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From Insiders to Outsiders: Caribbean Banana Interests in the New International Trading Framework

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ABSTRACT

The paper considers the role of the Caribbean banana interests in the defence of the European Union's banana regime, within the context of the dispute between the EU and the United States at the World Trade Organization (WTO). The paper examines how the interests of the Caribbean became entangled in a wider set of concerns, particularly the institutionalization of a liberal trading orthodoxy within the WTO, which increased the international pressure against the concept of preferential access. The paper assesses the challenges against the banana regime in the WTO, and why the WTO was so effective in making the EU change its banana regime to the detriment of the Caribbean banana interests. The themes of the paper are the complex nature of institutional decision-making as regards a highly controversial issue of trade policy, the conflict within the world trading environment between different centres of political, economic and legal power, and the marginalization of Caribbean interests that have defended the merits of preferential access in international trade for so long.

INTRODUCTION

The history of the Commonwealth Caribbean banana export trade has been one underpinned by close political and economic ties with Europe, and particularly the United Kingdom. The development of the Jamaican trade at the turn of the twentieth century, and the establishment of the trade in the Windward Islands and Belize after the Second World War, were dependent on access to the UK market, and financial support from the British government. What followed was the creation of a tightly knit relationship between the main actors involved in exporting Caribbean bananas to the UK, including the banana producers, the private corporate interests, and the relevant UK government departments. Indeed there was evidence that a degree of clientelism existed, whereby the government departments who had dealings with the Caribbean banana interests identified with their concerns and policy objectives. The close relationship between the actors in question was institutionalised with the creation of the Banana Advisory Committee in 1973 which oversaw banana imports into the UK, and the fundamental strength of this relationship was sustained when the UK entered the European Community (EC) in 1973. Pressure increased on the traditional Caribbean producers with the creation of the Single European Market at the beginning of 1993 which removed national safeguards for preferred producers. However, with the strong support of the UK government, the European Parliament, and certain sections of the European Commission, together with a highly effective lobbying effort by the Caribbean banana producing interests, preferential access was sustained. Nevertheless, despite widespread support for continuing such access within the European Union, a new threat to

the Caribbean banana producers became apparent. The paper considers this challenge and argues that the national and regional commitments to retain long term trading patterns have now been superseded by the institutional nature of the newly created international trading environment, overseen by the World Trade Organisation.

The first challenges to the common market in bananas

Once the common market organisation in bananas had been agreed within the Council of Ministers, those forces that had been pushing for a 'liberal' regime began to explore other avenues of opposition. In May 1993, for example, Germany supported by Belgium and the Netherlands filed an unsuccessful complaint with the European Court of Justice requesting the annulment of the Council Regulation 404/93 (Official Journal of the European Communities, 1993a; Official Journal of the European Communities, 1993b; and Caribbean Insight, August 1993). Indeed, despite the fact that numerous court cases have been brought against the banana regime, the European Court of Justice has never ruled against the fundamental principles underpinning it. However, other legal avenues have proved much more effective in undermining the political compromise achieved in the Council of Ministers.

The consequence of five Latin American banana producing countries (Costa Rica, Colombia, Guatemala, Nicaragua and Venezuela) opening consultations with the EC in the General Agreement on Tariffs and Trade (GATT), in June 1992, over whether the Community's national regimes were GATT compatible, was the establishment, eight months later, of a GATT Panel to formally consider the complaint. During the panel procedure, the ACP countries were represented by Jamaica, Cameroon, Ivory Coast, Senegal, and Madagascar. Significantly the Windward Islands were unable to participate directly, since they were not members of GATT. Nevertheless, there was a realisation that membership was necessary in order that the islands could defend their interests at GATT in the future. By late May, Dominica, St Lucia, and St Vincent had become GATT Contracting Parties, although Grenada was not to become a member until February 1994. However, the applications of Dominica, St Lucia, and St Vincent had not been processed when the GATT Panel ruled against the EC's existing banana regime on 19 May 1993, a decision ratified by GATT's governing council on 16 June.

