

**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 IPhase 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 IPhase 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.
-