EUROPEAN COMMISSION

Brussels, 17.3.2010
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2010/0057 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of a Geneva 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

EXPLANATORY MEMORANDUM

Council Regulation (EEC) No 404/93 of 13 February 1993 established a common organisation of the market in bananas in the European Communities. After the adoption of this Council Regulation, several Latin American WTO Members supplying bananas to the EU on a Most Favoured Nation basis as well as the United States initiated WTO dispute settlement proceedings against the EU (notably the longstanding dispute WT/DS27) with respect to the different treatment of bananas introduced into the European Union market by different suppliers.

On 11 April 2001 and on 30 April 2001, respectively, the Commission reached Understandings with Ecuador and the United States which set the conditions to resolve the disputes. Those Understandings envisaged the introduction of a 'tariff regime only' for the imports of bananas in 2006. On 14 November 2001, the WTO Doha Ministerial Conference adopted waivers from the EU obligations under Articles I (Doha Waiver) and XIII of the GATT regarding the preferential treatment granted to products of ACP origin under the Cotonou Agreement. Those waivers established as a condition for the waiver with respect to bananas that the new tariff only regime to be introduced in 2006 "would result in at least maintaining total market access for MFN banana suppliers" and provided for an arbitration mechanism in case of disagreement.

On 12 July 2004, the Council authorised the Commission to open negotiations under Article XXVIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") with a view to introducing a tariff only regime for bananas in the EC schedule. Accordingly, the Community notified the WTO on 15 July 2004 of its intention to modify concessions on item 0803 00 19 (bananas) in the EC WTO Schedule (CXL). Negotiations were conducted by the Commission in consultation with the Committee established by Article 133 of the Treaty and the Special Committee on Agriculture and within the framework of the negotiating directives issued by the Council. These negotiations failed to lead to an agreement.

On 31 January 2005 the Community notified the WTO of its intention to replace its concessions on item 0803 00 19 (bananas) with a bound duty of €230/tonne. On 30 March 2005 several WTO Members (Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama and Venezuela) requested arbitration under the Doha waiver. The Arbitrator’s Award issued on 1 August 2005 concluded that the MFN tariff rate of €230/tonne proposed by the Community was not consistent with the conditions of the Doha Waiver. The Commission revised the Community proposal in light of the arbitrator’s findings. In a second arbitration award, issued on 27 October 2005, the Arbitrator concluded that the revised proposal for an MFN tariff rate of €187/tonne also failed to rectify the matter.

In view of its obligation to introduce a tariff only regime by 1 January 2006, and in consideration of the lack of agreement on a bound duty, the EU introduced an applied MFN duty of €176/tonne through Council Regulation (EC) No 1964/2005. This Regulation also opened an autonomous tariff quota of 775 000 tonnes net weight subject to a zero-duty rate for imports of bananas originating in ACP countries. The EU did not notify any further proposal to modify its tariff schedule on bananas, pending an agreement with MFN banana suppliers.

Since 1 January 2008, ACP banana suppliers have enjoyed duty-free quota-free access to the EU market on the basis of Economic Partnership Agreements with the EU.

On 23 February 2007 and on 29 June 2007, respectively, Ecuador and the United States requested the establishment of a panel pursuant to Article 21.5 of the WTO Dispute Settlement Understanding concerning the alleged inconsistency with the WTO agreements of measures adopted by the EU to comply with the WTO Dispute Settlement Body (DSB) reports in the dispute WT/DS27. The final reports were adopted in December 2008. The report in the case brought by Ecuador stated that the EU applied tariff (€176/tonne) on bananas was inconsistent with the EU tariff bindings under GATT 1994. Both reports also ruled that the preference granted by the EU at the time of the establishment of the panel (775 000 tonnes duty free) was inconsistent with the GATT 1994.

On 22 March 2004 and on 29 January 2007 the Council authorised the Commission to open negotiations under Article XXIV:6 of the GATT 1994 in the course of the accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and the Republic of Bulgaria and the Republic of Romania, respectively.

