

AGREEMENT ON TRADE IN BANANAS
BETWEEN THE UNITED STATES OF AMERICA
AND THE EUROPEAN UNION

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 May 31, 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

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

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,
- (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

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*.

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.

Done at Geneva on the eighth day of June in the year two thousand and ten.

/S/

FOR THE UNITED STATES OF AMERICA

/S/

FOR THE EUROPEAN UNION

GENEVA AGREEMENT ON TRADE IN BANANAS

1. This Agreement is concluded between the European Union (hereinafter "the EU") and Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela (hereinafter "the Latin American MFN banana suppliers") regarding the structure and operation of the EU trading regime for fresh bananas, excluding plantains, classified under HS tariff line 0803.00.19 (hereinafter "bananas") and the terms and conditions that apply thereto.

2. This Agreement is without prejudice to the WTO rights and obligations of all the signatories to this Agreement subject to the provisions in paragraphs 3 to 8 below.

3. The EU agrees to the following:

(a) Without prejudice to subparagraph (b) below, the EU shall apply tariffs for bananas not greater than the following¹:

–	From 15 December 2009 until 31 December 2010	148 €/mt
–	1 January 2011	143 €/mt
–	1 January 2012	136 €/mt
–	1 January 2013	132 €/mt
–	1 January 2014	127 €/mt

¹ Upon signature of this Agreement, the EU shall apply retroactively the applicable tariff(s) specified in paragraph 3(a) for the period from the 15 December 2009 to the date of signature. Duties paid in excess of the amount stipulated in this provision shall be reimbursed by the competent customs authorities upon request.

- 1 January 2015 122 €mt
- 1 January 2016 117 €mt
- 1 January 2017 114 €mt

(b) If Doha Modalities² are not established by 31 December 2013, the ensuing tariff cuts in paragraph 3(a) above will be delayed until Doha Modalities are established. Under no circumstances shall the delay extend beyond 31 December 2015. The applicable tariff rate during that period of delay shall be 132 €mt. After the two year period expires, or immediately after Doha Modalities are established, whichever occurs first, the tariff rate shall be 127 €mt. The ensuing tariffs for the next three years, as from 1 January of each year, shall be no greater than 122 €mt, 117 €mt and 114 €mt, respectively.

(c) The EU shall maintain a MFN tariff-only regime for the importation of bananas³.

4. (a) The EU shall bind the tariff cuts provided in paragraph 3. To this effect this Agreement shall be incorporated into the EU's WTO Schedule by means of Certification⁴ in accordance with the Decision of 26 March 1980 on Procedures for the Modification and Rectification of Schedules of Tariff Concessions (L/4962).

² Doha Modalities for the purpose of this Agreement means that consensus has been reached in the Trade Negotiations Committee to proceed to scheduling in Agriculture and Non-Agricultural Market Access negotiations.

³ This provision shall not be read to authorise non-tariff measures on bananas that are inconsistent with the EU's obligations under the WTO Agreements.

⁴ The date of Certification shall be the date at which the Director-General certifies that the modifications to the EU Schedule have become a Certification in accordance with the Decision of 26 March 1980 on Procedures for the Modification and Rectification of Schedules of tariff concessions (document reference WT/LET).

- (b) Upon entry into force of this Agreement the EU shall communicate a draft Schedule on bananas incorporating the text of this Agreement to the Director-General for Certification.
- (c) Parties to this Agreement agree not to raise objections to the Certification of the modified Schedule, provided that this Agreement is correctly reflected in the notification.

5. Upon Certification, the pending disputes WT/DS27; WT/DS361; WT/DS364; WT/DS16; WT/DS105; WT/DS158; WT/L/616; WT/L/625 and all claims filed to date by any and all Latin American MFN banana suppliers under the procedures of Articles XXIV and XXVIII of the GATT 1994 with respect to the EU trading regime for bananas (including G/SECRET/22 item 0803.00.19 and G/SECRET/22/Add.1; G/SECRET/20 and G/SECRET/20/Add.1; and G/SECRET/26) shall be settled⁵. Within two weeks after Certification, the relevant parties to this Agreement shall jointly notify the DSB that they have reached a mutually agreed solution through which they have agreed to end these disputes⁶.

⁵ The date of the settlement shall be the date of Certification (document reference WT/LET).

⁶ The settlement of these disputes does not affect any party's right to initiate a new dispute under the DSU, or future rights under the procedures of Articles XXIV and XXVIII of the GATT 1994.

6. Without prejudice to their rights under the WTO Agreement including those derived from the disputes and claims identified in paragraph 5, the Latin American MFN banana suppliers further undertake not to take any further action with respect to those disputes and claims referred to in paragraph 5 between 15 December 2009 and Certification provided that the EU complies with paragraphs 3 and 4 (b) and (c).

7. The Latin American MFN banana suppliers agree that this Agreement shall constitute the EU's final market access commitments for bananas for inclusion in the final results of the next multilateral market access negotiation for agriculture products successfully concluded in the WTO (including the Doha Round)⁷.

8. (a) This Agreement enters into force the first day of the month following that in which the last of the signatories has notified the Director-General of the completion of the procedures necessary for that purpose. Each signatory shall furnish a copy of the notification to the other signatories.

(b) Notwithstanding subparagraph (a), the signatories agree to provisionally apply paragraphs 3, 6 and 7 from the day of signature of this Agreement.

⁷ If Certification has not been completed by the date of the conclusion of the next multilateral market access negotiation for agriculture products in the WTO (including the Doha Round), this Agreement shall be incorporated into the EU's WTO Schedule on the date that the Schedule enters into force as part of the results of that negotiation.

Done at Geneva on the thirty-first day of May in the year two thousand and ten.

For Brazil /S/

For Colombia /S/

For Costa Rica /S/

For Ecuador /S/

For the European Union /S/

For Guatemala /S/

For Honduras /S/

For Mexico /S/

For Nicaragua /S/

For Panama /S/

For Peru /S/

For Venezuela /S/