

**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.
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