

**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.

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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 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.
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