

TRADE HOT TOPICS

Commonwealth

Issue No.2

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The 11th April 2001 Deal which Ended The Banana War

*by Ambassador Edwin Laurent**

The banana dispute which started early in the last decade and effectively came to an end on 11th April with the Agreement between EU Trade Commissioner Pascal Lamy and US Trade Representative, Richard Zoellick, has certainly been one of the most protracted and complex trade disputes of recent times. Although its principal protagonists were the world's two leading economic powers, at issue were the terms of access for a product from developing countries.

It was the peculiar structure of the international banana market and patterns of production and ownership of plantations which contributed to and largely gave rise to the dispute in the first place and made a solution so elusive. An appreciation of the dispute itself would be essential for real comprehension of the terms of its resolution.

BACKGROUND

For several decades, many Commonwealth Member States have relied on the European Union as the sole major export market for bananas. These have included Jamaica, Belize, Cameroon, and more recently Ghana. The Windward Islands have also been dependent on this market for exports from this industry which has dominated their economies. None of the Commonwealth exporters have, however, been able to match the export prices of the Latin American plantations. In most cases, among Commonwealth suppliers, production is under difficult topographical and climatic conditions on small holdings where economies of scale, so vital for competitive marketing of this high volume product are not achievable. As a result, export prices of Commonwealth suppliers vary from US\$8 - US\$10 per 18 kg. box

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whilst in Latin America, the same sized box is being exported between US\$3 - US\$6.50. There have been occasions on which spot market prices in Ecuador have been as low as US\$2 per 18 kg. box. Despite this massive price differential, Commonwealth members associated with the EU under the Lomé Convention and now the Cotonou Agreement had for decades been able to export their bananas to Europe on a remunerative basis because several Member States including the UK, France and Italy restricted imports of Latin American bananas to enable the marketing of ACP bananas and additionally, in the case of France, domestically produced bananas. However, by the end of the 1980s with the projected single market looming, the ACP sought and won, within the context of the 1993 European single market, the equivalent of their historical benefits. These advantages were enshrined in Regulation 404/93 which stipulated access levels for each traditional supplier and made provision for non-traditional suppliers through country quotas. The access which was secured through this device was supplemented by the 'B' licensing system providing an essential incentive for operators to market ACP bananas and, to fund a *de facto* subsidy to growers.

THE TRANSATLANTIC DISPUTE

The problem came to a head with the actual adoption of Regulation 404/93 and successful Latin American-US challenges in the GATT and subsequently the WTO. Following this, in an attempt to conform to the rules, the EU introduced the current system on January 1, 2000 which abandoned the "B" licences and country quotas for the ACP replacing them with a global ACP quota of 857,000 tonnes but retaining individual country quotas for the major Latin American producers. The in-quota tariff rate was 75 Euro for the Latin Americans and zero for the ACP. The new system was again successfully challenged, this time by Ecuador.

To get around the impasse, the Commission begun work on a 'first come, first served' (FCFS), system for the award of licences which would have been disastrous for the ACP. But even more immediately, and completely damaging to them would have been the alternative single tariff. The US though would not accept FCFS, insisting on an historical based system for the award of licences.

THE BREAKTHROUGH

Secret negotiations between the two sides had nonetheless been proceeding simultaneously and in a surprise announcement on the 11th April, the Commission and the US Trade Representative jointly confirmed that agreement was 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 take the matter back to the WTO.

A new set of discussions with Ecuador were formally requested and concluded on Monday 30 April, with an agreement which left intact the US/EU deal but made some changes to the proposed implementation.

HOW WILL THE NEW SYSTEM WORK?

The US-EU Agreement has been reflected in a new set of import rules enshrined in a Commission Regulation adopted on 2 May. It will operate in two phases as follows:

Phase I - beginning 1st July 2001

<i>TRQs - tonnage</i>	<i>Non-preferential Tariff</i>	<i>ACP Tariff</i>
A - 2,200,000	75 Euro per tonne	Duty Free
B - 353,000	75 Euro per tonne	Duty Free
C - 857,000	300 Euro per tonne	Duty Free

The quotas will be open to bananas from all origins at the relevant duty rates.

Licences will be shared between traditional and non-traditional operators with 83% to the former and 17% to the latter. The traditional operators will receive licences on the basis of the average of their

1994-96 imports. There will be "simultaneous examination" of licence applications from non-traditional operators. In the event of the latter requests exceeding the quantity available, all applications will be reduced on a *pro rata* basis.

The US will end its sanctions and along with Ecuador will support the application in the WTO for the waiver for the Cotonou Partnership Agreement.

The EU will submit an application for a GATT Article XIII waiver in respect of quota C, once that has been granted, the second phase will begin with the following changed access arrangements.