The panel recommended that the EC remove the discriminatory quota arrangements that were maintained by the UK, France, Spain, Portugal and Italy. In addition, the panel found that the EC preferential tariff for ACP banana exporters violated Article I (most-favoured nation treatment), in that the benefits of the EC's banana policy were restricted to a small group of countries. The panel asked the EC to bring its tariff rates for Latin American banana producing states into line with those for other GATT members (GATT Panel Report, DS32/R). Although the GATT Panel only ruled against the national banana regimes, and not the new single market regime, the ruling was significant as it set a precedent for the future. By ruling against the national regimes, the Panel opened up the possibility of a successful challenge against the new regime, which came in February 1994. The second Panel argued that the common regime violated the principle of most favoured nation treatment, and that the distribution of licences was unfair (GATT Panel Report, DS38/R).

Even though the European Union (EU), formerly the EC, was able to prevent adoption of the GATT reports by voting against rulings that required unanimity for acceptance, the EU was keen to minimise the international opposition to its new banana regime, while also wanting to increase the regime's wider credibility. As a consequence the EU signed a compromise 'Framework Agreement' with four of the five Latin American complainants, which involved increasing the quota for dollar bananas, lowering the associated tariff, and allocating a majority of the dollar quota to the four Latin American signatories. In return the Latin Americans undertook not to initiate dispute settlement procedures against the EU's banana regime for the duration of the agreement (European Commission, 1994). The

negotiations and subsequent agreement between the EU and the Latin American complainants were the first indications that the ACP in general, and the Commonwealth Caribbean in particular, would be increasingly marginalised in the international debate on the EU's banana regime. The Caribbean were only third parties to the GATT dispute, and therefore the attempt to reach an accommodation to prevent further attacks against the regime was only going to involve those parties who had been directly involved in the case. As a consequence, the Caribbean banana interests had little influence in the discussions.

The increasing interest of the United States in the banana dispute

During the summer and autumn of 1994, the United States government began to take an increasing interest in the banana issue, precipitated by the growing feeling on the part of some US companies that the EU's regime, together with the newly agreed Framework Agreement, seriously discriminated against them. The first indication of more serious opposition to the EU's regime came in September, when Chiquita Brands International and the Hawaii Banana Producers Association called on the United States Trade Representative (USTR) to act. The USTR responded by launching an investigation under the unfair trade provisions of Section 301 of the US Trade Act. Section 301 allows the USTR to take action (including unilateral measures) against policies of foreign countries that harm US commerce. During the months that followed, the USTR in the guise of Mickey Kantor increased the pressure on the EU to make its banana regime more acceptable, albeit with little success (PrNewswire, 1994 and Caribbean Insight, June 1995). As a consequence, in August 1995 the USTR indicated that attempts would be made to resolve the dispute at the World Trade Organisation (WTO), the more powerful successor to the GATT.

The motivation for US involvement in the banana issue has been questioned, as it is unusual for the USTR's thinly staffed office to devote resources to a case in which few US jobs are at stake, particularly when only around a dozen cases a year are accepted by the USTR, and even fewer are taken to the WTO. Only a very small amount of bananas are produced in the US, all of which are grown in Hawaii, and even though Chiquita is a significant US concern, most of its 40 000 workers are based in Honduras and Guatemala. Suggestions have been made that financial donations from Carl Lindner, a staunch Republican, and his American Financial Corporation, the parent company of Chiquita, to both Democrats and Republicans have been important in persuading the US to take action against the EU's banana regime. It seems that Chiquita was anxious to regain market share lost since the EU's banana regime was introduced, while also attempting to make up for losses sustained in the Far East and Eastern Europe. Carl Lindner has declined to comment on the alleged link between political donations and government action, while the US government itself has argued that such events are nothing more than coincidence.

The first WTO Panel: a marginalization of Caribbean interests

The first move to challenge the EU's banana regime at the WTO was taken in February 1996, when the US filed a petition at the WTO supported by Ecuador, Guatemala, Honduras and Mexico. After unsuccessful consultations were undertaken between the parties to the dispute (the US, the EU and the four Latin American countries), the complainants asked for the creation of a dispute panel, a request that the Dispute Settlement Body (DSB) acceded to on 8 May.

