

EUROPEAN COMMISSION

Brussels, 17.3.2010
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ANNEX to

Proposal for a Council Decision on the conclusion of a "General Agreement on Trade in Bananas" between the European Union and Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela and of an "Agreement on Trade in Bananas" between the European Union and the United States

ANNEX 2

The United States of America ("the United States") and the European Union ("EU"),

Recalling the US-EC Understanding on Bananas of April 11, 2001 (WT/DS27/59);

Taking note of the Geneva Agreement on Trade in Bananas ("GATB") signed between the EU and Colombia, Panama, Ecuador, Costa Rica, Honduras, Guatemala, Peru, Brazil, Mexico, Nicaragua and Venezuela on xx.xx.2010, a copy of which is attached;

Taking note of the questions and answers exchanged between the United States and the European Commission on March 16 and 18, 2009 and April 10 and 17, 2009;

Have agreed as follows:

1. Upon settlement by all the signatories to the GATB of the pending disputes and claims listed in the first sentence of paragraph 5 of the GATB (the "settlement date"), the dispute *EC – Regime for the Importation, Sale and Distribution of Bananas* (WT/DS27) ("the dispute") shall be settled as between the United States and the EU. Immediately after the last notification to the Dispute Settlement Body of all the mutually agreed solutions referred to in paragraph 5 of the GATB has been submitted, the United States and the EU shall jointly notify to the Dispute Settlement Body, pursuant to Article 3.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), that they have reached a mutually agreed solution through which they have agreed to end the dispute.[1]

2. Without prejudice to their rights and obligations under the WTO Agreement, including those derived from the dispute, the United States and the EU undertake not to take any further action with respect to the dispute between the date of initialling of this agreement and the settlement date, provided that the EU complies with paragraphs 3 (a) and (b) below and its obligations contained in paragraphs 3 and 4 (b) and (c) of the GATB.

3. The EU further undertakes:

   (a) to apply a MFN tariff-only regime for the importation of bananas and therefore not to apply measures affecting the importation of bananas into its territory in the form of quotas, tariff rate quotas, or import licensing regimes for bananas supplied from any source (other than automatic licensing regimes solely for market monitoring purposes);[2] and,

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[1] The settlement of this dispute does not affect any party's right to initiate a new dispute under the DSU.

[2] This provision is without prejudice to the EU's right to apply measures that are in conformity with Article XXIV of the *General Agreement on Tariffs and Trade 1994*.

(b) not to apply any measure that discriminates between suppliers of banana distribution services based on the ownership or control of the service supplier or the origin of the bananas distributed.

The provisions of paragraph 1 will not apply if, as of the settlement date, the EU is not in compliance with either of the undertakings contained in this paragraph.

4. In accordance with applicable World Trade Organization ("WTO") rules, the EU will notify to the WTO promptly upon conclusion, any concluded bilateral or regional free trade agreement that includes provisions regarding trade in bananas.

5. The United States and the EU agree to communicate, and upon request of either party the other party will consult, in a timely manner with respect to any issues arising under or relating to this agreement.

6. The United States and the EU shall notify each other in writing of the completion of the internal procedures necessary for the entry into force of this agreement. This agreement shall enter into force on the later of (a) the date of the last notification referred to in the previous sentence, and (b) the date of entry into force of the GATB. Paragraphs 2 and 3 (a) and (b) shall provisionally apply as of the date of signature of this agreement.

Date

Signed,

Geneva, Switzerland

For the European Union

For the United States of America