

Small States in the Banana Dispute and the Lessons to be Learnt from their Experience

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Introduction

The high-profile and long-running transatlantic dispute over the European Union's (EU) banana import regime was widely perceived as a straightforward fracas between the EU on the one hand and the US and Latin American exporters on the other. In reality, however, it involved a diverse mix of participants, including some of the world's smallest states, which had a decisive bearing on the evolution of the regime. Among the most determined and active were Caribbean exporters, led by the tiny Windward Islands.¹ This study examines their performance, the implications for them of the outcome of the dispute and the lessons to be learnt – amongst the most intriguing of which is that their size did not automatically preclude small states from actually being more than passive onlookers in the processes of international decision-making that determine their future.

What was the dispute?

The trigger that precipitated the 'banana war' was the approach to the unification of the European Communities' markets from 1 January, 1993. Prior to this, the various member states had operated their own import arrangements for bananas, in some cases applying a variety of tariff and quota restrictions. At one extreme was Germany with no import restrictions and at the other Spain, which effectively reserved its entire domestic market for bananas from the Canary Islands. Between these extremes were the range of import systems operated by the individual member states. France maintained import duty and a virtual ban on bananas from Latin America though it provided import quotas for the bananas from francophone exporters in Africa. The UK permitted virtually unrestricted access for bananas from the African, Caribbean and Pacific group (ACP) with a quota for Latin American bananas. The table below shows the import patterns prior to and since the Single Market.

Table 1. Supplies of bananas to the EU-15, 1990–2002 ('000 tonnes)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
EU DOM	737	699	706	644	585	658	685	811	786	729	782	767	–
ACP	622	596	680	748	727	764	800	693	655	676	756	730	726
<i>of which:</i>													
Carib. ACP*	384	342	384	374	328	340	362	295.4	273	278	288	207	185
Ivory Coast	95	116	144	161	149	160	181	166	158	193	200	218	211
Cameroon	78	115	110	147	158	165	167	157	155	161	205	216	230
Dominican Rep.	4	10	39	62	86	75	61	49	56	42	60	86	97
Dollar	2,363	2,641	2,731	2,560	2,450	2,405	2,470	2,462	2,426	2,522	2,543	2,561	2,611
<i>of which</i>													
Colombia	421	518	533	452	511	557	653	569	541	552	617	644	665
Costa Rica	643	608	520	565	727	564	604	603	640	663	656	634	686
Ecuador	381	646	745	651	612	632	686	738	569	697	691	702	829
Panama	649	591	601	569	427	416	311	358	417	422	389	347	307
Total	3,722	3,936	4,117	3,951	3,762	3,827	3,955	3,966	3,867	3,927	4,081	4,059	

Source: European Commission, DG Agriculture. * Traditional suppliers

With consumption growing and already close to 4 million tonnes and average prices well in excess of those on the world market, the EU market was a particularly attractive prize both for exporting nations and marketing companies. The members of both groups therefore were evidently anxious to increase the volume of their banana sales to Europe. But the very cause of the attractive prices, the widespread import regulation, also limited import volumes and the scope for exporters and banana companies to win increased sales. All the major companies and exporting states lobbied in European capitals for whichever post-single-market regulatory arrangement they envisaged would, according to their circumstances, safeguard their existing volumes, prices and profit margins and/or permit their expanded exports.

In the years before the single market, suppliers could roughly be categorised into two interest groups: one that sought to prevent any change to the rules that would reduce their volumes and returns and another that wanted some considerable progress in liberalisation, which would permit the expansion of their sales.

Why was there a problem?

An underlying complication in the EU banana market was the substantial differential in the production and shipping costs of its various suppliers. The large and highly capitalised plantations of Central and South America benefit from favourable climatic and other conditions such as vast expanses of suitable flat land with deep fertile soils and most especially economies of scale in production and shipping. These plantations, which in general enjoy low unit labour and related costs, are able get their bananas to Europe at substantially lower cost than those produced by the ACP or the overseas European producers like the Canary Islands, Martinique and Guadeloupe.

By contrast, production costs in the Windward Islands are high due to a variety of factors including their hilly and difficult terrain, the small size of the severely under-capitalised, family-owned and operated farms (averaging less than 5 acres), unfavourable rainfall patterns and limited availability of arable land, all of which combine to preclude their ability to benefit from economies of scale. This competitive disadvantage is compounded by susceptibility

to storms and hurricanes and a wage and social cost structure that are significantly more burdensome than the average for the Latin American plantations.

Table 2 shows the differential costs in 1999 among a sample of producers.

Table 2. Average 1999 fob prices of a sample of suppliers (US\$ per tonne)

Ecuador	235
Belize	419
Jamaica	558
Surinam	636
Dominica	547
St. Vincent	500
St. Lucia	498

Sources: *FAO Year Book* and Windwards Islands Banana Development Company (WIBDECO)

It is evident that, being so much cheaper, 'dollar' bananas (as the Latin American bananas are popularly known) would, unless impeded by regulation, quickly be able to supplant European and most ACP bananas on the EU market. To prevent this happening and to permit European bananas and those from the ACP (linked from 1975 by the Lomé Convention to the EC) to be sold, various national tariff and non-tariff barriers were introduced. In order to prevent circumvention of the restrictions through the re-export of 'dollar' bananas from those EC members with liberal import regimes to the more restrictive, derogations from the rules requiring free circulation of goods were invoked for bananas by the UK, France, Spain, Portugal, Italy and Greece. The protective arrangements were enshrined in the Lomé Conventions in which the EC undertook to ensure that none of the 12 traditional ACP suppliers² would be placed in a disadvantaged position.

Prelude to battle

The approach of the 1993 Single Market was seen as a threat by the ACP banana suppliers. The derogations permitting their key importers, the UK, France and Italy to block 'dollar' bananas being re-exported from another member state would come to an end and the national regimes were all set to be dismantled and replaced by a unified import regime.