The Panel consisted of Kym Anderson, Director of the Centre for International Economic Studies in Australia, Christian Haberli, executive director of the GATT/WTO division of the Swiss Ministry of Economic Affairs, and Stuart Harbinson, permanent representative of Hong Kong to GATT/WTO, and the Chairman of the Panel. The Caribbean and other ACP banana producing countries were extremely disappointed with the composition of the panel, believing that none of its members truly represented the interests of developing countries in the dispute. Of more significance, however, was the fact that the ACP countries were only

allowed third party rights at the panel hearings, which meant that they were grouped together with countries such as Canada, India, Japan, and Thailand, who had no direct interest in the dispute (WT/DS27/R/ECU). Within the context of the WTO third party status meant that the ACP countries were for the first time excluded from direct involvement in a process which was considering the future status of their banana exports. In the past the banana producing interests of the ACP had been able to directly access the policy process both at the national and European levels in order to make sure their interests were secured.

At the Panel hearings in September and October, both the EU and the ACP states, the latter doing so under their third party status, set out a legal defence for the provisions of the EU's banana regime, while the complainants, along with Paraguay, presented arguments against the regime. There was a perception on the part of the Caribbean that during the hearings the Panel was receptive to those arguments that suggested the EU's regime was a restriction on free trade, while dismissing submissions which argued that the regime was an important mechanism in promoting economic development. In addition, the legal defence set out by the Caribbean was blunted somewhat by the fact that only permanent government employees were allowed to sit in on Panel hearings. As a consequence, a number of advisers to the Caribbean banana producing countries, including those with legal experience, were barred from the Panel hearings after the US delegation protested at their presence. Small states such as St Lucia and St Vincent were unable to employ the necessary expertise on a permanent basis, and had legal advisers when required. The exclusion of a number of accredited representatives of the small Caribbean states exacerbated the feeling that the WTO discriminated against the particular needs and circumstances of the smaller contracting parties of the organisation.

The publication of the WTO's final ruling came in May 1997, which upheld several elements of the complaint lodged by the US and the four Latin American countries. The Panel did rule that the EU could continue to give preferential access for traditional ACP bananas, a change from the GATT Panel rulings, which had themselves precipitated the EU to organise a waiver to exempt the Lomé Convention, and therefore its banana regime from GATT's most favoured nation commitment. Nevertheless, the Panel recommended "that the Dispute Settlement Body request the European Communities to bring its import regime for bananas into conformity with its obligations under GATT, the Licensing Agreement and the GATS (General Agreement on Trade in Services)" (WT/DS27/R/ECU). An unsuccessful appeal was heard by the Appellate Body in July, and in September, two weeks after the Appellate Body report was released, the DSB adopted the ruling. Under WTO rules of negative consensus, which means that a ruling can only be blocked if the benefiting party votes to reject the favourable Panel decision, the EU and the ACP were unable to prevent adoption of the report, a very important difference from the previous GATT dispute settlement rules. The new system thus shifted the balance of the dispute settlement process away from the defendant and towards the complainant, which meant changes to the EU's banana regime that were stipulated by the WTO had to be implemented. The EU, therefore, undertook to reform its banana regime to meet the WTO ruling, and was given until 1 January 1999 to do so, much to the annoyance of the US who thought that too long a period for compliance.

The rulings of the Panel and the Appellate Body, meanwhile, were strongly criticised by Caribbean politicians and officials. From the Caribbean perspective, the banana case at the WTO illustrated the narrow remit of the organisation in terms of the development/liberal trade dichotomy, and the risk of marginalization of small states at the WTO. Although there is some merit to these arguments, the former issue has to be qualified as the WTO did not rule against preferential access per se, but just the nature of the system which sustained that access. It could be argued that in reality the principle of preferential access, and the way in which that access was safeguarded, were so closely linked that the ruling against the latter negated the former, but it was hoped that reforms to the regime would be possible which would secure the position of Caribbean bananas in the European market.

