RESEARCH PAPER 99/28
12 MARCH 1999

The Trade Dispute between the EU and the USA over Bananas

This paper sketches out the background to the dispute between the USA and the EU over bananas. It describes why the EU import regime for bananas arose, and what the World Trade Organisation has ruled. It also shows how other sectors of the British economy, such as cashmere, have become involved in the dispute.

Christopher Barclay

SCIENCE AND ENVIRONMENT SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

List of 15 most recent RPs

99/13	Iraq: "Desert Fox" and Policy Developments	10.02.99
99/14	The Asian Economic Crisis	11.02.99
99/15	Unemployment by Constituency - January 1999	17.02.99
99/16	Immigration and Asylum	19.02.99
99/17	The Monetary Policy Committee: theory & performance	18.02.99
99/18	National Minimum Wage	19.02.99
99/19	*Welfare Reform and Pensions Bill* [Bill 44 1998-99]	19.02.99
99/20	Inflation: the Value of the Pound 1750-1998	23.02.99
99/21	*Protection of Children Bill* [Bill 12 of 1998-99]	25.02.99
99/22	Economic Indicators	01.03.99
99/23	*Right to Roam Bill* [Bill 16 of 1998-99]	02.02.99
99/24	*Fur Farming (Prohibition) Bill* [Bill 13 of 1998-99]	02.03.99
99/25	The *Mental Health (Amendment) (Scotland) Bill*: Finances of Incapable Adults [Bill 14 of 1998-99]	10.03.99
99/26	Direct taxes: rates & allowances 1999-2000	11.03.99
99/27	Defence Employment: 1996-97	11.03.99

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.uk***

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Users of the printed version of these papers will find a pre-addressed response form at the end of the text.

Summary of main points

- The EU banana regime is an attempt to combine obligations to former colonies with the Single European Market.
- The regime has been the subject of references to the international trading authorities since 1993.
- The current dispute with the USA follows a ruling from the World Trade Organisation disputes panel in 1997.
- European industries having no connection with bananas are threatened by 100% US import tariffs.
- The dispute could set a precedent for further trading disputes between the USA and the EU.

CONTENTS

I Background

A. The Issue

France and the UK have traditionally offered preferential importing arrangements for bananas from the Caribbean, although some other EU countries, such as Germany, have imported bananas cheaply from Latin America. Caribbean bananas were imported into France and the UK, under favourable trading arrangements to benefit the very poor former colonies, which are normally grouped under the acronym ACP (Africa, Caribbean and Pacific) in trading terms. Bananas come from the Caribbean and also from Africa, notably the Cameroon and the Ivory Coast. Most of these are traditional ACP suppliers, but the Dominican Republic, is a non-traditional ACP supplier, with slightly fewer advantages. British interest has concentrated upon the Caribbean, which is responsible for about half of the ACP bananas imported into the EU. Caribbean bananas tend to be small, sweeter and more curved, whereas the Latin American bananas tend to be longer and straighter.

It is generally agreed that the Latin American growers, who operate on a much larger scale, can produce bananas much more cheaply than Caribbean producers. In view of the dependence of the Caribbean on banana production, the Caribbean countries and their European supporters have feared that the opening up of the European market to increased competition from Latin America would mean that the Caribbean countries lost their market.

B. The importance of bananas to the Caribbean

The Caribbean Banana Exporters Association has stressed the importance of bananas to the Caribbean.

> Because of overriding problems of size, climate and terrain, Caribbean banana producers cannot compete on price with the vast, flat plantations and more fertile soil of Latin America, where production and marketing is highly integrated, in many cases controlled by the dominant North American multinationals, and benefits from substantial economies of scale. Indeed, world banana trade is essentially an oligopoly, with the three largest companies – Chiquita, Dole and Del Monte – controlling over 64% of world trade…Total ACP export earnings from bananas equal just 4% of the sales of these three large companies. The ACP account for only 20% of the EU market, where Latin American bananas still predominate. Caribbean exports to the EU represent under 10% of the EU market and under 3% of world trade.
>
> Caribbean states are uniquely dependent on bananas for their economic survival. For the small Windward Islands of Dominica, St Lucia and St Vincent, bananas provide over half of all export earnings. They also contribute about 16% of GDP in St Lucia and 175 in St Vincent and Dominica.[1]

---

[1] Caribbean Banana Exporters Association Webiste, www.cbea.org/CBEA.EU/Default.htm, 9 March 1999

C. The EU banana regime established 1992-1994

With the coming of the Single European Market, by 1993, it was necessary to find a compromise that satisfied EU Member States and avoided infringing international trading rules. The original problem looked to be an internal EU matter, because England and France wanted to continue the restrictions on the imports of Latin American bananas, that formed the other side of the coin of the preferential arrangements for the ACP producers. Germany, on the other hand, wanted to continue its purchase of Latin American bananas.