Their fear was that a liberal regime would so dilute their effective preference that they would not be able to compete with bananas from Latin America. On the other hand, producers in these countries and the companies that marketed their fruit, principally Chiquita, Dole, Del Monté and Noboa, were keen for a more liberal regime permitting greater access for 'dollar' bananas.

The first of the battles of the 'banana war' was therefore over the nature of the unified regime. The EC had a bound import duty rate in the GATT of 20%, but given the price differentials it was clear that such a tariff on its own would be insufficient to permit continued access for the ACP. Some European producer interests initially favoured a reference price mechanism³ or simply a commitment to provide a subsidy that would compensate the producers for any declines in price. The Windward Islands with their overwhelming dependence on banana exports were particularly determined to ensure that any new system would permit the continued marketing of their bananas on a viable basis. They were wary of an arrangement that would rely exclusively on a direct subsidy since, among other things, they were unsure of the required long-term commitment in Europe for such considerable financial support to the ACP. The alluring option of campaigning for the retention of the distinct national regimes was dismissed as impractical in the single market context.

The Caribbean exporters committed themselves quite early to becoming actively involved in the search for a new banana regime. Their aim was to ensure that even with the disappearance of the national regimes, the 1993 European Single Market and its Common Organisation of the Market (COM) would deliver the equivalent security of access and remunerative prices upon which they had hitherto relied.

In the first phase of the banana dispute, the run-up to the Single Market, the main protagonists were Latin American exporters and some of the international companies, particularly Chiquita, that campaigned for a liberalised market in which there would be an end to quantitative import restrictions even if a flat tariff was retained. Such was the confidence in this camp that some gambled heavily on the expectation of being able to export more bananas to

Europe. Chiquita bought six custom-built refrigerated banana ships to add to its existing fleet and increased its investment in Latin American plantations. So widespread was the expectation among banana companies that Geest, which had been marketing only Windward Island bananas, bought a plantation in Costa Rica.

Nonetheless, even in the face of such confident and powerful opposition, the Caribbean traditional suppliers were quite determined and insisted to European member states and the Commission that it would not be acceptable to abandon their treaty commitments under the Lomé convention, which had assured them that their exports would not be placed in a worse position than they were currently or had been in the past.⁴ Using the indices of economic dependence, they stressed the calamitous economic, social and political consequences of the loss of their banana industry for which there were no short-term alternatives. Their message was clearly and consistently articulated by diplomatic representatives of the Windward Islands but significantly also by senior political figures including their prime ministers who were quite visible and vocal campaigners in Brussels and other European capitals.

The 1st phase of the banana wars

From the outset, the three small islands of Dominica, Saint Lucia and St. Vincent and the Grenadines were at the centre of the coalition that was seeking to ensure that the COM would effectively limit imports of 'dollar bananas' so as to ensure a tight market and high enough prices. The coalition included Caribbean and other ACP suppliers, the Caribbean Banana Exporters Association (CBEA), Geest Plc, Fyffes Plc and eventually the French marketing companies and producer interests in the overseas departments. The coalition's wide-ranging campaign recognised that securing a favourable position in the Council of Ministers would require convincing public opinion and enlisting the support of various groups including the Commission, the EU Parliament, national governments and parliaments, NGOs, church groups and journalists among others. Recognising that EU banana trade policy would not be made in isolation, the 'coalition' targeted important third parties that were exerting pressure on

Europe for liberal reform. Hence, there was a very active campaign in Washington focusing principally on the Congress. As well, direct though limited contact was maintained with Latin American supplying states and the multinational companies themselves in the hope of at least tempering their opposition to a restrictive regime. It was the threat and danger posed to the Windward Islands that provided the moral legitimacy and rationale for the campaign. Its most public aim was to ensure that the EU would honour its obligations to these islands, who given the nature of their production on small family-run farms and their lack of alternatives, would suffer disastrous economic and social consequences should they lose bananas. In addition, they were also to a large extent the 'face' of the campaign. The safeguarding of the banana industry became their top foreign policy objective hence their representatives sought out or even created opportunities to promote and advance their case. Despite the fact that by 1992 the Windward Islands accounted for only 7.6% of the EU banana imports, in the perception of the public (particularly in the UK), a key policy question to be addressed was how the trade in their bananas would be safeguarded.

In the end the COM, enshrined in EC Regulation 404 of 1993, was an attempt to translate the existing national regimes into a unified system. It awarded quotas for Latin American bananas totalling 2.2 million tonnes and each ACP traditional exporter was assigned a maximum tonnage within an autonomous quota for the ACP. There was no price support for the ACP though the European suppliers were subsidised up to pre-determined maximum volumes per region. In an attempt to further unify the market and provide an inducement for traders to handle the more costly ACP and European bananas, a system popularly referred to as the 'B' license system gave them a share of the import licenses for 'dollar' bananas according to the volume of ACP or European bananas that they marketed.

The early challenges

This system was challenged from the outset; five Latin American countries (Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela) initiated a Panel complaint against the quota system in 1993.

Following negotiations with the Commission all except Guatemala withdrew their complaint and, the following year, signed the Banana Framework Agreement (BFA) that gave them fixed country quotas and the consequent potentially lucrative power to control their exports to Europe.

The 1994 BFA itself did not end the dispute since it excluded one of the WTO complainants, Guatemala, who could still pursue the dispute. Instead it introduced a new issue of contention, the BFA itself. Then Ecuador, Honduras and Panama – who had previously rejected the quotas offered to them under the BFA – acceded to the GATT and promptly joined Guatemala in their complaint. Protesting their opposition to the BFA's restrictions and ceilings on their exports, they claimed privately that the Commission had not treated them fairly in the allocations. Quite ominously, the international companies saw the BFA as a threat to their operations in Latin America. The awarding of quotas to the exporting countries handed their governments considerable potential power. They could have a real say in the export to Europe since operators wanting bananas could now be subjected to conditions and the prior approval of these countries' authorities. Some of the BFA countries, in particular Colombia, used the arrangement to promote local marketing companies and along with Costa Rica sought to impose export levies.