The ruling by the WTO was a seminal moment in re-defining the Caribbean's role in shaping the nature of the EU's banana trade. There was now an actor which had the power to override the traditional interests of the Caribbean which had been so central in both the UK, and latterly the EU banana trades during the twentieth century. The Caribbean had no choice but to accept the Panel ruling, and to prepare for the changes that were necessary to make the banana regime WTO-compatible.

Reform and resistance: new EU proposals and a second WTO Panel

After lengthy discussions within the EU, agreement was reached amongst the member states in June 1998. The revised regime sustained preferential access for ACP bananas albeit in an altered form. The compromise entailed the abolition of the import licence system which discriminated between ACP and dollar operators, and the retention of a revised quota system designed to sustain duty-free access for ACP banana producers. The Commission and the Presidency were both pleased with the changes, believing that the banana reforms would make the regime WTO compliant, whilst also honouring the EU's commitments to the ACP banana producers under the Lomé Convention. The new banana regime came into force at the beginning of 1999, and was due to last at least until the end of 2004 (Official Journal of the European Communities, 1998). However, as soon as the compromise proposal was agreed, those countries that had taken the EU's original regime to the WTO indicated that the revised proposals were not acceptable.

When unsuccessful attempts were made by the US to persuade the EU to make further changes to the revised regime, the USTR outlined plans in October for unilateral action to be taken under Section 301 of the Trade Act against the EU for alleged inaction to comply with the WTO ruling. Such action was condemned by the EU, as being illegal under WTO law. The EU argued that sanctions were only allowed when authorised by the DSB. Despite the stand-off between the EU and the US, Ecuador broke ranks with the US and the other Latin American complainants, to begin the process of reconvening the WTO Panel that had considered the EU's original regime. Then, in an unprecedented move, the EU asked the DSB to set up a Panel to examine the EU's reformed regime. Usually it is the complainants who request the establishment of a Panel, but in this case the EU wanted to ensure that the dispute was arbitrated within the WTO in order to avoid the imposition of unilateral sanctions by the US.

The dispute worsened in late December when the USTR published a list of 16 products from the EU on which it was threatening to impose 100% duty, covering trade to the value of US\$520 million (Inside Europe, 21 December 1998). The US maintained that such action was permitted by the WTO because the EU had failed to amend its banana regime to be fully consistent with WTO rules, and that the increase in tariffs would be equivalent to the harm the EU regime had caused. The US followed this course of action, because they feared that the normal WTO process would take too long, thus restricting the USTR's ability to take action. Despite the hope that the WTO would effectively promote a new approach to global trade, the realities of diplomatic horse-trading transcended any high ideals that may have existed. The determination of the US to force the EU to design a regime which met its requirements risked usurping the role of the WTO as the final arbiter in international trade disputes.

Despite the threat of sanctions the DSB established the Panels requested by Ecuador and the EU on 12 January 1999, and were due to complete their work by April, although this was at least a month after US sanctions were scheduled to be applied. As a consequence, the US prepared to ask the DSB on 25 January to approve its trade sanctions. However, when the US attempted to get WTO approval, Dominica and St Lucia, supported by the Ivory Coast, effectively delayed the examination of the US request for authorisation of sanctions by blocking the adoption of the agenda, the first time this had happened. Under WTO consensus rules, meetings cannot proceed if the agenda is not accepted. The representatives

of Dominica and St Lucia argued that a dangerous precedent might be set if the US was allowed to act unilaterally, thereby undermining the basic foundation of the multilateral trading system.

Although blocking the DSB agenda was only a temporary expedient, and had no direct bearing on the final outcome of the banana issue, it was an important gesture by two small states highlighting the fact that their rights and interests had not been fully recognised during the time which the WTO had considered the banana issue. As regards the banana dispute itself, such action on the part of Dominica and St Lucia can be seen as a last act of defiance before the US and Latin American complainants finally got their way.

With the agenda blocked, a compromise to break the impasse was agreed on 29 January 1999 which postponed the unilateral imposition of US sanctions against EU products until 12 March at the earliest. In return, the Panel created to consider the validity of the EU's revised banana regime would also examine the US request for sanctions, and set the value of any penalty. Despite the fact that the threat of sanctions had been postponed, some EU member states were concerned about the wider ramifications of the dispute. Italy in particular, strongly criticised the effect it was having on the wider trading environment, a view supported by a number of European companies whose products were at risk from US sanctions. There was a belief in some quarters that the EU's commitment to safeguard preferential access for ACP bananas was damaging European economic interests, and a result there was a realisation that defending the banana regime was becoming more trouble than it was worth.