Phase II

<i>TRQs - tonnage</i>	<i>Non-preferential Tariff</i>	<i>ACP Tariff</i>
A - 2,200,000	75 Euro	Duty Free
B - 453,000	75 Euro	Duty Free
C - 758,000	no access	Duty free

The commencement of Phase II will be triggered by the 100,000 tonne reduction to 'C' quota, following the granting of a GATT Article XIII waiver.

On 1 January 2006 the TRQ system will be replaced by a single tariff.

WHO WILL BE ABLE TO IMPORT BANANAS AS OF 1ST JULY 2001?

The significant feature of the system is that only "operators" i.e. persons or registered companies or agents who have, during a specified reference period, imported bananas to the EU who will be eligible for import licences, hence it is they who will determine the source from which bananas will be imported.

Operators will be classified either as traditional or non-traditional.

Traditional operators for whom 83% of quotas A and B, i.e. 2,118,990 tonnes, will be reserved are those operators who had imported Latin American bananas. The available licences will be shared out among them according to their share of the annual average of 1994-96 imports of bananas from Latin America. In the case of the 'C' quota, traditional operators will be those who have imported ACP bananas (from the original twelve traditional exporters). These will share 83% of the 'C' quota, i.e., 711,310 tonnes of bananas.

Non-traditional operators will be those other than the traditional operators who have only imported bananas in one of the two years preceding the particular year in which an application is submitted. They will not qualify for licences according to the levels of their historical trade but may apply for any amount under quotas A/B or of quota C up to 12% of the total of 52,081 and 17,482 tonnes respectively. All eligible applications received by the set date will be considered and if they exceed the available allocation for non-traditional operators, all will be reduced on a *pro rata* basis.

SIGNIFICANCE AND IMPLICATIONS OF THE SETTLEMENT.

The agreement first with the US and subsequently with Ecuador has finally settled the transatlantic dispute. It has also ensured that FCFS will not be adopted and that the very real threat of a single tariff will not materialise until 1 January 2006.

ACP access levels seem to be safeguarded. The combination of the historical based licensing system and the 300 Euro tariff should be sufficient to ensure access at least up to traditional ACP export levels. Given that in some cases operators have close links with specified ACP suppliers, it would be expected that these would use their licences to trade in the bananas of the country in question.

However, the reduction during Phase II of the 'C' quota is not in the interests of the ACP for two reasons. Firstly it will reduce the volume of bananas which they can expect to sell. Secondly, it will depress prices by transferring 100,000 tonnes to the 'B' quota so that there will be the assurance that this volume which hitherto has not entered the market will now be getting in and more so in the form of low cost supplies.

PRICES

The changes are likely to threaten the ability of ACP suppliers to earn viable prices. Already, the ongoing process of reform and the uncertainty over the future have resulted in substantial declines in prices. The loss of the residual effect of the 'B' licences will cause further price deterioration and can threaten the continued viability of several suppliers.

TIMING

The transition to a liberalised market is to be of less than five years which leaves very little time to adapt by completing the restructuring of the banana industries and diversification of the economies of those countries most dependent on bananas.

BROADER CONCERNS

Both the Agreements with the US and Ecuador envisage a GATT Article XIII waiver to enable the EU to reserve quota C for ACP bananas. Given the extent of support for such a waiver, it should have a good chance of approval and would be the first such waiver under the WTO

This waiver would be a particularly significant precedent since it would constitute acknowledgement that in order for the EC to meet its obligations to the ACP under the Cotonou Agreement, it would require more than an Article I waiver (authorising the application of more favourable tariff treatment to the ACP).

The importance of this recognition has not been lost on the wider ACP. When ACP Ministers met in Council on 10th May they urged the EU, in a Resolution on bananas, "*to consult with the ACP in formulating the text of the request for a GATT Article XIII waiver, in a new revised single request for a GATT Article I and Article XIII waiver for the Cotonou Agreement, thus providing additional legal security for the entire Agreement*".

The Ministers clearly appreciated that other commodities in which trading benefits are provided up to pre-set limits could well benefit from the security of an Article XIII waiver for the Cotonou Partnership Agreement.

CONCLUSION

The US/EU Agreement has brought peace and an end to the uncertainty which undermined confidence in the banana industry. The agreement has provided security of access for the ACP until 2006, albeit to a market in which prices are expected to continue to decline in real terms.

Maybe the most lasting benefit of the Agreement will be the recognition by the two largest trading powers that when a GATT Article I waiver will not be sufficient to safeguard ACP interests, then an Article XIII waiver can be at least part of the solution.



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Produced by the Economic Affairs Division of the Commonwealth Secretariat.

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