The ACP was becoming more active in the dispute with a prominent role for the Caribbean as the ambassador of the three Windward Islands began to preside over the ACP Working Group on bananas. ACP participation in the dispute process was organised, a legal consortium was engaged, and a legal defence of the contested provisions prepared. The processes were managed by the ACP Banana Working Group Chairman in full collaboration with national representatives. For the Panel Hearing two of the ACP legal advisers were included on the delegation of Saint Lucia, but they were expelled by the Panel on the grounds that they were not full-time employees of the government. This prompted the leader of the delegation to walk out in protest at what he asserted was an inequitable ruling essentially disempowering small states that cannot afford to retain the required specialists on a permanent basis

and must rely on outside expertise to assist in the presentation of their case before the Panel. Denying them that ability would entrench their disadvantage in disputes as they present and advance their case.

This ruling by the Panel would have been appealed by Saint Lucia and the Caribbean but as Third Parties they could not introduce independent grounds of appeal. Even if the Appellate Body did not explicitly overturn the contentious ruling, by reaffirming the sovereign right of countries to determine the composition of delegations to its meeting, it in effect implied its dissent with the Panel's ruling. As a result, subsequent WTO practice has been that Parties to disputes have been able to engage outside experts. This facility has since been used in many instances by members. Indeed, the WTO Advisory Law Centre was subsequently created in recognition of that capacity gap in developing countries that was so dramatically demonstrated by this incident in 1997.

Resolution of the dispute and subsequent reforms

Following the successful challenge in the WTO to the regime, in an attempt to conform to the rules, the EU introduced a new system on 1 January, 1999⁵ that abandoned the 'B' licenses and country-specific quotas for the non-substantial suppliers that were BFA signatories, Nicaragua and Venezuela, and the individual ACP traditional suppliers. From 1999 the latter were assigned a quota of 857,000 tonnes for the group as a whole. The MFN quota remained at 2,553 million tonnes but with shares to the four 'substantial' suppliers, Colombia, Costa Rica, Ecuador and Panama according to their 1994–96 exports and the remaining 9.43% (240,748 tonnes) of the quota reserved for the 'others' category of suppliers. The in-quota tariff rate for MFN suppliers was €75 and a prohibitive €737 for out-of-quota imports. No duty was levied on ACP imports within the group's quota, nor on any that were imported within the 240,748-tonne 'others' category. Additional imports would attract a prohibitive duty of €537 per tonne. The Caribbean and the ACP were not able to overcome the high out-of-quota tariff nor compete within the MFN quota despite getting in duty free, and as a result their exports were virtually limited to the ACP quota. The inability of the ACP to compete even on

the basis of duty-free entry demonstrates that effective access is secured not simply by exemption from import duty but rather the adequacy of the preferential margin and the possible existence of other protective mechanisms or structures.

The new system was again challenged, this time by Ecuador, which claimed that the EC had still not complied with the Panel's decisions.

The earlier defeat in the WTO was compounded by the US imposition of US\$191 million worth of trade sanctions against the EU, which more than anything else completely changed the attitude of member states. With the dispute costing their exporters, they were determined to end it and directed the Commission accordingly. The latter intensified its negotiations with the United States Trade Representative (USTR) and some headway was made, reaching agreement that the quota system would be retained with licences issued on a historical basis. Very soon however, talks floundered with the main sticking point over the share of licences for newcomers, the EU and Ecuador wanted 20% and the US 3.5%.

To get around the impasse, the Commission begun work on a potentially chaotic 'first come, first served' (FCFS), system for the award of import permits, which would have been disastrous for the Caribbean. But even more damaging to them would have been the alternative single tariff. The US, though, would not accept FCFS, insisting on a historical-based system for the determination of licence eligibility.

The breakthrough

Secret negotiations between the two sides had nonetheless been proceeding simultaneously and in a surprise announcement on 11 April, 2001 the Commission and the US Trade Representative jointly confirmed that an agreement had been reached to end the dispute. Ecuador, the winner of the last Panel, was incensed that a deal was struck without its involvement and threatened to initiate new proceedings in the WTO. To avert this, a new set of discussions with Ecuador were quickly initiated and were formally concluded on Monday 30 April, 2001 with an agreement that left intact most of the US/EU deal but made some minor changes to the proposed implementation.

The agreement

The agreements with the US and Ecuador were reflected in a new set of import rules enshrined in a Commission Regulation adopted on 2 May, 2001 to operate in two phases. The first lasted from 1 July, 2001 to 31 December, 2001, in which the quantitative limitations and tariffs were unchanged. The licensing system was adjusted. The significant feature of the system is that only 'operators' i.e. persons or registered companies or agents who had, during a specified reference period, imported bananas into the EU, are eligible for import licences and hence they determine the source from which bananas are imported.

The US ended its sanctions and along with Ecuador agreed to support the application in the WTO for a waiver for the Cotonou Partnership Agreement. Once 100,000 tonnes were transferred from the ACP quota to the MFN quota and a GATT Article XIII waiver was obtained for the ACP quota (done at Doha 14.11.01) Phase II could begin on 1 January, 2002.

Impact of the changes

The regulatory changes since the early 1990s have had a fundamental impact on shaping the character of the EU banana market, through determining the origins and levels of supply and hence prices. In addition, the requirement that, to be saleable, banana imports must be covered by scarce licences, has generated valuable 'quota rent' that is earned by the licence holder. The extent to which this is shared with other participants along the production/supply chain varies according to the differing circumstances including their relative bargaining strengths.

