

VI. TRADE DISPUTES AND CONSULTATIONS

(1) Dispute Settlement under GATT 1947

(i) Complaints against Costa Rica

1. Costa Rica has never been subject to a complaint under any GATT 1947 dispute settlement procedure.

(ii) Complaints by Costa Rica

(a) EEC member States' import régimes for bananas

2. In February 1993, following unsuccessful consultations and use of the Director-General's good offices, a panel was established on the request of Costa Rica, Colombia, Guatemala, Nicaragua and Venezuela¹, in accordance with the provisions of the 1966 Decision on Procedures under Article XXIII², to examine import measures maintained on fresh bananas by individual member States of the European Communities.³

3. The Panel reached the following conclusions:

- (i) The quantitative restrictions maintained by France, Italy, Portugal, Spain and the United Kingdom were inconsistent with Article XI:1 (general elimination of quantitative restrictions) and were not justified by Article XI:2(c)(i) (governmental restrictions on marketing of domestic products), Article XXIV (territorial application, frontier traffic, customs unions and free-trade areas) or the "existing legislation" clauses in the protocols of accession of these member States to the GATT;
- (ii) the tariff preference granted to banana imports from African, Caribbean and Pacific (ACP) States was inconsistent with Article I (m.f.n. treatment). A legal justification for the preference could not emerge from an application of Article XXIV to the type of agreement described by the EEC in the panel's proceedings, but only from an action (waiver) of the CONTRACTING PARTIES under Article XXV (Joint Action by the Contracting Parties).

¹In 1991, these countries were responsible for around 11 per cent of world production of bananas. Brazil, Philippines and Mexico, as the second, third and seventh largest producers representing jointly around 22 per cent of world production, also made submissions to the Panel.

²The rules of this Decision required the Panel to finish its work and present its findings within 60 days (BISD 14S/18).

³National restrictions applied by certain member States on imports from Latin America were considered as "residual" (trade measures applied prior to the creation of the EEC, or member States' accession, and maintained thereafter due to lack of a common import policy for bananas). Belgium, Denmark, Ireland, Luxembourg and the Netherlands, which imported bananas mainly from Latin America, applied a bound m.f.n. tariff of 20 per cent with no quantitative restrictions. All member States applied a zero rate to ACP bananas. Germany applied a tariff-free quota based on the level of estimated domestic consumption. France, Greece, Italy, Portugal and the United Kingdom applied various quotas and licensing requirements, while Spain maintained a de facto prohibition on banana imports. These import régimes were to be replaced on 1 July 1993 by a common market organization of the banana sector, including a new import régime (Council Regulation (EEC) No. 404/93).

4. The Panel recommended that the import restrictions should be brought into conformity with the EC's obligations under the General Agreement. The same should apply to the ACP tariff preference unless, in accordance with the provisions of Article XXV, authorization was given by the CONTRACTING PARTIES to maintain the scheme.⁴

5. The report, brought to the Council in June 1993 and discussed in subsequent meetings in 1993 and 1994, has not yet been adopted.

(b) EEC Import Régime on Bananas

6. In June 1993, a second panel was established on the request of Costa Rica, Colombia, Guatemala, Nicaragua and Venezuela, in accordance with the 1989 Decision concerning Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/61), to examine the EU import régime for bananas introduced on 1 July 1993.⁵

7. The Panel concluded that the tariff quota was not inconsistent with Articles XI (elimination of quantitative restrictions) and XIII (non-discriminatory application of QRs); the security requirements and other formalities connected with the importation of bananas were not inconsistent with Article VIII (on import and export fees and formalities); and that the EU had not acted inconsistently with its obligation under Article XVI:1 to discuss, upon request, the possibility of limiting the subsidization of (domestically produced) bananas. However, the Panel also concluded that the specific duties levied by the EU were inconsistent with its bound concessions under Article II; that the preferential rates to ACP States were inconsistent with Article I and could neither be justified by Article XXIV nor Article XX(h) (restrictions pursuant to obligations under commodity agreements) and that the allocation of import licences providing access to the tariff quota was inconsistent with Articles III (national treatment) and I, and could neither be justified by Article XXIV nor by Article XX(h). The Panel therefore recommended that the EU bring its tariffs and the allocation of tariff quota licences into conformity with its GATT obligations.⁶

⁴GATT Focus, July 1993. The EU and the ACP States obtained a waiver, granted by the CONTRACTING PARTIES at their 50th Session (December 1994), until 29 February 2000, the expiry date of the fourth Lomé Convention (C/M/276, C/W/820 Rev.2, L/7539 and Corr.1 and SR.50/1).

