

# WORLD TRADE ORGANIZATION

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**G/C/W/269**

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

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## **REQUESTS FOR A GATT ARTICLE I AND A GATT ARTICLE XIII WAIVER**

### New ACP-EC Partnership Agreement

The following communication, dated 22 June 2001, was sent to the Chairman of the Council for Trade in Goods by the Permanent Delegation of the European Communities.

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The request presented by the European Communities and Tanzania and Jamaica on behalf of the ACP countries for a GATT Article I waiver concerning the new EC-ACP Partnership Agreement is on the agenda of the meeting of the Council for Trade in Goods on 5 July 2001.

The relevant documentation for that request can be found in documents G/C/W/187 of 2 March 2000, G/C/W/187 Add. 2 of 14 April 2000, G/C/W/204 of 4 May 2000, G/C/W/254 of 12 March 2001 - enclosing Council Regulation (EC) No 216/2001 – and WT/DS27/51/Add.19 of 7 June 2001 - enclosing Commission Regulation (EC) No 896/2001.

In this respect, the European Communities would like to modify document G/C/W/204, as follows. On page 96, under the heading 0803 “Bananas, Incl. plantains, fresh or dried”, the text next to the CN code 08030019 should be replaced by:

*“Imports of bananas from the ACP countries are granted duty free access on a preferential basis, in accordance with the relevant provisions of the EU-ACP Partnership Agreement, the transitional Community banana regime in force from 1 July 2001 until 31 December 2005, and the banana tariff only regime from 1 January 2006 following GATT Article XXVIII negotiations”.*

Further, in view of the mutually agreed solution recently found by the EC, the US and Ecuador concerning the banana dispute<sup>1</sup>, the European Communities would also like to put on the agenda of the same meeting a request for a GATT Article XIII waiver, concerning the transitional regime for the EC autonomous tariff rate quotas on imports of bananas (CN code 0803 00 19), whose text is enclosed herewith.

The two requests should be considered simultaneously during the meeting, so that their examination can start immediately.

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<sup>1</sup> Circulated to the WTO on 22 June 2001.

**ANNEX I**

Request for a GATT Article XIII waiver

Transitional regime for the EC autonomous tariff rate quotas on imports of bananas  
(CN code 0803 00 19)

On 11 April and 30 April 2001 respectively, the European Communities and the United States of America, and the European Communities and Ecuador, reached Understandings in which they identified the means by which the long-standing dispute over the EC's banana import regime can be resolved.

This mutually agreed solution in the bananas dispute has been notified to the WTO as document [WT/DS27/58.]

As part of that resolution, the EC will implement, from 1 January 2002 until 31 December 2005 at the latest, an import regime that includes a global tariff rate quota of 750.000 tonnes (the "C quota") exclusively for bananas originating in African, Caribbean and Pacific (ACP) States Party to the Cotonou Agreement. At the same time that it amends the C quota, the EC is to increase the autonomous tariff quota available to all suppliers ("the B quota") by 100.000 tonnes, from 353.000 tonnes to 453.000 tonnes.

This reserved tariff-rate quota is justified by the absolute need to afford a sufficient protection to the ACP banana supplying countries, including the most vulnerable, during a limited transition period, in order to enable them to prepare for a tariff-only regime that the EC will introduce no later than 1 January 2006.

In view of the exceptional circumstances linked to reconciling Member's interests in the EC's banana dispute, the European Communities request that Members grant a waiver until 31 December 2005 from the provisions of paragraph 1 and 2 of Article XIII of the GATT 1994 with respect to the European Communities' reservation of the global C quota exclusively for bananas of ACP origin. No country allocation is to take place within the C quota. This waiver is a pre-requisite for the modification of Council Regulation (EC) No 216/2001 (notified to the WTO as document WT/DS/51/Add. 16 and G/C/W/254), in particular of its Article 18 in order to set aside the C quota for ACP bananas only.

The European Communities request that the WTO Members give their application for a waiver expeditious and favourable consideration. The European Communities are prepared to give full consideration to representations made to them by other WTO Members and to engage in consultations with them as may be necessary.

**EUROPEAN COMMUNITIES – TRANSITIONAL REGIME FOR THE EC  
AUTONOMOUS TARIFF RATE QUOTAS ON IMPORTS OF BANANAS  
(CN CODE 0803 00 19)**

Decision of   October 2001

The General Council,

*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");

*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 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 II**

Notification of a mutually agreed solution under 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).

Attached is 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.

**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 licences 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. Licences 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 licences 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 licences to “traditional” operators for the “A” and “B” TRQs will be allocated based only on usage of licences 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 licences 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. Licences for TRQ “C” are intended to be distributed broadly in accordance with the principles to be utilized in managing of licences for TRQ’s “A” and “B” and on the basis of imports of ACP-origin bananas.
5. Within each TRQ, licences may be used to import bananas from any source. Licences 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 licences 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 licences to “traditional” operators for the “A” and “B” TRQs will be allocated based only on usage of licences 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.
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