The changes in regulation, by permitting larger volumes of cheaper 'dollar' banana imports into the UK, caused a decline in prices. Selling prices for Windward bananas fell by 10% from their level at the start of the Single Market whilst 'dollar' banana prices were more or less unchanged. The Windward Island farmers are not only affected by the price drop but even more by the loss of the *de facto* subsidy that they had enjoyed under the 'B' licensing system that ended in 2000.

Simultaneously, with the price decreases, the import patterns were changing not only between the ACP and 'dollar' suppliers but also among ACP

Table 3. Nominal and real retail prices of bananas in the UK 1990–2003

	Retail prices of bananas £/ kg	Real prices (1990 = 100)
1990	1.14	100
1991	1.19	98.4
1992	1.06	84.7
1993	0.96	75.4
1994	0.94	72.2
1995	0.80	59.4
1996	0.89	64.5
1997	1.00	70.2
1998	1.04	70.6
1999	1.02	68.2
2000	0.99	64.2
2001	1.08	68.9
2002	1.02	64.1
Jan.–March 2002	1.09	
Jan.–March 2003	0.90	

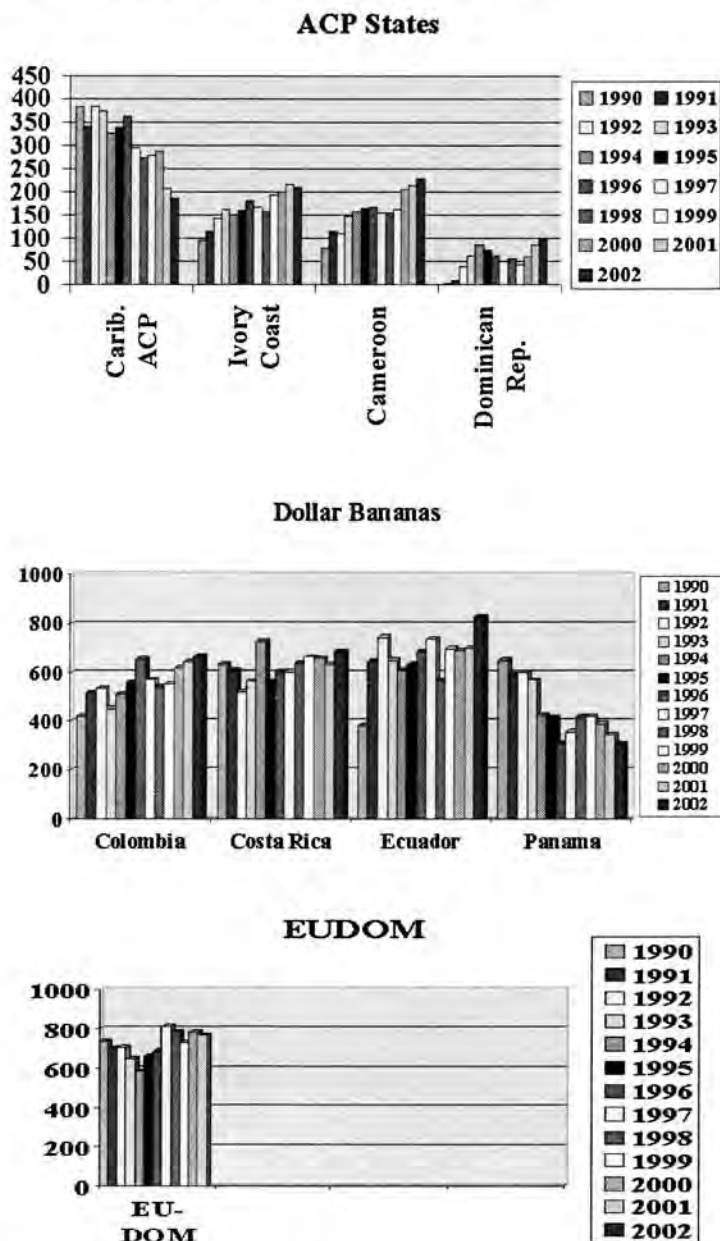
Source: Fyffes 1992–2003, ONS 1990–91; real prices calculated by NERA⁶

suppliers. As shown in the charts below, the traditional Caribbean suppliers were losing out to West Africa and the Dominican Republic whilst Ecuador was expanding as Panama and Honduras went into decline. The subsidised EU producers have been able to maintain their supply levels.

Although the Windward Islands, through their marketing company WIBDECO, controlled sufficient import licences to be able to handle their exports, production was declining sharply. The cause was principally the reduction in the number of farmers and the abandonment of farms. Figure 2 shows the declining number of growers in the Windward Islands, from 24,100 in 1993 to 7,300 in 2001.

The consequences of such a decline on rural employment and income were massive, since there was no sufficient productive activity to fully replace bananas. In his 2002 study of agricultural performance in the Eastern Caribbean, Gary Melville found great official enthusiasm for diversification but overall the production and export performance of non-traditional agriculture was erratic. This he attributed in part to unfavourable climatic conditions including natural disasters, a variety of production problems, and difficulties in meeting the phytosanitary requirements in export markets.⁷

Figure 1. Supplies of bananas to the EU-15, 1990-2002 ('000 tonnes)



Source: DG Agriculture.