⁵Council Regulation (EEC)No. 404/93. The régime established different treatment for non-EU sources of fresh bananas. Imports from "traditional" ACP States entered duty free up to a quantity of 857,700 tonnes. Up to 2 million tonnes, imports from "non-traditional" ACP suppliers (including quantities exceeding the traditional suppliers' quota) entered duty free, and imports from non-ACP countries were subject to a tariff of ECU100 per tonne. Imports above tariff quota levels were charged a tariff of ECU750 per tonne (ACP States) or ECU850 per tonne (third countries). Imports from third countries were contingent on the granting of an import licence and making a security deposit. Licences for third country and/or non-traditional ACP fruit were distributed to three broad categories of operators established in the EU. In addition, the EU maintained a bound tariff of 20 per cent ad valorem.

⁶GATT Focus, June 1994.

8. In March 1994, a Framework Agreement on Bananas (Chapters IV and V), due to come into force on 1 October 1994, was concluded between the EU and four complainants, including Costa Rica, providing preferential treatment for their exports to the EU market.⁷ The Panel report was brought to the Council the same month (March 1994).⁸ On this occasion Costa Rica expressed concern about the continued EU restrictions on Latin American banana exports, called for some flexibility for resolving the dispute, and reserved its right to revert to this matter. In May 1994, a group of Latin American and Caribbean banana-producing countries⁹ jointly reiterated that the EU banana import régime had been found inconsistent with the GATT and drew attention to the fact that the acceptance by some countries of an offer by the EU in the Uruguay Round did not make the régime any less discriminatory.¹⁰

9. The panel report has not so far been adopted. Costa Rica, Colombia and the EU implemented the Framework Agreement on 1 January 1995.¹¹ In January 1995, the United States initiated a "Section 301" investigation of the banana export practices of Colombia and Costa Rica.

(iii) Third party interests

10. Costa Rica reserved its rights to be heard by and make written submissions to a panel, established in February 1991, to examine a U.S. prohibition of import of yellowfin tuna and its products from Mexico under the United States Marine Mammal Protection Act (MMPA). Costa Rica, an "intermediary nation" and tuna exporter to the United States, was affected by this measure.¹² The Panel found that the U.S. MMPA and the ban were contrary to GATT Article XI:1 (prohibition of quantitative restrictions) and were not justified by Article XX (general exceptions), and requested the United States to bring them into conformity with its obligations under the General Agreement.¹³

⁷Other participants to the Agreement were Colombia, Nicaragua and Venezuela. Following the EU's offer for a settlement, in early 1994, Colombia and Venezuela withdrew from the dispute (DS38/10, DS38/11, DS38/12).

⁸C/M/271.

⁹GATT 1947 contracting parties Guatemala, Honduras, Mexico, and observers Ecuador and Panama.

¹⁰GATT Focus, June 1994.

¹¹The United States, whose banana marketing companies (Chiquita Brands International Inc. and the Hawaii Banana Industry Association) claimed that they could be adversely affected by the framework agreement, expressed concern over its implementation which, it was said, permitted signatory producer countries to impose discriminatory export quotas and licences on U.S. companies. In October 1994, the United States initiated a procedure under Section 301 of the Trade Act, 1974 against the EU banana import régime; a preliminary decision that the régime adversely affected U.S. economic interests was made in January 1995.

¹²Costa Rica exports 65 per cent of its tuna to the United States. Under the MMPA, "intermediary nations" were initially defined as those which purchased tuna caught in the Eastern Tropical Pacific Ocean from countries which do not comply with U.S. dolphin protection standards. The definition of "intermediary nation" was subsequently extended in October 1992 to any nation that exports yellowfin tuna or yellowfin tuna products to the United States, and any nation that imports yellowfin tuna or yellowfin tuna products that are subject to a direct prohibition on import into the United States.

¹³More information on this dispute settlement case is found in DS21/R, 3 September 1991 and GATT (1993b).