The final decision from the WTO Panel came in April 1999, it found that the EU's revised banana regime was still inconsistent with WTO rules in a number of respects, while at the same time authorising the imposition of US sanctions, which the Arbitrators agreed should be implemented up to a total of \$191.4 million, i.e. just over a third of the amount the US was originally claiming (WT/DS27/ARB and WT/DS27/RW/EEC). On 9 April the office of the USTR published a revised list of European products which would be subject to a suspension of concessions, and on 19 April the WTO Dispute Settlement Body authorised the action.

Despite the complicated and controversial events that surrounded the second WTO Panel, it is important to remember that the interests of the ACP banana producers were once more under threat. After the first WTO Panel, the ACP banana interests had been able to use its network of influence at the national and European levels to secure a revised EU regime which sustained their preferential access. However, once the banana issue returned to the WTO, the ACP interests were again marginalized as a result of the nature of the new dispute settlement system.

It can be argued that with the development of the WTO as a new arena of decision-making to challenge the role of the EU, the Caribbean banana interests became less engaged with the policy process. Within the context of the EU, the ACP interests were able to influence the decision-making process directly, as the actors were considered to be legitimate by politicians and civil servants and were consulted regularly. However, within the context of the WTO the ACP banana interests became detached from the main arenas of influence, being relegated to third party status, with no direct role in the process. The ACP interests were therefore unable to gain proper recognition at the WTO. Both status and strategy were pre-determined within the framework of WTO rules, and so there was little opportunity for the ACP states to adopt a particular strategy to improve their standing within the dispute settlement process. The ACP interests became marginal players within the WTO, not through choice, but through design. Therefore, as the banana dispute moved between the European and international levels of decision-making, the banana interests of the ACP oscillated between having an active interest on the one hand, and being marginalized on the other. The more distant the decision-making process became, the more damaging were the policy outcomes for the ACP.

The politics of fatigue: a final settlement

There was a feeling of inevitability when the WTO Panel gave its judgement. On 21 April, the EU decided not to appeal against the ruling, and undertook to amend the regime. With no appeal forthcoming, the Panel Report was adopted by the DSB in early May. The European Commission then set about the task of reforming the EU's banana regime once again. However, the divisions between the various actors with an interest in the banana issue remained, both regarding the options for reform and whether the options on offer would be compatible with WTO rules. Despite these deep differences of opinion, the European Commission, after extensive consultations, finally adopted a proposal to revise the EU's banana regime at the beginning of November 1999. The proposal was based on a reformed tariff quota system, and after a period of transition, a tariff only system would come into force in January 2006, with the ACP receiving an appropriate tariff-preference (European Commission, 1999).

However, once again the intractability of the banana dispute meant little progress was made in reaching an agreement. As a consequence the patience of the European Commission and Council was now wearing thin. Pressures were growing within the EU for any kind of resolution of the dispute to be found, as the wider economic interests of the Union were being further damaged. For example, two European firms sought compensation from the EU for alleged losses incurred as a result of the banana dispute, while Ecuador received the support of the WTO's Dispute Settlement Body to apply sanctions on EU goods in retaliation for the continued operation of the illegal banana regime. In addition, the US threatened to impose further sanctions on EU goods through the 'carousel' system, whereby sanctions on goods are rotated over time, if a settlement was not found.

The Caribbean's involvement through this period of negotiation was to reiterate the vital importance of the banana export trade to a number of its island economies. However, the banana interests in both the Caribbean and more widely in the ACP saw their position being marginalized in the negotiations. A number of the WTO complainants indicated that in the absence of a settlement on bananas they would block the EU's request for a WTO waiver for the newly agreed partnership arrangement between the EU and the ACP, the successor to the Lomé Convention. The WTO complainants hoped that by threatening the future of this prized agreement both the EU and the ACP would be more willing to come to an accommodation over bananas. However, the most important issue was that the EU was obliged to undertake discussions with the WTO complainants, and the US in particular, to make sure that any changes to the regime were acceptable. This was necessary in order to prevent any further action being taken at the WTO, and to end US sanctions on certain EU imports which were already in place. The need to find a solution to the dispute thus outweighed the concerns the ACP had regarding whether the outcome of the negotiations would adequately safeguard their market access.