However, after the EU Agriculture Council agreed on 17 December 1992 on a banana regime, the new arrangements were challenged under international trading rules both by the Latin American countries and later by the USA, acting on behalf of its banana companies. That challenge was the start of a dispute that remains unresolved and poses considerable threats to the international trading system.

The Agriculture Select Committee in 1992, noted the factor that influenced the European Commission to try to find a solution offering something to the Caribbean producers.

> The preferential arrangements for traditional ACP suppliers were confirmed in the first Lomé Convention in 1975 and in each of its three successors. Protocol 5 of the current Lomé Convention (which runs for 10 years from 1 March 1990) states explicitly:
>
> "In respect of banana exports to the Community market, no ACP State shall be placed, as regards access to its traditional markets and advantages on those markets, in a less favourable situation than in the past or at present".
>
> This is a specific commitment and, although the burden of it has hitherto been borne by some Member States, it is a commitment made on behalf of the whole Community and which we would expect the whole Community to honour. The minister made clear to us the UK Government's view that, while different mechanisms for honouring the commitment could and would be considered, the commitment itself was not negotiable. We strongly endorse this position.[2]

The solution, agreed in February 1993, was to offer Latin American producers a quota of 2 million tonnes that could be imported on payment of a uniform tariff of 20%. Imports above this level face a tariff of roughly 170%. This arrangement was considered more acceptable than a strict physical limitation on the volume of imports.

The Latin American countries were very dissatisfied with this policy, arguing that they too are poor countries, if not quite so dependent on bananas as the Caribbean islands. They wanted an increase in the quota to 2.5 million tonnes, combined with tariff reductions both within and above the quota. They, therefore, took the complaint to the GATT. This original

dispute was largely resolved in 1993, when the EU was able to reach an agreement with most of them.

However, the USA, then became involved in the dispute, arguing that the EU policy discriminated against US enterprises trading in bananas. The USA does not itself grow bananas. In November 1994, two US-based banana multinationals called for an investigation under Section 301 of US trade law, the so-called super 301. Much of the objection related to the "framework agreement" signed by the EU at Marrakesh, which had been the basis of the EU settlement of the General Agreement on Trade and Tariffs (GATT) dispute with the banana growers. They argued that this agreement favoured the signatories, Costa Rica, Colombia, Nicaragua and Venezuela, over other Latin American countries. The US Government has supported this line and pressed for an amendment to the EU scheme. The Caribbean countries reacted angrily, pointing out that Chiquita Brands and other producers in Latin America had been enjoying growth in the volume of their exports in Latin America in 1993 and 1994, and were unaffected by the EU regime.

D. Economic Analysis

In January 1995 a report by Mr Brent Borrell, a consultant, writing for the World Bank, was severely critical of this EU banana regime, arguing that the new regime cost European consumers $2.3bn a year in higher prices, $700 million more than the previous arrangements.

> The study says most of the extra cost is in monopoly profits for European companies which market bananas. Little of the money benefits the overseas producers whom the EU says the policy is intended to help… The study says the system severely distorts competition, encourages black marketeering, restricts the growth of the EU banana market, discriminates against efficient producers and robs inefficient ones of incentives to raise productivity and cut costs…The study says the policy has extended to the whole of the EU the most protectionist of the former national curbs. It has raised average EU banana prices 12% and increased costs to consumers in Germany, Belgium, Denmark, Ireland and the Netherlands, where markets were previously open or less protected…The study says only $300m of the policy's $2.3bn annual cost benefits ACP producers, which have to use up valuable natural and financial resources to qualify for the aid.[3]

However, the Caribbean Banana Exporters' Association (CBEA) commissioned another report challenging this calculation, arguing that the consumer cost was between $600 million and $800 million less than the previous system.[4] A further report by the CBEA was pessimistic.

---

2 Agriculture Committee, *Arrangements for the Importation on Bananas into the United Kingdom: Interim Report*, 9 December 1992, HC 258 1992-93, paragraph 9

3 Guy de Jonquieres, "EU banana policy 'perverse and inefficient' says World Bank," *Financial Times*, 20 January 1995

4 "Report says EU banana regime benefits consumers", *Financial Times*, 10 March 1995

> The CBEA report suggests that the quota increases and change in licensing arrangements proposed by the US would cripple Caribbean banana production, in turn starving national governments of foreign exchange and the ability to service national debts. The report's authors, Mr Henry Gill and Mr Anthony Gonzales, forecast considerable social unrest as a fall in prices would cause significant unemployment. In the case of the Windward Islands, 50% of the 30,000 people farming bananas could lose their jobs, they say. Suggestions that CBEA members should restructure their economies away from banana production are also dismissed. According to the study, "none of the alternatives examined (tourism, other services, manufacturing and agriculture) can substitute individually for bananas".[5]

Working conditions in the Central and South American banana fields have been criticised. Three US companies dominate the market - Chiquita, Del Monte and Dole. According to one critical pamphlet, the companies exploit labour on short term contracts. It quotes a recent study from Heredia State University, which concludes that in Costa Rica's Atlantic Zone, banana expansion since 1985 has adversely affected workers, local residents and the entire region:

> Banana cultivation causes deforestation, water pollution, the transformation of peasant farmers into agricultural labourers, the creation of all-male villages, prostitution, alcoholism, drug abuse and family disintegration.[6]

It has been alleged that there have also been problems with excessive use of pesticides, in some cases, already banned in the USA because of health problems.

