

Brussels, 5 July 2000

The banana case: Background and history

The EU import regime and the WTO findings

In 1993 the EC adopted a Common Market Organization for bananas. The import regime consisted of:

- a) a tariff quota of 2 million tonnes (increased in 1994 to 2.1 million tonnes and to 2.2 million tonnes in 1995, following the Banana Framework Agreement. Also in 1995, following enlargement, the EC introduced an additional tariff quota of 353000 tonnes) for Latin American countries and non-traditional ACP bananas; and
- b) quantities allocated to traditional ACP banana suppliers totalling 857 700 tonnes;
- c) a within quota duty of 75 €/t for Latin American countries and zero duty for ACP countries, in line with our obligations under the Lomé Convention.

This import regime was found to be illegal by the WTO in 1997. A revised scheme was implemented on 1 January 1999, also based on a 2.553 million tonnes tariff quota with an additional quantity assigned globally to the ACP. This was also found to be WTO-illegal. The main criticisms were the setting aside of a quantity reserved solely for ACP imports, and the allocation of licences on a "historical" basis (ie. reflecting past sales). According to the WTO, this did not eliminate the "drag-on" discrimination vis-à-vis third-country operators.

In April 1999, the WTO authorized the US to impose trade sanctions for an annual value of \$191 million. The US carried this out by setting 100% customs duties on an equivalent amount of trade. The US has now been applying these prohibitive duties to a number of products from EC Member States (excluding Netherlands and Denmark) since 3 March 1999. In addition, a Carousel, whereby the products subject to sanctions would be rotated every 6 months, is now likely to be applied.

The lead-up to the Commission proposal

On 26 May 1999, the Commission presented a Communication to the Council on bananas. The Communication enumerates eight options, and identifies three as appearing capable of resolving the dispute and respecting the Community's key budget concerns and internal commitments to its own producers. These are:

- Moving to a high flat tariff (only)
- Removing the limit on the ACP preferences, and maintaining the other two existing tariff-rate quotas
- Introduction of a new tariff-rate quota

Following this Communication, the Commission reported to the General Affairs Council on 13 September 1999 and to the Agricultural Council of 27 September 1999 on the basis of a report underlining the following:

- The Commission services had held numerous contacts with complainants and other governments concerned, and also with many of the operators in the banana business;
- These contacts had confirmed that all the interested Latin American countries and operators were in favour of maintaining a tariff quota system, provided that they could protect their export earnings on the high-value EU banana market;
- The ACP countries had underlined the need to maintain the EU's obligations under the Lomé Convention and would have preferred the maintenance of the current regime.
- There continued to be a wide divergence amongst the different positions, notably as regards distribution of licences;
- Under the present circumstances, if we were to propose a revised tariff quota system without the agreement of all the interested parties, and in particular the US and Ecuador, its WTO compatibility could again be strongly contested and there was the risk that US sanctions would not be promptly removed.
- For these reasons, the Commission, considered that if this situation were to continue and it was not possible within a short time to negotiate an acceptable tariff quota system in spite of the considerable efforts that continued to be made, there would be little option other than a tariff-only solution involving negotiations under GATT Article XXVIII. The Commission did not, however, preclude the option of a tariff quota system if it should prove feasible.

The Commission presented a proposal for a Council Regulation on 10 November 1999. It consists of a two-phase scheme based on a flat tariff after a transitional period during which a tariff quota system would apply with preferential tariff access for ACP countries.

During phase 1 the current quotas of 2.553 million tonnes in total would be maintained. A third quota of 850 000 tonnes would be open to all suppliers at a tariff level which would have a maximum preference of 275€/ton for ACP bananas (i.e. zero duty for ACP as long as base tariff would not go beyond 275 €).

In phase 2, a tariff-only system would automatically enter into force at the latest by the end of the transition period on 1 January 2006.

As regards distribution of licences, the proposal mentions allocation based on historical performance and/or other methods (e.g. "first-come, first-served", simultaneous examination or auctioning).

The Commission indicated that if no feasible administrative system which will resolve the dispute could be found, the Commission would not be able to maintain its proposal for a transitional regime and would propose immediate negotiations to move to a tariff-only regime.

The position of the European Parliament

The Commission proposal to reform the Common Market Organization (CMO) for Bananas was discussed in three EP Committees (COMAGRI, INDU and DEVE¹). The EP report voiced particular opposition to the Commission proposal to establish a flat tariff regime for banana imports no later than in 2006.

¹ COMAGRI – Committee on Agriculture and Rural Development
 INDU – Committee on Industry, External Trade, Research and Energy
 DEVE – Committee on Development and Cooperation

The main amendments suggested by the EP are:

- no automatic switch to a flat tariff system;
- to maintain a TRQ system for at least 10 years;
- a tariff preference of €300 per tonne for imports from ACP countries.

At the Plenary Session in April 2000, the Commission rejected the suggested amendments because discussions were still on-going on the proposal and any amendments at that stage could cause complications. At the request of the Chairman of the COMAGRI the Parliament therefore decided to refer the report back to the Committee before a final vote.

The EU request for a WTO waiver to grant preferential treatment to the ACP countries

Some WTO members have indicated, that they intend to block the EC's request for a WTO waiver for the transitional regime with the ACP, in the absence of agreement on the EC's new banana regime. This serves to complicate the issue further, and does not help in moving towards a solution. On 18 May 2000, the Chairman of the WTO Goods Council convened an informal session. The banana producing countries (Honduras, Guatemala, Panama, Ecuador, Costa Rica and Colombia) still refuse to start examination of our request on the grounds that the documentation is still inadequate.