatment for products originating in ACP States as required by the relevant provisions of the ACP-EC Partnership Agreement (hereinafter also referred to as "the Agreement")<sup>1</sup>;

CONSIDERING that, in the field of trade, the provisions of the ACP-EC Partnership Agreement requires preferential 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 treatment for products originating in ACP States as required by the relevant provisions of the Agreement is designed to promote the expansion of trade

and economic development of beneficiaries in a manner consistent with the 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 no later than 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;

TAKING INTO ACCOUNT the circumstances surrounding the bananas dispute before the Dispute Settlement Body and the interests of many WTO Members in the EC banana regime;

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<sup>1</sup>As contained in the request for a waiver submitted by the Parties to the Agreement (see documents G/C/W/187, G/C/W/187/Add. 1 and G/C/W/187/Add.3).

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 special quota allocation for ACP countries under specified conditions;

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;

TAKING NOTE of the request of the EC for a waiver from its obligations under paragraphs 1 and 2(a) of Article XIII of the General Agreement with respect to bananas;

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 treatment for products originating in ACP States as required by the relevant provisions of the Agreement;

NOTING that, in light of the foregoing, the exceptional circumstances justifying a waiver from paragraph 1 of Article I and in addition, for bananas, from paragraphs 1 and 2(a) of Article XIII, 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 to the extent specified in the schedules to the interim trade provisions of Annex V of the ACP-EC Partnership Agreement as of 2 July 2000, without being required to extend the same preferential treatment to like products of any other Member; provided, however, that this waiver shall not apply to preferences applied pursuant to any future EC-ACP partnership agreement into which the EC enters with one or more of the ACP States.
2. The Parties to the Agreement shall promptly notify the General Council of any changes in the preferential treatment to products originating in ACP States, without prejudice to whether such changes require a further waiver from the EC's WTO obligations.
3. With respect to bananas, notwithstanding any other provision of this Decision, the following provisions of the GATT 1994 are waived until December 31, 2005, under the following conditions:
  - (a) Paragraph 1 of Article I of the GATT 1994 is waived only with respect to the tariff preference applied to bananas of ACP origin within the EC's tariff quota for which the current volume is 850,000 tonnes and, as of 1 January 2002, with respect to the duty-free treatment accorded to bananas of ACP origin in the EC's quota of 750,000 tonnes that is not accorded on a most-favoured-nation basis;
  - (b) as of January 1, 2002, paragraphs 1 and 2(a) of Article XIII of the GATT 1994 is waived with respect to the EC's separate quota of 750,000 tonnes for bananas of ACP origin, provided that the EC has increased its tariff quota that is open on a most-favoured-nation basis from 2.553 to 2.653 million tonnes.
4. 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 treatment for products originating in ACP States as required by the relevant provisions of the Agreement covered by this waiver; 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.

5. Any member which considers that the preferential treatment for products originating in ACP States as required by the relevant provisions of the Agreement covered by this waiver 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 treatment for products originating in ACP States as required by the relevant provisions of the Agreement 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.
  6. The Parties to the Agreement will submit to the General Council an annual report on the implementation of the preferential treatment for products originating in ACP States as required by the relevant provisions of the Agreement covered by this waiver.
  7. This waiver shall not preclude the right of affected Members to have recourse to Articles XXII and XXIII of the General Agreement.
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