However, it must be said that the Central and South American countries are also poor, although generally not quite so poor as the Caribbean. Income per head figures show the wealthier banana producers in Latin America well ahead of those in the Caribbean, but there is some overlap between the two groups of countries.

---

5 "Caribbean banana producers launch fresh attach on US", *Financial Times*, 25 May 1995

6 *Just Green Bananas*, UK Campaigners' Guide to the Banana Trade

Country	Import of bananas into EU (1997) *Tonnes*[a]	PPP Income per head in 1996[7] *$*[b]
ACP		
Belize	53,143	4,170
Cameroon	157,131	1,760
Dominican Rep	48,958	4,390
Dominica	35,774	4,390
Ivory Coast	166,421	1,580
Jamaica	76,978	3,450
Somalia	21,600	na
St Lucia	70,691	4,920
St Vincent	29,986	4,160
Surinam	29,257	2,630
Latin America		
Colombia	579,325	6,720
Costa Rica	607,865	6,470
Ecuador	738,892	4,730
Honduras	70,488	2,130
Guatemala	58,387	3,820
Nicaragua	29,673	1,760
Panama	357,721	7,060
Venezuela	30,427	8,130
Mexico	2,849	7,660

Sources: a EUROSTAT on disc
b World Bank Atlas,1998, pp 42-43

Almost all Latin American export crops are grown in ways that some might find unattractive. For example, plantation workers do not have many rights and are very badly paid. The move towards freer trade in agricultural commodities, greatly strengthened by the Uruguay Round settlement of the General Agreement on Trade and Tariffs, does involve buying from countries where conditions are unsatisfactory. Free traders argue that low-wage countries are even worse off if we do not buy from them, and that the profits from exports will trickle down to benefit the country generally, including the poor.

[7] PPP means purchasing power parity. This measure is meant to reflect the purchasing power of money in different countries and therefore measure income more accurately than a conversion simply based upon exchange rates.

II The World Trade Organisation rulings in 1997

In 1996, the USA and the Latin American countries referred the dispute to the World Trade Organisation (WTO), the successor body to the General Agreement on Trade and Tariffs (GATT). Complaints to the GATT, used to have little effect because action following a disputes panel ruling had to be supported unanimously. The country against which the complaint had been made invariably vetoed any hostile conclusions. The WTO works the other way round, in that unanimity is required for the report of a disputes panel to be overruled. Therefore, the conclusion of a disputes panel will always be upheld unless the original complainant withdraws the original complaint. The ruling of a WTO disputes panel cannot be ignored because the WTO can justify retaliatory action against a country against which a ruling has been made.

The US ambassador to the Caribbean denied that the USA wished to damage Caribbean banana production, but said that its disagreement was with the EU.[8] Washington's complaint against the EU, was that it had implemented a licensing system that had taken away business from US companies that had marketed South and Central American bananas in Europe for many years, and had given it to a few EU companies, the ambassador said. That had cut the US companies out of almost half of the trade they had developed over several decades, and the EU had maintained its "unfair" system, even after a GATT dispute settlement panel recognised that it was inconsistent with fair trade rules.

The WTO disputes panel report appeared in late May 1997, finding that the EU's banana import regime violated free trade rules on 19 counts.[9] The report does not contain an official summary but the *Financial Times* summed it up:

> The main EU measures criticised included distribution of import licences for Latin American bananas to French and British companies, which took away a large part of the US banana distribution business. Distribution of import licences for Latin American bananas to European banana ripening companies also took away US business, the WTO found, while licensing requirements for imports from Latin America were more severe than for other countries. The report also accused the EU of "discriminatory" allocation of access to the EU market. But, importantly, the report focuses on the EU licensing regime and does not target tariff preferences for Caribbean banana producing countries in the EU.[10]

This ruling was confirmed by the WTO Appeal Panel in September 1997. The following three paragraphs from the Appellate Body's conclusions bring out the main points:

---

8 "EU banana regime defence pleases Caribbean growers - A 'stout and comforting' response to US criticism of import preference", *Financial Times*, 17 November 1995

9 WTO Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by the United States*, 22 May 1997

10 "WTO attacks EU banana licensing arrangements", *Financial Times*, 24 May 1997