The negotiations under Article XXVIII and Article XXIV:6 of the GATT 1994 were successfully concluded on 15 December 2009 by the initialling of a "Geneva Agreement on Trade in Bananas" with Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela ("the Geneva Agreement") and of an "Agreement on Trade in Bananas" with the United States of America (the "EU/US Agreement").

The agreements negotiated by the Commission provide for the settlement of the claims of the countries concerned under Articles XXIV:6 and XXVIII of the GATT. In addition, they implement the Understandings by binding a 'tariff regime only' and provide a solution to all the pending disputes concerning the tariff treatment of bananas, which should therefore be formally settled upon certification of the new EU tariff schedule on bananas.

The Geneva Agreement and the EU/US Agreement were signed by the Commission on xx.xx.2010, subject to their conclusion at a later date. The two agreements should therefore be concluded.

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on the conclusion of a Geneva 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[1],

Whereas:

(1) In accordance with Council Decision 2010/XXX/EU[2], the Geneva Agreement on Trade in Bananas between the European Union and Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela and the Agreement on Trade in Bananas between the European Union and the United States of America were signed by the Commission on behalf of the European Union on xx.xx.2010, subject to their conclusion at a later date.

(2) Those two Agreements should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The following Agreements are hereby approved:

(a) the Geneva Agreement on Trade in Bananas between the European Union and Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela" (the "Geneva Agreement");

(b) the Agreement on Trade in Bananas between the European Union and the United States of America (the "EU/US Agreement").

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[1] OJ C x, xx.xx.2010, p. x.
[2] OJ L x, xx.xx.2010, p. x.

The texts of those Agreements are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to proceed, on behalf of the European Union, to the notification provided for in paragraph 8(a) of the Geneva Agreement and in paragraph 6 of the EU/US Agreement, in order to express the consent of the European Union to be bound by those agreements.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

FINANCIAL STATEMENT

FichFin/10/50124(DDG/EM/tm)
6.9.2010.1

DATE: 27/01/2010

1.	BUDGET HEADING: Chapter 12 – Customs duties and other duties	APPROPRIATIONS: B2010 : 14.079,7 Mio €

2. TITLES:

Proposal for a Council Decision on the signature and provisional application 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,
&
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,
&
Proposal for a Regulation of the European Parliament and of the Council repealing Council Regulation (EC) No 1964/2005 on the tariff rates for bananas

3. LEGAL BASIS:
Treaty on the Functioning of the European Union. Articles 207(4), 218(5)(6) and 207(2).

4. AIMS:
Signature, provisional application and conclusion of two Agreements on Trade in Bananas and repealing the regulation on the tariff rates for bananas.

5.	FINANCIAL IMPLICATIONS	PAST FINANCIAL YEAR 2009 (EUR million)	CURRENT FINANCIAL YEAR 2010 (EUR million)	FOLLOWING FINANCIAL YEAR 2011 (EUR million)	FOLLOWING FINANCIAL YEAR 2012 (EUR million)
5.0	EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	-	-	-	-
5.1	REVENUE - OWN RESOURCES OF THE EC (~~LEVIES~~/CUSTOMS DUTIES)	-3.5	-74.8	-88.1	-106.8

5.2 METHOD OF CALCULATION: Based on applying the reduced tariff rates on imports of NC Code 0803.00.19 of the recent 12 months available.

6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?	~~YES~~ NO
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?	~~YES~~ NO
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?	~~YES~~ NO
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?	~~YES~~ NO

OBSERVATIONS:

The Agreements reduce progressively the tariff rates for bananas. It can be estimated that these measures will lead to smaller own resources which is indicated at point 5.1, net amounts after deduction of collecting costs by Member States. (An estimate of the loss of own resources for 2009 was included because of the retroactive validity of these Agreements to 15/12/2009).