Indeed, the pressure exerted by the US and Chiquita finally paid off at the beginning of April 2001. After almost 16 months of discussion, it was revealed that the EU and the US had reached a settlement regarding the banana dispute. Under the agreement, the EU consented that the distribution of licences would be based on historical trading patterns, rather than the 'first come, first served' system suggested by the Commission. In addition, the Commission reduced the import quota for ACP bananas by 100 000 tonnes to 750 000 tonnes, while the autonomous quota favouring dollar bananas increased from 353 000 tonnes to 453 000 tonnes. The third quota category also primarily for dollar bananas remained at 2.2 million tonnes. The EU further committed itself to move to a tariff-only system in 2006. In return, the US removed its \$191 million of sanctions imposed on the EU in April 1999 and agreed to support the EU's attempt to obtain a WTO waiver to allow for the continuation of the exclusive ACP quota until 2006 (Office of the United States Trade Representative Press Release, 11 April 2001). The new import rules took effect at the beginning of July 2001. The

EU's Agriculture Commissioner Franz Fischler showed his relief that an agreement had been found when he stated "the decision shows the determination of the Commission to end this never ending story. We are delivering" (Caribbean Insight, 4 May 2001).

The agreement particularly benefits Chiquita, who will gain most from the quota changes; an indication of this became apparent when the company's share price rose by 50 percent on the news of the settlement (Financial Times, 12 April 2001). Dole and the independent banana producing country of Ecuador were originally unhappy with the compromise, as both had been in favour of a settlement which would have discounted past performance. Indeed, earlier in the negotiating process, Ecuador's ambassador to the EU complained that the EU and Ecuador had been "virtually taken hostage" by the US government (Caribbean Insight, 13 October 2000). However, after reassurances from the Commission regarding technical aspects of the new regime, Ecuador swung behind the agreement. As for the Caribbean producers, even though they will be guaranteed sales above current levels in the agreement, the medium-term future looks bleak. The EU has been forced to favour those interests that have opposed the regime at the WTO at the expense of the ACP, in order to secure an end to the dispute which has damaged the wider trading interests of the EU. With the solution to the banana dispute being a tariff only arrangement for the EU market, it is questionable whether such a system will be able to meet the obligations in the new Banana Protocol attached to the Partnership Agreement between the ACP States and the EU which commits the latter "to examine and where necessary take measures aimed at ensuring the continued viability of the ACP banana export industries and continuing outlets for ACP bananas on the Community market" (Horne, 2000).

Conclusion

Although the Caribbean/ACP were able to safeguard their interests prior to the creation of the single market in bananas, the period after the single market's enactment saw a series of challenges against the EU's banana regime which fundamentally undermined their position. The creation of the WTO Dispute Settlement Process meant that the Commonwealth Caribbean countries became only peripheral players in defending a regime for which they so successfully lobbied for, while the EU was obligated to meet the legal requirements stipulated under WTO law. The institutional nature of the present international trading environment superseded national and regional commitments to retain long term trading relationships. The Commonwealth Caribbean lobbying effort continued at the national and regional level, but there was now a new level of arbitration, in the form of the WTO, which marginalized their efforts. As the EU's banana regime was not theirs to defend, the Commonwealth Caribbean became third parties in a dispute between the two great trading areas of the world, the US and the EU. The increasing role of the US government along with Chiquita Brands International was also important in that the banana dispute took on a significance that bore little relation to its actual importance, with ramifications for the future operation of the WTO, the power of multinational companies, the place of small island states in a more integrated international economy, and the nature of the US-EU trading relationship. In short, the 1990s saw a significant marginalization of Commonwealth Caribbean banana interests, whereby the future of their banana exports to Europe is now in serious doubt.

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