> (g) concludes that the European Communities is "required" under the relevant provisions of the Lomé Convention to: provide duty-free access for traditional ACP bananas, provide duty-free access for 90,000 tonnes of non-traditional ACP bananas, provide a margin of tariff preference in the amount of 100 ECU/tonne for all other non-traditional ACP bananas, and allocate tariff quota shares to the traditional ACP States in the amount of their pre-1991 best-ever export volumes;
>
> (h) concludes that the European Communities is not "required" under the relevant provisions of the Lomé Convention to: allocate tariff quota shares to traditional ACP States in excess of their pre-1991 best-ever export volumes, allocate tariff quota shares to ACP States exporting non-traditional ACP bananas, or maintain the EC import licensing procedures that are applied to third-country and non-traditional ACP bananas.
>
> (i) and therefore, based on the conclusions in (g) and (h), upholds the findings of the Panel that the European Communities is "required" under the relevant provisions of the Lomé Convention to require preferential tariff treatment for non-traditional ACP bananas, is not "required" to allocate tariff quota shares to traditional ACP States in excess of their pre-1991 best-ever export volumes, and is not "required" to maintain the EC import licensing procedures that are applied to third-country and non-traditional ACP bananas.[11]

The EU was required to make its banana regime compatible to WTO rules by 1 January 1999.

The EU announced its acceptance on 26 September 1997. One option is for the party against whom the complaint has been upheld to pay financial compensation to the aggrieved party. That would probably have been the EU's preferred option, since they have not wanted to dismantle the banana regime. However, the President of Ecuador, the world's largest banana exporter, has announced that he would accept nothing less than full compliance by the EU with the WTO ruling ordering it to dismantle part of its banana import regime.[12] He would not accept compensation instead.

Dr Cunningham, then UK Agriculture Minister, expressed his support for the Caribbean banana producers:

> I give you my assurance today that this Government is in no doubt about the vital importance for the Windward Islands of its banana industry. We shall continue to do everything we can in Brussels and elsewhere to ensure that the interests of the Caribbean banana growers are fully recognised in the negotiations on the new arrangements. Above all, the Caribbean must be given the opportunity to prove

---

11 WTO Appellate Body, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, 9 September 1997. The grammar has not been changed.

12 "Bananas: 'EU must comply", *Financial Times*, 20 October 1997

> that it can sustain a viable industry committed to providing a good quality product to the European consumer at a competitive price…
>
> We have obligations under the WTO. We must find ways of revising the EU arrangements so that they conform with the rules.[13]

The *Economist* argued in December 1997 that the EU banana regime had to be replaced:

> This regime, unfortunately, is reckoned to cost consumers $2 billion…Perhaps the most unfair irony of Europe's Banana Regime is that, despite everything, it has not actually put much money in its beneficiaries' pockets. According to the World Bank, the regime has returned only 7.5 cents to the ex-colonial countries for every dollar it costs; and in recent years it has not stopped banana prices from falling below the costs of production.[14]

The article noted that almost anything the Caribbean could grow, Latin America could grow more profitably.

---

[13] MAFF News Release 315/97, *Caribbean banana interests must be recognised, says Jack Cunningham,* 23 October 1997

[14] "Globalisation: expelled from Eden" *The Economist,* 20 December 1997

III The revised EU banana regime of 1998 and its critics

A. The revised banana regime

The EU deal was agreed in the Council of Ministers on 22/26 June 1998. Under the revised arrangements, the traditional ACP suppliers would be able to send up to 857,000 tonnes of bananas a year at a zero tariff. Other suppliers would pay a tariff of 75 Ecus a tonne on imports of up to 2.553m tonnes under tariff quotas. Beyond this level of imports, both groups would face high tariffs, 737 ECUs for Latin American suppliers and 537 ECUs for ACP suppliers.[15] The ceilings have different effects, however. The 2.553m tonnes is only just above the typical level of EU imports of non-ACP bananas, so that no room was offered for expansion of this trade. The ACP ceiling of 857,000 tonnes was 100,000 to 150,000 tonnes above the typical level of ACP imports into the EU, leaving room for expansion. However, the 2.553m tonne figure for imports into the EU-15 was still well above the 2m tonne figure originally offered in 1993 for imports into the EU-12.

In his announcement of the settlement, Mr Rooker, Minister of State and Deputy Minister, MAFF, added some further details:

> Access for traditional ACP banana producers will be 857,000 tonnes at zero tariff, significantly above the current level of ACP sendings. The ACP countries have separately agreed to work together to ensure that the interests of the more vulnerable suppliers are not put at risk as a result of the loss of individual ACP quotas. Commonwealth Caribbean suppliers should now be able to export to the EU all the marketable bananas they can produce. The operation of the revised import arrangements will be reviewed in 2004 but no date has been set for their termination. This should help to provide a reasonable period for the ACP suppliers to restructure their industries and improve their productivity. Discussions on a new aid framework for the traditional suppliers are continuing.[16]

B. The US and Latin American reaction

The USA and 5 Latin American countries argued that the EU's changes were merely cosmetic and that the WTO should re-open its disputes panel on the issue.[17] However, WTO procedure is not entirely clear. The country against which a disputes panel has ruled, has to produce a regime compatible with WTO rules. There is no easy way to determine whether or not a revised regime is actually compatible or not. One option would be to negotiate with the complainant country, but the EU has argued that there is no obligation under the WTO rules to do so.

---

15 MAFF News Release 263/98, *EU reaches deal on bananas*, 26 June 1998

16 HC Deb 3 July 1998 c.321W

17 "New WTO attack on EU banana reform plans", *Agra Europe*, 24 July 1998 EP/7

The USA announced its dissatisfaction with the revised EU regime and its intention to impose duties on products exported from Europe, arguing that this was justified under WTO rules because of the earlier ruling of the WTO disputes panel. The EU argued that the matter should be referred again to a disputes panel to determine whether or not the revised EU regime was actually incompatible with WTO rules. The USA has argued that such a process would involve more time wasting. The US response to the revised EU regime was scathing:

- Following the WTO rulings against it in late 1997, the EU refused to consult with the United States or its Latin American co-complainants to reach a mutually acceptable solution. Instead, it adopted a regime rigged to perpetuate the illegal aspects of the prior regime. Then the EU unilaterally declared itself to be in compliance.

- During the past year, the United States has proposed to the EU a variety of ways the EU could implement a WTO-consistent banana regime. Such ideas include both tariff-only methods and tariff-rate quota approaches, which would include specific preferences for Caribbean countries.

- The EU continues to reject any notion of a negotiated settlement, insisting instead that the only remedy available to the complaining parties is to go through the dispute settlement process all over again on the new bananas regime.

- The United States is excluding the Netherlands and Denmark in recognition of their voting records against the adoption of the new EU banana regime.

- Every other WTO Member that has lost a case in the WTO, including the United States, which in 3 cases has either eliminated its measures altogether or changed its measures after consultation with the complaining parties. The EU is the first WTO Member to fail to do so.

- The implications of the EU's actions go far beyond this dispute, threatening the effectiveness of the multilateral trading system as a whole.[18]

C. Developments in 1999

In January 1999, Ecuador called for a disputes panel to rule on the compatibility of the revised EU regime.

On 29 January 1999, a partial settlement of the procedural issues was reached. The USA agreed not to impose the duties before 3 March and the EU went to the World Trade Organisation arbitrator to rule on whether or not the level of retaliation proposed by the USA is appropriate, while reserving its position as to whether the revised EU plan does

[18] Office of the US Trade Representative, *US Response to the EU Banana Import Regime*, December 1998

contravene the earlier WTO disputes panel ruling. It was also agreed that the WTO disputes panel and the arbitrator should be composed of the same people, although sitting with different remits. The disputes panel is to judge by 12 April 1999, whether or not, the revised EU banana regime is compatible with WTO rules or not. Either side would have the right to appeal against that ruling. The arbitrator is to rule on whether the level of retaliation proposed by the USA is appropriate. There is no appeal procedure against that ruling.

The arbitrator announced on 2 March 1999 that he needed more information before deciding on whether the level of retaliation was appropriate. The information had to be supplied by 15 March 1999.[19] The USA responded by requiring that importers of products on the list should pay a 100% bond to US customs. If the arbitrator finally rules that all the retaliation is justified, then the money will be forfeited to the US Government. If the arbitrator rules that less retaliation is justified, then some of the products will be removed from the list and their bonds will be refunded.[20]

---

[19] Communication from the Arbitrators, *European Community – Regime for the importation, Sale and Distribution of Bananas*, WTO website www.wto.org/wto/dispute/ds27-48.htm

[20] Office of the US Trade Representative Press Release 99-17, *United States takes Customs Action on European Imports*, 3 March 1999

IV The list of products facing 100% import taxes

The USA has announced its dissatisfaction with the revised EU scheme, and argues that it is justified under WTO rules in imposing retaliatory duties on EU products exported to the USA, even though the actual products have no connection to bananas. Denmark and the Netherlands have been excluded from the list, because they voted against the revised banana regime in the summer of 1998.

Meat of swine (with exceptions)
Pecorino cheese
Sweet biscuits, waffles and wafers
Bath preparations and salts
Candles and tapers
Non-adhesive plates, sheets and films
Handbags and plastic coated articles normally carried in a handbag
Uncoated felt paper and paperboard
Non-corrugated paper boxes and cartons
Lithographs
Knitted cashmere clothing
Unembroidered cotton bed linen
Lead-acid storage batteries, excluding those used in cars.
Electrothermic coffee and tea makers[21]

[21] Office of the US Trade Representative Press Notice 99-17, *United States takes customs action on European imports*, 3 March 1999

V The Commons statement on cashmere on 4 March 1999

A. The statement by Mr Stephen Byers

The Secretary of State for Trade and Industry (Mr. Stephen Byers): The European Union and the United States have been engaged in a long-running dispute in the World Trade Organisation over the EU's banana regime. Following two adverse WTO rulings in 1997, an amended regime was agreed by the EU's Agriculture Council in June 1998.

The United States and other complainants maintain that this regime still does not comply with WTO procedures. In November 1998, the United States announced its intention to retaliate against the EU by imposing 100 per cent. import duties on selected products. The United States sought WTO authorisation for that in January. At the request of the EU, the level of damage that the United States was seeking in retaliation was referred to arbitration, to be decided on 2 March.

On Tuesday this week, the arbitrator, in an initial ruling, said that he needed more information to make a decision, and asked the parties to respond to a series of questions by 15 March. He would then return to the issue and come to a final ruling soon afterwards.

However, the United States yesterday announced that, with immediate effect, the United States customs service would begin "withholding liquidation" on imports of various EU products, including cashmere knitwear. We are firmly of the view that that prejudges the panel ruling and is contrary to the WTO dispute settlement rules.

The United States argues that it will not apply the duties until after the arbitrator has ruled, but the practical effect of the measures is the same as if they applied now, because exporters have to put up a bond to cover possible duties in the future.

I deplore the action which the United States has taken. It is completely unauthorised by any WTO procedures and wholly ignores the arbitrator's appeal for discussions to continue. Even now, it is not too late for the United States to reverse its decision. It should do so, in the interests not only of the EU-US relationship but to safeguard the whole framework of dispute resolution and settlement within the WTO. The United States action is irrational and unacceptable. I have summoned the United States ambassador and will make those points to him later this afternoon. We shall also support an urgent convening of the WTO General Council.

It is particularly regrettable that American action is directed against industries which have absolutely no connection with bananas or the issues in dispute. There can be no justification for inflicting, or seeking to inflict, serious damage on businesses and communities in pursuit of objectives which are utterly unrelated to the activities in which they are engaged. We are very conscious of the effect that even the threat of US action has been having over the past few months, especially

> in respect of the cashmere industry. This is a seasonal industry and it has been particularly affected. Cashmere orders are now being placed and dispatched to the United States for the autumn season.
>
> I spoke this morning to George Pedan, chairman of the Scottish Cashmere Association, who stressed to me the damaging effect that the proposed US action would have. In the light of yesterday's action by the United States, the Government have decided to establish a scheme to guarantee the bonds in respect of the cashmere industry, and we will discuss with the industry, as a matter of urgency, the details of that scheme.
>
> The United States action is unacceptable. We shall do all that we can to reverse it. I hope that the measures that I have announced today to support the cashmere industry will be welcomed on both sides of the House.[22]

B. The Liberal Democrat Comment

The Liberal Democrat spokesman, Archy Kirkwood, welcomed the announcement:

> **Mr. Kirkwood:** I am deeply grateful to the Secretary of State for taking the opportunity to come to the House at such short notice, and so quickly, to deal with the damaging situation that the cashmere knitted industry faced last night. The anger and incomprehension felt in the Scottish borders at this completely gratuitous hostile and unilateral act at the hands of a so-called ally were palpable. The concern was that knitwear businesses would be driven to the wall and into financial insolvency if they had to carry financial bonds in addition to the other difficulties that the knitwear industry is suffering.
>
> I am deeply grateful to the Secretary of State for making it clear that he has engaged, immediately, in talks with the Scottish Cashmere Association and associated bodies to achieve a scheme that will give confidence to the industry. He is absolutely right that this is a crucial time of year for securing contracts for cashmere delivery to the United States. It is the worst time of year for the problem to have arisen. If he can secure agreement with the trade representatives and get a scheme in place at the earliest possible opportunity, that will at least give us some short-term respite during which we can sort out this long-term dispute.
>
> I congratulate the Government on what they have done, but I hope that the Secretary of State will redouble his efforts to resolve the fundamental underlying dispute between the EU and the US about bananas quickly, so that we can all put this deeply damaging and unfortunate incident behind us.[23]

---

[22] HC Deb 4 March 1999 cc 1223-1224
[23] HC Deb 4 March 1999 c 1224

C. The Conservative comment

The Opposition trade spokesman, John Redwood, expressed a range of concerns:

> **Mr. John Redwood** (Wokingham): I, too, am grateful to the Secretary of State for his answer and I am glad that he can, at last and after so long, see the damage that US action can do to innocent industries in Britain. Will he promise to get the EU to settle this diplomatic trading dispute? He accepted in his statement that the EU has twice broken the rules and twice lost the case in the WTO. Will he promise us that he and Brussels now have a compliant regime? When does he intend to establish that regime to the satisfaction of the WTO?
>
> Why did not the Secretary of State or his predecessor intervene a long time ago to achieve a proper, compliant agreement from Brussels so that we could have avoided this whole sorry mess? How much money will be made available to help the cashmere industry during its time of trouble? Does he now agree that the Government's appalling diplomacy, in Brussels and beyond, has made the banana row so much worse? Does that not show that the Secretary of State has no influence in Brussels, that he has failed to stand up for British industry and that he does not care about British manufacturing? First, he makes it too dear to make things in Britain; then, he fails to keep our markets open for those who are still struggling to succeed.
>
> Will the Secretary of State now stand up for the UK cashmere manufacturers, stand up for the others and do whatever is necessary, through Brussels, to solve this dispute and to impose a compliant regime on Brussels?[24]

[24] HC Deb 4 March 1999 c 1225

VI Some Possible Consequences of the Dispute

The dispute shows two large trading groups clashing over trading arrangements, but trying to operate within the rules of the WTO. An optimistic interpretation of the way it has developed came from the Director General of the WTO, Renato Ruggiero, who has stressed that: "the rule based system is working and will continue to work even if there are different interpretations about some important aspects related to the banana issue".[25]

Others might be more critical. The US view of the EU behaviour is shown in a statement in January 1999 warning of impending retaliatory import tariffs.

> This action follows a period of over six years in which the US patiently waited for the EU to comply with the rules of the GATT and WTO systems it helped to create. Both organisations have ruled repeatedly against the EU's banana regime: in 1993 and 1994 GATT panels found that EU banana rules were GATT-inconsistent, and in 1997 and 1998 a WTO dispute settlement panel, and then the WTO's Appellate body, also found the banana regime in violation of WTO rules. After the Appellate Body Ruling, the EU responded with a cosmetic change which continues to discriminate against US distribution companies and Latin American countries in the EU market.[26]

The EU, on the other hand, has accused the USA of action unauthorised by WTO procedures.[27] Sir Leon Brittan, EU Trade Commissioner, has called the US move "unacceptable and unlawful".[28] The EU complaint, is that no WTO Panel has yet ruled on the legality or otherwise of the EU revised banana regime. Indeed, it is clear that the USA has violated the rules of the WTO disputes procedure, copied in section 7 B of this paper, mainly because authorisation has to be given by the WTO for the retaliatory suspension of concessions.

The question of the relationship between the two main world trading superpowers and the WTO rules goes well beyond the issues of the banana trade. A further possible area of dispute is the EU ban on the import of beef from animals treated with growth-promoting hormones. The dispute between the EU and USA on that topic has lasted for ten years. The US has given notice that the EU must either provide firm scientific evidence justifying its ban on hormone-treated meat by 13 May 1999, a deadline imposed by the WTO arbitration panel that examined the dispute, or lift the restrictions immediately.[29]

---

25 *Solution to the banana dispute a few weeks away – Ruggiero*, Statement at the WTO General Council, 8 March 1999, www.wto.org/

26 Office of the US Trade Representative Press Release 99-17, *United States takes Customs Action on European Imports*, 3 March 1999

27 Mr Byers' Statement quoted in Section V of this paper

28 "US imposes 100% duties as EU banana war erupts", *Agra Europe*, 5 March 1999, EP/5

29 "EU sets out options for beef hormone deadline", *Agra Europe*, 12 February 1999, EP/7

Another obvious danger area is genetically modified crops and food. If the EU did decide to impose restrictions on imports, there would almost certainly be a further severe trade dispute with the USA. The EU has shown no signs of wishing to impose such a ban, but the world trading rules provide the context within which any ban, or even, perhaps strict labelling rules, would present considerable problems.

On the other hand, there is to be a new Round of World Trade talks starting just before the end of 1999, and due to finish by 2003. On the one hand, that might offer an opportunity to amend WTO procedures, for example making it easier for a country to discover whether a proposed trading arrangement did or did not conform to WTO rules. On the other hand, such talks will undoubtedly require co-operation between the EU and the USA, so it can only be hoped that the trading disagreements are sorted out by that time.

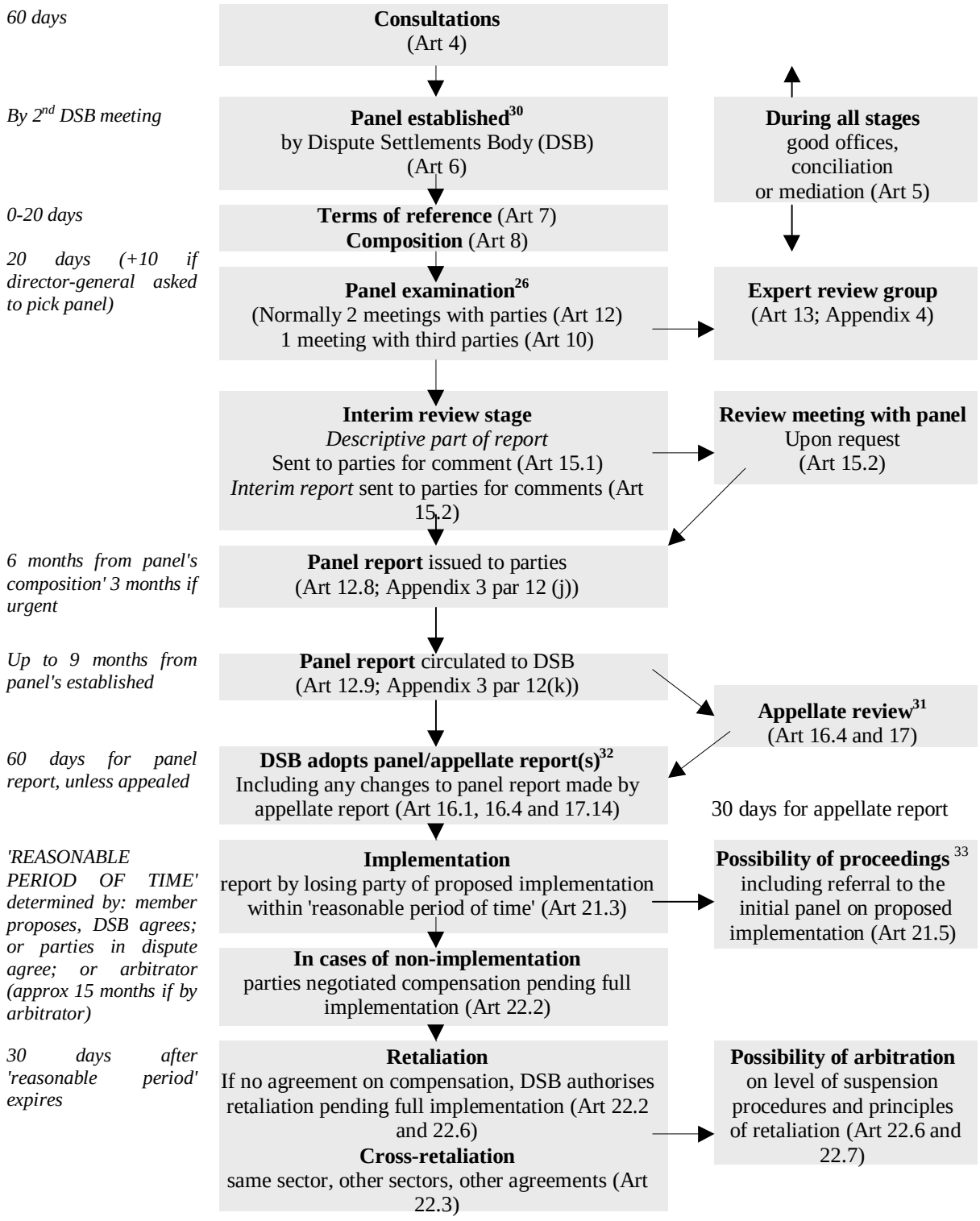
VII The WTO Disputes Procedure

The WTO disputes panels are part of a complex procedure for settling disputes between trading nations, but also for allowing for the right of appeal. The procedures take a long time to work, but the WTO is an important body, with the power to authorise appropriate retaliatory action against a country that flouts its rules. The decisions of disputes panels cannot be ignored by a country against which the disputes panel has ruled.

A. An overview of the disputes panel procedure

The following flow chart shows the ways in which the disputes panel procedure operates.

> The various stages a dispute can go through in the WTO. At all stages, countries in dispute are encouraged to consult each other in order to settle 'out of court'. At all stages, the WTO director-general is available to offer his good offices, to mediate or to help achieve a conciliation. NOTE: some times are maximums, some minimums, some binding some not



[30] A panel can be composed (IE panelists chosen) up to about 50 days after its establishment (ie DSB's decision to have a panel)

[31] Max 90 days

[32] Total for report adoption: Usually up to 9 months (no appeal), or 12 months (with appeal) from establishment of panel to adoption of report (Art 20)

[33] 90 days

B. The rules for the disputes procedure

The rules for the disputes panels were established during the Uruguay Round negotiations of the GATT, largely by the USA and the EU. The following document comes from the WTO website.[34]

Final Act

ANNEX 2
UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Article 22

Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorisation from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

3.In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to

[34] www.wto.org/wto/legal/finalact.htm, 9 March 1999

suspend concessions or other obligations under another covered agreement;
(d) in applying the above principles, that party shall take into account:
(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;
(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;
(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;
(f) for purposes of this paragraph, "sector" means:
(i) with respect to goods, all goods;
(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;[14]
(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;
(g) for purposes of this paragraph, "agreement" means:
(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements; (ii) with respect to services, the GATS;
(iii) with respect to intellectual property rights, the Agreement on TRIPS.

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension. 6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator[15] appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.
7. The arbitrator[16] acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of

concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.[17]

Notes:

14 The list in document MTN.GNS/W/120 identifies eleven sectors.

15 The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

16 The expression "arbitrator" shall be interpreted as referring either to an individual or a group or to the members of the original panel when serving in the capacity of arbitrator.

17 Where the provisions of any covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such covered agreement shall prevail.