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United States Wins WTO Dispute against EU's Discriminatory Bananas Preference Program

WASHINGTON - U.S. Trade Representative Susan C. Schwab announced today that the WTO Appellate Body has found against the European Union (EU) in the compliance proceeding brought by the United States against the EU's bananas import regime. The Appellate Body also found against the EU in the parallel proceeding brought by Ecuador.

"It is time for the EU to do the right thing and implement a tariff-only regime for bananas that meets the interests of all parties involved," said Ambassador Schwab.

The United States brought this proceeding in June 2007 to challenge the EU's import regime for bananas, which included a discriminatory tariff rate quota that allowed duty-free imports of bananas from only some countries. On May 19, 2008, a WTO dispute settlement panel found in favor of the United States. The EC appealed. Today, the Appellate Body issued its report and upheld all of the Panel's findings. The Appellate Body rejected all of the EU's procedural claims alleging the United States was barred from bringing this proceeding and agreed with the Panel that the EU's duty-free tariff rate quota reserved only for some countries was inconsistent with Article XIII of the General Agreement on Tariffs and Trade 1994.

Background

The bananas dispute is the longest running dispute in WTO history, stretching back to the pre-WTO days. Two panels under the General Agreement on Tariffs and Trade 1947 ("GATT 1947") found against the EU over its bananas import regime, but under the GATT 1947 dispute settlement rules, the EU was able to block adoption of the panel reports. In September 1997, the WTO's Dispute Settlement Body adopted a dispute settlement panel's recommendations and rulings in the third dispute on this subject ("Bananas III") brought by the United States, Ecuador, and other Latin American banana exporting countries. The EU was found to be in violation of various obligations under both the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the General Agreement on Trade in Services ("GATS"). The EU's failure to come into compliance led to a compliance proceeding (under Article 21.5 of the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU")) in 1999, in which once

again the EU was found to be out of compliance with its WTO obligations. The United States also requested authorization to suspend the application of trade concessions to the EU (i.e., to raise tariffs on goods from the EU). That request was subject to DSU arbitration, initiated by the EU, which led to an award in favor of the United States. The DSB then authorized the United States to suspend concessions to the EU in the amount of US\$191.4 million per year.

In April of 2001, the EU entered into an Understanding on Bananas with the United States. In the U.S.-EU Understanding, the EU and the United States agreed on the means by which the dispute could be resolved by setting out a series of steps that would culminate with a tariff-only regime to be introduced by the EU by January 1, 2006. The EU and Ecuador entered into a similar understanding.

It is the regime that the EU introduced in 2006 that is the subject of the Appellate Body report circulated today. The United States claimed that the actual regime introduced by the EU in 2006 was not tariff-only and was not consistent with the EU's obligations under Article I (MFN) and Article XIII (non-discriminatory administration of tariff rate quotas) of the GATT 1994.

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