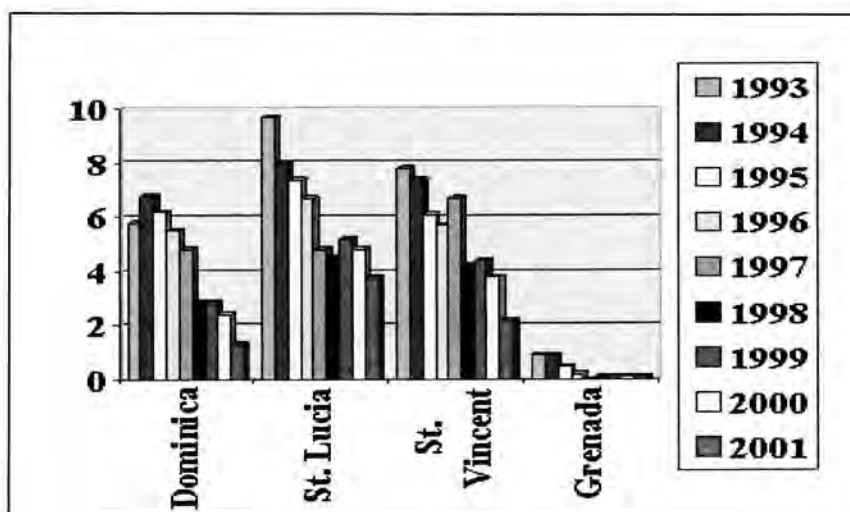
Note: Ivory Coast, Cameroon, and the Caribbean ACP supplier Belize exported above their traditional quotas between 1994-98.

It was not only the loss of direct and indirect employment (at the ports, in transportation, production of packaging materials, etc.) that resulted from the decline in banana production, but also the loss of national income due to declining export earnings from banana exports. Table 4 shows what has been happening in US dollar terms. Given that no

account has been taken of inflation, the full impact of the decreases on those countries, which are heavily reliant on banana exports, would be even greater than initially suggested by the figures.

The economic consequences of such a massive loss of earnings by a sector whose income rapidly circulated within the rural and national economies was

Figure 2. Number of active growers in the Windward Islands, 1993–2001 ('000)



Source: WIBDECO

quite catastrophic. In May, the ACP ministerial spokesman Julian Hunte, addressing the 28 ACP–EU Council of Ministers 2003 stated, ‘Dominica, one of the most vulnerable suppliers, has been so damaged by the falling prices and resultant export volumes, that its economy is literally on the verge of collapse. It had to have recourse to the IMF but a turnaround would only be possible if the country can again begin to earn sufficient foreign exchange’.

2004 – Enlargement

In May 2004, 10 new members will accede to the Union and in keeping with its WTO commitments to MFN suppliers and the new member states themselves, the EU increased the ‘dollar’ quota. This, it was generally agreed, should be related to historical import levels. Writing in *Eurofruit Magazine* of May 2003, Jessica Greniez indicated however that it is not simple to arrive at actual levels of imports and alludes

Table 4. Export values (fob) (US\$ million)

Year	Windward Islands					Jamaica	Belize	Surinam
	Dominica	St. Lucia	St. Vincent	Grenada	Total			
1991	32	60	34	4	130	49	7	10
1992	32	72	40	3	147	40	10	10
1993	26	55	25	2	107	36	12	11
1994	24	49	17	2	92	46	15	11
1995	18	52	25	2	97	46	22	8
1996	18	52	22	1	93	45	29	9
1997	18	37	16	–	71	45	26	24
1998	15	37	22	–	74	36	25	15
1999	15	34	20	–	69	29	27	21
2000	12	28	19	–	59	23	–	–
2001	8	16	13	–	36	–	–	–
2002	–	–	–	–	45	–	–	–

Source: WIBDECO (Windward Islands 1992–2002), *FAO Yearbooks* Vols 47, 50, and 53. Values for Jamaica, Belize and Surinam for 1999 and 2000 are from NERA.

to the 'incoherence of certain customs data supplied by the candidate countries'. One cause of difficulty was that a sizeable portion of these countries' banana imports had actually been re-exported from the EU, hence the danger of double counting. Over-estimation could have destabilised the market because if the quota was set too high, too many licences would be awarded, resulting in excessive imports that would have driven down prices even further. In addition, there could have been the possibility that effective demand for bananas in the 10 new member states would decline once the latter joined the EU, since their banana imports would face an import tariff that would make them more expensive.

How is the Caribbean adapting?

The changes that have been taking place result in lower prices to farmers who face greater competition and uncertainty. The islands are therefore forced by circumstances to adapt. At the domestic level serious efforts are being made to secure the structural adjustment of the industry. Attempts to increase productivity rely on investment in irrigation, feeder roads and improved farming practices and standards. In the Windward Islands, the management of the industry has been privatized and opened up to competition. Previously, national growers' associations controlled the bulk purchase and distribution to farmers of certain inputs and managed banana collection and export. The aim of all of these measures has been to promote efficiency and to lower costs.

In a situation of declining real prices, it is perceived as essential that farmer's share of the final price is not further reduced. The Windward Islands and Jamaica had been involved in the actual import and marketing of their bananas in Europe. Their marketing companies, though, are under pressure to continue to cut costs and to maximise returns. The Windward Islands have been introducing specific measures to safeguard their position in a weakening market. Firstly, they have been developing contractual arrangements with supermarkets that permit their bananas to be sent from the ripening rooms straight to the supermarkets, in some cases the bananas are actually pre-packed on the farms in the islands for the supermarkets. The Windward Islands have also begun producing organic bananas (still at

minimal levels) and ensured that more of their banana production qualifies for 'fair trade' certification and bears that label when marketed. The retail prices of organic and 'fair trade' bananas are higher than for the conventional bananas, hence these niche markets offer a more favourable return to the farmers.

Particularly in these islands with their production on small independent family-owned and operated farms, conducive environmental factors and considerations and marketing being in the hands of various farmers' associations, there is considerable potential for further expansion of the use of the 'fair trade' label. Despite the much higher cost and labour required for the production of organic bananas, there seems to be considerable long-term benefit to be gained by the small Caribbean suppliers from committing more resources to expanding their share of this small but growing and lucrative niche market.

Subsequent challenges

There can be little doubt that small developing economies cannot indefinitely defy the logic of the marketplace, since their ability to export is dependant on the policies of other players in the global trading system. In this case the EU and indeed other prospective importers have their own range of commitments for tariff reduction and broader trade liberalisation goals. Therefore the Windward Islands can only continue trade in the long-term if they manage to produce and supply competitively, whether it is bananas or any other products. These islands, with growing populations and facing irreversible declines in employment and income from bananas, must find new sources of productive activity in which they can be internationally competitive. Ultimately this would be the only prospect for these countries in a liberalised environment in which effective preferences have disappeared. But they require time for orderly transition if they are to be able to make the necessary adjustments.

2006 - Abolition of the quota system

The next challenge for Caribbean bananas will come with the proposed dismantling of the tariff rate quota system and its replacement by a flat tariff scheduled for 1 January, 2006.

Given the differences between costs of production in the Windward Islands and the most competitive 'dollar' suppliers, unless the tariff is sufficiently high, the former will not be able to find buyers for their bananas. As has already been shown in Table 2, there is a massive gap among the various suppliers, with Ecuador for instance able to export at less than half the prices of most Caribbean fruit. Their cost disadvantage is compounded by their substantially higher unit freight charges due to their small volumes. There is no doubt that the large low-cost producers benefit from liberalisation. However unless some means to trade are provided for the small vulnerable suppliers, who have no immediate alternative, then contrary to the very principles of the WTO, only some countries, the already more competitive, will benefit from liberalisation. Adequate (possibly preferential) support arrangements are required by the small suppliers if they are to export successfully rather than being further marginalised in the global trading system.

In order then for the tariff alone to provide the possibility of the Caribbean banana being marketable, the rates have to be at a level that might well be considered too high by some MFN suppliers.

According to the agreement reached at Doha, the EC would, upon request, enter into consultations over the tariff level with any interested member. The talks between the Commission and the nine Latin American suppliers began in late 2004.⁸ The Latin American suppliers have the right to take the issue to arbitration if they are not satisfied with the proposed level. If ultimately no agreement is arrived at, the WTO waiver for Cotonou will cease to apply to bananas from 1 January, 2006. It is ironic that it is the ACP that will be at risk if the EU and the Latins cannot reach agreement!

Whilst the Caribbean needs a high tariff under the 2006 flat tariff regime in order that its bananas, which should enter duty free, will be competitive, the Latin American producers resist that. Those that are relatively higher cost are concerned that they could be displaced by the more competitive ACP suppliers (West African and Dominican Republic), who will enjoy a price advantage over them. The lowest cost Latin Americans, such as Ecuador, fear that a high tariff will increase prices and dampen

demand, hence their exports would decrease. Also the margins of their trading companies, such as Noboa, would be eroded. Ideas have been circulated that a solution would be to place a ceiling on the volume of ACP bananas which will be eligible for duty-free entry. This could partially appease the Latin Americans but will cause problems of its own for the ACP. Essentially if this duty-free quota is available to all the ACP there will be intense competition among the suppliers, since the more competitive who have the capacity to expand production would invariably do so up to the point where the quota will be over-subscribed by further imports. Off course disruption can be avoided by retaining the licensing system.

2008 – End of the Cotonou Trade Preferences

By 2008, the current Cotonou trade preferences are to expire. Whatever replaces them will be determined by the current negotiations between the ACP and the EU for new Economic Partnership Agreement (EPAs). However, the effectiveness of access will depend not only on the nature of the preferences secured but also the import system in place at the time, which will impact on market prices and security.

Lessons to be learned

Implications of the banana challenge for other commodity protocols and preferences

With the largely successful challenge in the WTO to the Banana Protocol, concerns have been expressed within the ACP regarding possible consequent vulnerability of the other commodity protocols. Is it that politically and legally they are no longer inviolable, or are their provisions for quantitative allocations fundamentally flawed? The methods of allocation of volumes to the ACP vary among the protocols. In the case of bananas, it was initially the guaranteed share of the tariff rate quotas to the individual traditional suppliers, then later to the ACP as a group. (This violated the provisions of GATT Article 13.) In the case of sugar, however, the EC purchased set quantities at negotiated prices. With respect to beef and veal, it has fixed upper limits on the volumes of ACP imports that will enter at reduced duty.

What the protocols ultimately provide for the ACP is the prospect of marketing specified volumes of the covered products on a remunerative basis. However, the instruments and their legal and regulatory arrangements are all fundamentally different. Consequently, the fact that some of the provisions of the Banana Protocol fell foul of WTO rules does not signify that because the other protocols, which share the same objectives but are based on differing trading and regulatory arrangements, would be in similar legal jeopardy in the WTO. Though the successful challenge in the WTO to the Banana Protocol does not directly imply legal vulnerability of the other protocols, their ACP beneficiaries nonetheless need to be concerned. The WTO Panel did not question the underlying aims of the Banana Protocol but by rejecting the quota arrangements and the licensing system used by the EC to give effect to its objectives, it clearly established that the instruments used by members to implement their bilateral treaty obligations must conform to WTO rules.⁹ The EU had a definite and unambiguous obligation to the 12 ACP traditional suppliers to ensure that they would not be 'worse off than in the past or at present'. The Panel rejected the arrangements for giving effect to that commitment but did not indicate any acceptable alternative and feasible means of achieving the same objective. Indeed none has so far been found.

The other Commodity Protocols can therefore be challenged, not necessarily directly but through the instruments used to give them effect. Already, Australia, Brazil and Thailand formally challenged certain aspects of the Sugar regime that are essential for the trade in ACP sugar on a remunerative basis. The complainants formulated their case on their perceptions of the precise vulnerabilities and violations of the specific protocol or its beneficiary mechanism rather than those aspects challenged in the banana case, but which might not have been relevant.

Linked to the potential legal vulnerability of the protocols exposed by the banana challenge, is the perception that they have ceased to be sacrosanct. It is no longer 'politically incorrect' to challenge provisions of the ACP-EC Agreement. Although the Commission conducted a spirited defence before the Panel, the EU clearly lost the will to continue to defend the contentious provisions of Protocol V.

When the first opportunity arose to dispense with its obligations, the EC sought in the negotiations for 2000 Partnership Agreement with the ACP (Cotonou), to exclude all market access commitments from the Banana Protocol. The ACP was, though, able to finally secure a commitment from the EC, albeit one that was weaker and less clear than its predecessor.¹⁰ The history of the banana dispute suggests that the commitment of the EC to the Commodity Protocols, should they encounter serious difficulties in the WTO, cannot be taken for granted.

Strategy and tactics

It is in the areas of campaign planning and management methodology that the most important lessons for the defence of the other commodity protocols can be learnt from the banana 'wars'. These lessons include:

- **Having an inclusive, coherent and well-co-ordinated coalition.** ACP-EU banana exporters (states and producers associations), their marketing companies, and other allies such as NGOs co-operated and pooled resources to take on the massive task of influencing opinion in the EU as a whole.
- **The need for clearly articulated and simply expressed goals.** In order to get the range of politicians, NGOs, journalists and other non-technical supporters to advance the 'case' for the Caribbean and ACP banana and to sway public opinion, the argument was kept simple, even if the underlying issues were highly complex and technical.
- **Public relations are vital.** Being at a major disadvantage to the 'opposition' in terms of conventional negotiating and commercial power, it was essential to win over public opinion through a massive and effective campaign. Whilst there is natural public sympathy for the underdog, retaining support requires having a competently articulated, sound and morally justifiable case.
- **There must be a redefinition of the parameters of the debate.** If the public is to become engaged, it is necessary to move beyond the technical questions and consideration of the case for the partic-

ular Commodity Protocol simply in terms of conformity of the Protocol's provision and instruments with WTO rules. Rather the debate needs to be expanded to include more fundamental issues including development considerations, equity, and the desirability and right of all countries to participate on a sustainable basis in the global trading system. It must of course be emphasised that the technical legal debate over compatibility needs, in any event, to be simultaneously competently and vigorously pursued. The defence requires high visibility and sophistication in the negotiations.

- **It is necessary to canvass all key targets.** Just as the 'banana coalition' targeted very broadly its lobbying, negotiations and canvassing way beyond immediately responsible Commission officials, the defence of the other protocols will have to do likewise. The banana targets included the Commission at all levels, all EU member states, the US Government and Congress, the Latin American banana exporters, the international community, NGOs, journalists and others.
- **Defence is costly.** A tremendous amount of financial, political and intellectual resources have to be committed.

Other systemic lessons

There are a number of broad systemic lessons to be learnt from the banana dispute that transcend its product and geographic context and are applicable to international trade negotiations by small states.

The first is that small size and consequent lack of commercial and political power do not, on their own, preclude countries from exercising influence over international decision-making and events that impact on their vital national interests. However, they need to understand their real national interests and then define them in the form of clear, readily articulated and comprehensible objectives to which combined national effort can be devoted in a coherent and consistent manner. For small developing countries lacking political and commercial power as well as visibility and influence on the international stage, the share of total resources that they need to invest to win international support would be consid-

erable. Therefore if they are to have real influence, small states are obliged to concentrate their efforts on achieving their priority goals. The conventional approach of giving more or less equal attention to the international advancement of the full range of perceived national goals and interests is beyond the capacity of small states whose efforts would be dissipated in the pursuit of a broad agenda. It might seem counter-intuitive, but small states can actually achieve greater concrete results with ruthless prioritisation of their goals and concentrating their forces on the most important concerns, even if this precludes the direct pursuit of less vital aims. This insistence on the need to focus on priority concerns must not be confused with a simplistic concentration on a single goal or a narrow policy agenda. Rather small states have to be active participants in the multilateral system with an interest in and voice on more than the issues of immediate concern to them if they are to have the ability to exert real influence on any issues including those which are of vital concern. The 'secret' is that they themselves must neither lose sight of the key issues in their fight to advance their national interests, nor so deflect resources to peripheral pursuits as to prejudice the attainment of their priority goals.

It is a truism that the stronger the international opposition to the particular goals the greater the commitment of resources and effort that will be needed. Changing the positions of governments and of major institutions generally requires more than the formulation and presentation of valid arguments. The frequently encountered unwillingness of negotiators to concede, even when faced with irrefutable arguments, could be for a number of reasons, including a resistance to changing already endorsed decisions or positions (sometimes bureaucratic inertia). Also, it is generally the case that the interlocutors are not the real decision-makers but are instructed or influenced by superiors and other entities such as national parliaments, public opinion or even third countries, international institutions or the business community. When presented with conflicting but convincing arguments, the technical or ministerial representatives who engage in international negotiations would of course be expected to seek adjustment to their brief or national position. However,

when they face representatives of weak and relatively un-influential states, they might not feel the necessity to undertake the required negotiations with and/or persuasion of their superiors, parliaments, business and other interests groups required in order to be able to accept the position which the weak states have successfully championed in their negotiations but which conflict with their original national or institutional mandates or interests.

Small states, seeking through lobbying and negotiation to change the position of more powerful countries, need to convince not only their interlocutors at the negotiating table, but having determined all the actual locations of decision-making authority and sources of influence, to seek to win these over as well. The targets then are not just the interlocutors but others within the hierarchy that could even include subordinates who have delegated authority, which the latter might, for whatever reason, be unwilling to override. To be successful the small states will have to engage all required targets within the vertical and horizontal planes of authority.

Whilst such a broad strategy will invariably be demanding, unless all those with influence are either won over or neutralised, any which are not can subsequently seek to block or undo the outcome being sought by the small states.

The historical association of many small states with major powers can sometimes result in an over-reliance on and trust in international goodwill and the expectation that friendly developed countries will secure their interests. Whilst there is considerable evidence in the banana dispute of such principled commitment, it would be uncertain in the long-term or when the small states' aims conflict with the national interests or priorities of their 'benefactors'. Hence, small states must appreciate their ultimate responsibility for achieving through their own domestic and international action, the outcomes that they desire, whether or not that entails mobilising support and working with allies.

Securing international change can be very demanding and likely to be proportionately difficult for small developing countries. Hence, in order to be able to commit the required resources they need to effectively mobilise and engage all their national capacity. Their political, diplomatic, business, NGO,

academic and other emissaries who will articulate and advance the identified goals must be very well briefed and present persuasive, consistent and coherent arguments. Senior ministers and even heads of government can be enlisted to use their influence and the opportunities that arise or are deliberately created for interaction with and persuading of decision-makers in target countries and institutions. During the 1990s, given the overwhelming importance of the issue to their economies, advancing their interests in the banana dispute was the overriding foreign policy objective of the Windward Islands. That objective to a large extent defined their policy stance towards the various members of the EU, to Latin America, the US and also in multilateral spheres such as the Organisation of American States and the UN.

In their pursuit of favourable decision-making at an international level, small states will be able to obtain leverage through working with allies and benefiting from the support of friendly countries and institutions. However, actually securing the desired objectives will require effective preparation of positions and arguments and skilful negotiation by the countries' representatives. Hence it is essential that small countries field skilled and dedicated tacticians and negotiators who can actually win debates and change the views of even the experienced and trained negotiators and representatives of the developed countries and the multilateral institutions. The methods to ensure that capacity will be long term and entail a combination of training, careful recruitment, development and retention.

Conclusion

The aim of the small Caribbean traditional banana suppliers at the start of the last decade was simply to secure continued access to the EU banana market on a viable basis. They wanted the changes to the regulatory system to be sufficiently benign to ensure adequate preferential margins and high enough market prices. The islands also understood that they would need to drastically restructure their banana industries to substantially reduce costs of production and to make the industry more competitive. Simultaneously the agricultural sector and wider economy

would need to be restructured to create new sources of income and employment.

Despite their small size and lack of power in the traditional commercial and political sense, these islands through commitment and perseverance were able, along with their allies and supporters, to ensure that the banana import regime retained its preferential character and that the market continued to be regulated so that prices remained substantially above world market levels. The problem however is that despite advances in efficiency reflected in reduced costs and improved quality, the differential between the competitive Latin American producers and the Caribbean producers remains wide. Whilst these islands have achieved a considerable measure of success in the battle over the regulation of the system, they have been losing market share, with their exports falling drastically. In the Windward Islands, for instance, the drop was from 274,000 tonnes in 1992 to 99,000 tonnes by 2002.¹¹ This loss of banana production has not been significantly replaced by other productive activity. The result has been an increase in unemployment and sharp declines in foreign earnings.

For their long-term economic stability and growth, it will be essential that continued attention be paid to minimising costs of production at all levels in order to reduce as much as possible the cost handicap that they face. Most importantly, renewed commitment and effort will need to be put into diversification, possibly to include organic and 'fair trade' bananas as well as new lines of agricultural and non-agricultural production and services. To be successful, diversification will require that the introduction of viable new crops is initially alongside bananas. An attempt to immediately and simply displace bananas with another crop is unlikely to have any chance of success, though the process of identifying, testing and introducing new lines must be completed in the time remaining when some measure of rural income and employment stability is still provided by the banana industry.

Endnotes

1. The Windward Islands grouping consists of the Commonwealth of Dominica, Grenada, Saint Lucia and St. Vincent and the Grenadines.
2. The traditional suppliers as listed in the ACP-EU Convention of Lomé were Belize, Cameroon, Cape Verde, Commonwealth of Dominica, Grenada, Ivory Coast, Jamaica, Madagascar, Saint Lucia, St. Vincent and the Grenadines, Somalia and Surinam.
3. A minimum selling price for bananas would be set which would be sufficiently high to permit the higher cost European and ACP bananas to be marketed profitably, however, this would not have assured them of being able to market their bananas since marketing companies would have preferred to handle the lower cost bananas on which they would now make greatly increased profit. This alternative was dismissed in the early stages.
4. Protocol V of the Fourth ACP-EC Convention of Lomé stipulated that 'In respect of its banana exports to the Community markets, no ACP state shall be placed, as regards access to its traditional markets, in a less favourable position than in the past or at present'.
5. The EC implementation measures are contained in the following regulations: (i) EC Regulation No. 163/1998 amending the contested parent EC Regulation No. 404/1993 which established the Common Organisation of the Market in bananas (ii) EC Regulation No. 2362 of 1998 which laid down the detailed rules for operationalising Regulation 404 of 1993. Both of the EC 1998 Regulations 1637 and 2362 were applied from 1 January, 1999.
6. 'Banana exports from the Caribbean since 1992', Report by National Economic Research Associates (NERA), June 2003, London
7. 'Situational Analysis of the Agriculture Sector of the OECs member countries', Gary Melville, FAO Capacity Building Project, December 2002.
8. Annex to WTO decision on the waiver for the EC-ACP Partnership Agreement – 14 November, 2001 Doha.
9. The final remarks 8.3 of the Report of the Panel – EC Regime for the importation, Sale and Distribution of Bananas, 22 May, 1997, read, '*From a substantive perspective, the fundamental principles of the WTO and WTO rules are designed to foster the development of countries, not impede it. Having heard the arguments of a large number of Members interested in this case and having worked through a complex set of claims under several WTO agreements, we conclude that the system is flexible enough to allow, through WTO-consistent trade and non-trade measures, appropriate policy responses in the wide variety of circumstances across countries, including countries that are currently heavily dependent on the production and commercialization of bananas.*'
10. '*The Community agrees to examine and where necessary take measures aimed at ensuring the continued viability of their banana export industries and the continuing outlet for their bananas on the Community Market.*' Protocol V Article I ACP-EU Partnership Agreement Cotonou 23.05.2000.
11. Source: Windwards Islands Banana Development Company (WIBDECO)