11. The adoption of the Panel report, although debated in the Council in February, March and April 1992, was postponed at the request of the United States and Mexico, which were holding bilateral consultations on the matter.¹⁴ The extension on 31 January 1992 of the U.S. secondary embargo on "intermediary nations" to some 20 countries and the delay by the United States and Mexico in finding a solution through consultation obliged the EU and the Netherlands (on behalf of the Netherlands Antilles) to request, in June 1992, a panel to deal with the secondary embargo, which now affected a number of its member States.

12. Costa Rica, made a third-party submission to the second Panel on U.S. restrictions on imports of tuna. On this occasion Costa Rica, as a founding member of the Inter-American Tropical Tuna Commission (IATTC), expressed concern over the increasing use of unilateral trade measures to fulfil praiseworthy environmental objectives. It questioned their compatibility with GATT Articles III and XI:1 and considered them not justifiable under Article XX. The use of trade restrictions for imposing domestic environmental goals on third countries, regardless of their level of development, could lead to new protectionist policies and obstacles to sustainable development. Costa Rica also recalled that according to a recent U.S. publication none of the dolphin population associated with yellowfin tuna fishing was threatened¹⁵; there was no way of attaining a sustained level of tuna harvesting without using the (U.S. prohibited) purse seine method; and, dolphin mortality had been decreasing significantly in recent years. Costa Rica was of the view that, in this case, the United States had disregarded the option of negotiating an international co-operation agreement, and, thus, had not exhausted all possibilities for achieving its goal of dolphin protection.

13. The Panel found that the U.S. restrictions did not meet the requirements of the Note ad Article III (requiring national treatment to apply to laws and regulations enforced at the time or point of importation), were contrary to Article XI:1 (prohibition of QRs) and were not covered by the exceptions in Article XX (b), (d) or (g) of the General Agreement (human, animal or plant life or health; compliance with laws or regulations not inconsistent with the GATT; conservation of exhaustible natural resources). The contracting parties were recommended to request the United States to bring its legislation into conformity with its GATT obligations.¹⁶

14. Although discussed at the July, October and November 1994 Council meetings, the panel report has not yet been adopted.

¹⁴DS21/R, C/M/254, C/M/255, C/M/256 and GATT (1993a).

¹⁵United States National Research Council, "Dolphins and Tuna Fishing".

¹⁶GATT Focus, August-September 1994.

(2) Dispute Settlement under the Multifibre Arrangement

15. In 1989, 1991 and 1993 Costa Rica resolved its differences with the United States under Article 3:5 of the MFA, by means of bilateral consultations.¹⁷ These disputes concerned U.S. plans to adopt unilateral measures against imports of apparel from Costa Rica.¹⁸

16. A temporary restraint against imports of underwear from Costa Rica, imposed by Canada under Article 3:6 in September 1993, was superseded by an Interim Agreement.¹⁹

(3) Disputes outside GATT

17. The Central American Common Market (CACM) provides for trade consultation and dispute settlement among its members in the context of Presidential Summits, Ministerial, Vice-ministerial and high officials' meetings. Since the creation of the CACM, problems arising from the implementation of economic integration policies, including regional trade policy instruments, have been dealt with in these fora.

18. Joint commissions (*Comisión Mixta*) oversee the implementation of the provisions of bilateral agreements with Colombia, the Dominican Republic, Panama and Venezuela. Since March 1992, bilateral trade problems with Chile have been discussed and settled by a Joint Council on the Economy and Trade (*Consejo Conjunto sobre Economía y Comercio*). Dispute settlement on issues relating to the 1994 agreement with Mexico are covered by a special chapter of the agreement.

19. In the context of a trade and investment agreement with the United States (*Acuerdo Relativo al Consejo sobre el Comercio y la Inversión*, 29 November 1990), bilateral disputes are resolved in a Council. So far this has met four times to deal, inter alia, with problems relating to trade barriers on agricultural products and labelling requirements.

¹⁷Article 3:5 of the MFA provides, inter alia, for the introduction of import restrictions if no agreement in form of export restraint or any other alternative solution is reached with the exporting country within sixty days from the date on which the request is made by the importing country.

¹⁸These comprised: trousers, slacks and shorts (for men, women, girls and boys); skirts; men's and boys' wool suits; cotton gloves and mittens; and wool trousers for men and boys (COM.TEX/SB/1455, COM.TEX/SB/1467, COM.TEX/SB/1487, COM.TEX/SB/1677, COM.TEX/SB/1872).

¹⁹COM.TEX/SB/1893, COM.TEX/SB/1894, COM.TEX/SB/1900.

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