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EUROPEAN COMMISSION

Brussels, 17.3.2010
COM(2010)98 final

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 1

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 following:¹

– 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 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.

¹ Upon signature of this Agreement, the EU shall apply retroactively the applicable tariff(s) specified in paragraph 3(a) for the period from 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.

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.

- (c) The EU shall maintain a MFN tariff-only regime for the importation of bananas.³
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).
- (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 disputes.⁶
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

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).

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.

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.

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.

Date

Signed,
Geneva, Switzerland

Text initialled in Geneva on 15 December 2009 by the following:

For Brazil:

For Colombia:

For Costa Rica:

For Ecuador:

For the European Union:

For Guatemala:

For Honduras:

For Mexico:

For Nicaragua:

For Panama:

For Peru:

For Venezuela: