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WILL THE GREAT BANANA WAR EVER END: WILL THE TARIFF ONLY SYSTEM BE THE SOLUTION?

JESSICA L. SPIEGEL

Abstract: The European Union and the United States are in the midst of the Great Banana War, a trade dispute over EU banana tariffs. The World Trade Organization authorized sanctions against the EU, effective until the EU modifies its banana tariff system to comply with WTO rules. Meanwhile, the EU’s former colonies, the ACP nations, are caught in the precarious position of losing the EU’s preferential treatment concerning the banana tariffs. This Note highlights the issues surrounding this conflict and advocates on behalf of the EU’s latest re-configuration of its tariff system.

INTRODUCTION

The European Union (EU) currently is involved in complex and conflicting obligations concerning its Banana Trade War with the United States (US).¹ The EU’s convoluted system of tariffs and quotas on banana imports, otherwise known as the “New Banana Regime,”² favors banana imports from several EU nations’ former colonies in Africa, the Caribbean, and the Pacific (“ACP countries”).³ By allowing preferential trade benefits to the ACP countries, the EU has effectively limited the number of Latin American bananas that EU nations can import.⁴ US multinational corporations are infuriated with the New Banana Regime because their Latin American banana producers are excluded by the EU’s trade preferences.⁵ The US claims that the EU’s protectionist trade policy violates global trade rules under

² Id.
³ Id. at 538–40.
GATT. On March 3, 1999, the US retaliated by imposing high tariffs on certain EU imports. The EU acknowledges that it must renegotiate its trade preferences with the ACP nations in order to have the flexibility to comply with its WTO obligations. On November 10, 1999, the EU proposed a completely new banana trade regime that it hopes will comply with WTO trade rules, satisfy some of its ACP commitments, and consequently force the US to cease imposing sanctions.

The Banana War is the result of conflicting protectionist economic policies of the EU and the US. Continuance of the trade war has the potential to jeopardize trade relations between the two trading blocks. The core issues underlying the Banana War, namely the EU’s difficulty reconciling its ACP commitments with its WTO obligations, and the US’s determination to maintain every possible economic advantage, will resurface under another guise if they are not confronted and corrected as soon as possible.

Part I of this Note examines the history of the Banana Trade War. Part II discusses the EU’s frantic and precarious position of recognizing its historical obligations to its former colonies—the ACP trade preferences—while complying with WTO trade rules that will allow the EU to participate fairly in global trading. Part III of this Note analyzes the EU’s new proposal for the banana regime. After many rejected proposed amendments to the New Banana Regime, the EU finally has agreed to overhaul its banana import system in hopes of satisfying all of its varying interests. Finally, this Note concludes with an assertion that the tariff-only proposal is the most promising solution offered thus far by the EU because it aims to satisfy all involved parties. Moreover, because of the EU’s earnest attempt to treat everyone fairly, the US should reward the EU by lifting its sanctions.

6 Declaration by Sir Leon Brittan to the European Parliament on Banana Dispute with the US, EU DIRECTORATE GEN. FOR TRADE, Mar. 9, 1999.
8 Matthew Newmann, EU Commission to Decide on New Plan in Banana Row Wednesday, DOW JONES INT’L NEWS, Nov. 8, 1999.
10 The US/EU Banana Dispute: Modifications to the EC Banana Regime, DIRECTORATE GEN. FOR TRADE, Nov. 10, 1998; see Margolis, supra note 5.
11 Sheppard, supra note 7, at 91.
12 Newmann, supra note 8.
13 Id.
14 Id.; Sheppard, supra note 7, at 91.
15 Newmann, supra note 8.
I. THE HISTORY OF THE BANANA WAR

The roots of the banana controversy began in the years immediately following World War I, when the victorious nations of France, Britain, and Italy initiated a policy of preserving trade preferences for their former colonies in Africa, the Caribbean, and the Pacific. In 1957, the Treaty of Rome created the European Economic Community (EEC), which included six signatory states and eighteen of their former colonies under “associate” status. “Associate status” intended to aid the integration of these formerly dependent territories into the world economy by employing trade preferences because the EEC countries harbored a “residual sense of responsibility for the colonial past.”

In 1973, the Treaty of Accession brought Britain, Ireland, and Denmark into the EEC. In addition, Britain wanted to include its former colonies with the other EEC “associate status” nations. This request prompted the 1975 Lome I Convention which officially formed an alliance between the nine European countries in the EEC and almost fifty ACP countries. The Lome I Convention included the following: (1) a move toward non-reciprocal duty-free and quota-free access to EEC markets for ACP countries, (2) an export earnings stabilization scheme, (3) financial and technical assistance towards the development of the ACP nations, and (4) establishment of implementing institutions for the convention.

Subsequently, the Lome Convention was re-negotiated in 1980, 1985, and 1989, culminating in Lome IV, a strong economic arrange-

18 Sheppard, supra note 7, at 84.
19 Bessko, supra note 17, at 269 n.27 (citing Treaty Concerning the Accession of Denmark, Ireland and the United Kingdom of Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community, Jan. 22, 1972, 197 O.J. SPEC. ED. 5).
22 Id.
ment between the EU’s advanced market economy and the markets of the less-developed ACP nations.23 Lome IV provides that no ACP state that traditionally has supplied bananas to the EU will be placed in a less favorable position in the EU market than it presently enjoys or previously had enjoyed.24 The EU’s preferential treatment of the ACP nations has stabilized and promoted the economic development of these countries.25 However, the system of trade preferences under Lome IV adversely affected Latin American countries that also rely heavily on banana exports for their economies but do not have equal access to the EU market.26

These Latin American bananas are called “dollar” bananas because they are grown by American multinational corporations, such as Dole and Chiquita, on enormous plantations in Latin America.27 “Dollar” bananas have an economic advantage over the ACP bananas because their production is less costly than that of Caribbean bananas, largely due to cheaper transportation and labor costs.28 ACP banana production suffers from poor terrain, poor soil conditions, independent farmers, natural disasters, and more expensive shipping costs due to the absence of economies of scale.29 Thus, ACP bananas are roughly twice as expensive to produce as Latin American bananas. As a result, ACP bananas were unable to compete with Latin American bananas for importation into the open market of the EU.30

On July 1, 1993, the EU introduced the New Banana Regime (Regulation 404/93)31 that replaced the various national import systems of the EU Member States with a single uniform system, and essentially guaranteed ACP countries a certain share of the EU banana

26 Sheppard, supra note 7, at 87.
29 Sheppard, supra note 7, at 86.
30 Chen, supra note 27, at 1299.
31 Bustamante, supra note 1, at 337–38.
The Regime was the EU's attempt to reconcile its regulation of the banana market with three of its obligations: (1) its duty to the EU Single Market, which formed a trading area with no internal barriers to obstruct the free flow of goods among member nations, (2) its commitment to the ACP countries that their banana exports would be protected, arising in the Lome IV Convention, and (3) its obligations under the Uruguay Round of GATT, where a crucial objective was opening markets in industrialized countries to products from developing countries. The New Banana Regime imposed a tariff quota on banana imports that was applied according to whether the bananas originated from ACP or non-ACP countries. Under this tariff-quota system, ACP bananas may enter Europe duty-free until 2002 and non-ACP bananas are subject to a tariff quota. Regulation 404/93 also imposed a licensing scheme requiring the distribution of banana import licenses under the tariff quota among three categories of eligible operators. The new regime consisted of five separate titles establishing uniform rules on common quality and marketing standards, producers or organizations and concentration mechanisms, assistance, trade with third countries, and other general provisions.

Colombia, Costa-Rica, Guatemala, Nicaragua, Venezuela, Honduras, Panama, Mexico, and El Salvador are the Latin American countries that are adversely affected by the New Banana Regime. The United States, claiming that it also has been disadvantaged by the EU trading preferences, has become involved in the dispute, declaring that the regime violates certain provisions of the WTO.

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32 Id.
33 Lyons, supra note 24, at 167, 176.
36 Lyons, supra note 24, at 178 n.126 (citing Council Regulation 404/93, art.12, Titles IV, 1993 O.J. (L.47)).
38 Eric Margolis, supra note 5. The WTO replaced the GATT system on January 1, 1995, providing a common institutional framework for the conduct of trade relations among its members concerning the agreements negotiated under the Uruguay Round. Khansari, supra note 16, at 188. The DSU originated out of the shortcomings of the GATT dispute settlement arrangement and eliminated ineffective GATT policies, such as the consensus voting. Id.
Immediately after the EU announced its New Banana Regime, many Latin American banana producing countries, five of which were GATT members, requested that a WTO Panel examine the legality of the regime and find that the EU’s trade preferences violated GATT’s free trade principles. Principally, the countries claimed that the EU’s import regime was inconsistent with the Most Favored Nation clause (MFN) in Article I, paragraph 1 of GATT. According to this provision, each GATT member must extend MFN status to all other members. This requires equal access to the markets for all GATT members; any discrimination against any member is prohibited. Both the Latin American countries and the ACP countries are Contracting Parties under GATT.

Subsequently, the WTO Panel condemned the EU banana import regime. It held that certain features of the EU’s tariff preferences toward the ACP countries violated global trading laws because they imposed unacceptably disparate treatment on certain nations, specifically the Latin American banana producing countries, inconsistent with Article I of GATT.

The EU rejected the WTO Panel ruling, claiming that dire political and economic consequences would result in the ACP economies if the EU opened up its market to the less expensive Latin American bananas. Due to the need for “consensus” voting under GATT, the EU managed to block the adoption of the WTO Panel decision. In addition, the EU was able to avoid complying with the WTO ruling by


40 Id. The countries named other GATT provisions that they believed the EU violated, such as the “National Treatment on Internal Taxation and Regulation” provisions and Article II’s Schedule of Concessions, both of which the WTO Panel found to be valid criticism of the banana regime. Id.

41 Sheppard, supra note 7, at 87.

42 Khansari, supra note 16, at 200.


44 Id.

45 Lyons, supra note 24, at 170 n.43 (citing Alison Maitland, Commissioner Rejects GATT Attack on EU Banana Regime, FIN. TIMES LIMITED, Feb. 23, 1994, at 34).

46 Sheppard, supra note 7, at 87 nn.40–41 (citing Terence P. Stewart, The World Trade Organization: Multilateral Trade Framework for the 21st Century and US Implementing Legislation, AMERICAN BAR ASSOCIATION, 1996, at 33; Latin American Nations Ask GATT to Adopt Panel Report on EC Banana Duties, INT’L TRADE REPORTER, Jul. 28, 1993). According to Article 23(2) of GATT, “consensus voting” means that a panel holding was not enforceable unless all members including the party against whom the decision was made, agreed to adopt it. Sheppard, supra note 7, at 87 n.40.
claiming a waiver from GATT non-discrimination rules.47 In pertinent part, the EU claimed that the Lome Conventions create a "customs union" pursuant to Article XXIV of GATT.48 This article provides that in exceptional circumstances, the contracting parties may waive an obligation imposed upon them, provided that such a decision is approved by a two-thirds majority of the vote.49 The EU obtained that majority and waived the application of GATT rules to the Banana Protocol of Lome IV.50 Therefore, this waiver sheltered the Lome Convention and exempted it from the obligations of Article I of GATT until the expiration of Lome IV on February 28, 2000.51

Angered by the EU's ability to avoid compliance with the WTO ruling, the Latin American countries turned to the United States Trade Representative (USTR) and the WTO Dispute Settlement Body (DSB) for relief.52 Pursuant to Title III of the US Trade Act of 1974, the USTR has extensive authority to address illegal, unfair, and discriminatory foreign practices that restrict US exports.53 The USTR is authorized to suspend, withdraw, or prevent the application of trade concessions, impose duties or import restrictions, or enter into agreements to remedy the situation.54

In this case, based on a petition of Chiquita Brands International, Inc., the world's largest banana producer, the USTR initiated an investigation under section 301 of the Trade Act (also known as "Super 301").55 "Super 301" authorizes the USTR to take appropriate action if the US economy is unjustifiably burdened or restricted under any trade agreement.56 It also provides the medium in the US through which private parties can enforce US rights under international trade

47 Khansari, supra note 16, at 200-01.
48 Sheppard, supra note 7, at 87 n.43 (citing General Agreement on Tariffs and Trade, Article XXV(5)).
49 Id.
50 Khansari, supra note 16, at 201.
51 Id.
52 Id. at 87-88 n.45 (citing Guy de Jonquieres, EU Banana Policy 'Perverse and Inefficient' Says World Bank, FIN. TIMES, Jan. 20, 1994).
54 Bessko, supra note 17, at 282 n.122 (citing Trade Act of 1974, S 301(c), 19 U.S.C. § 2411(c) (1988)).
55 Sheppard, supra note 7, at 88. Chiquita already had captured approximately 45% of Germany's market because Germany offered a free market with no import restrictions or tariffs. Donald L. Barlett & James B. Steele, With Big Money and Politics, Who Gets Hurt? How to Become A Top Banana, TIME MAG., Feb. 7, 2000 at 45.
56 Id. at 88 n.47 (citing Trade Act of 1974, Title III. Chapter 1. Section 301).
agreements and respond to certain unfair trade practices.\textsuperscript{57} The USTR determined that it should retaliate against the EU’s banana import regime because it violated GATT and economically disadvantaged the US.\textsuperscript{58}

However, the EU rightfully signaled that any unilateral measure taken by the US would violate the WTO’s Dispute Settlement Understanding (DSU).\textsuperscript{59} As a result, the USTR and Latin American companies filed an official complaint with the WTO, declaring the New Banana Regime violative of WTO trade rules.\textsuperscript{60} The complaint demanded two remedies: (1) a larger quota for Latin American fruit, and (2) changes in the EU’s licensing system.\textsuperscript{61}

In April 1997, the WTO Dispute Panel ruled that the EU’s New Banana Regime violated WTO trading rules and directed the EU to "bring the regime in line with its obligations under global trade accords."\textsuperscript{62} Specifically, the EU panel found the following measures inconsistent with the WTO rules: "(1) the granting of import licenses for Latin American bananas to British companies as opposed to American companies, (2) the imposition of unequally burdensome requirements for imports from Latin America, and (3) the discriminatory allocation of access to the EU market not using past levels of trade as a criteria."\textsuperscript{63} Unlike earlier decisions under GATT rules that required a consensus vote to impose the ruling, all WTO decisions are binding unless all members decide by consensus to reject them.\textsuperscript{64} Therefore, the EU had no way to avoid compliance.\textsuperscript{65}

As a result, the EU Council of Ministers modified the New Banana Regime with the adoption of Regulation 1637/98, to take effect

\begin{itemize}
\item\textsuperscript{57} Bessko, \textit{supra} note 17, at 282 n.118 (citing Trade Act of 1974, § 301–09, as amended, 19 U.S.C. § 2411 (1988)).
\item\textsuperscript{58} Sheppard, \textit{supra} note 7, at 88.
\item\textsuperscript{59} \textit{Id.}; EU Requests WTO Panel Against US Section 301 Legislation, \textsc{Directorate Gen. for Trade}, Brussels (Feb. 17, 1999), \textit{available at} http://europa.eu.int/commission/dg0/sect3011.htm.
\item\textsuperscript{60} Sheppard, \textit{supra} note 7, at 88 n.49 (citing \textsc{U.S. Complains Again to WTO, St. Lucia Accuses Chiquita of Trying to Destroy Industry}, \textsc{Lat. Am. Regional Reports}, Caribbean, Feb.29, 1996).
\item\textsuperscript{61} \textit{Id.}
\item\textsuperscript{63} Sheppard, \textit{supra} note 7, at 88 n.51 (citing Brendan McGrath, \textit{WTO Ruling on Bananas May Hit Fyffes}, \textsc{The Irish Times}, May 24, 1997).
\item\textsuperscript{64} \textit{Id.} at 88 n.52 (citing Dispute Settlement Understanding—WTO, Article 19(1)).
\item\textsuperscript{65} See \textit{id.}
on January 1, 1999. Regulation 1637/98 either eliminated or amended the provisions designated by the WTO as inconsistent with global trade laws. In addition, the EU reformed its accompanying licensing arrangement to take effect with Regulation 1637/98.

Despite these efforts to comply with the WTO, the US claimed that the EU still was not implementing the WTO ruling correctly. Consequently, on January 14, 1999, the US requested permission from the WTO to impose $520 million US in sanctions against the EU for noncompliance. In response, an angry EU requested a WTO Panel arbitration to determine that the US sanctions were illegal under WTO rules. Consequently, the WTO suspended the issue until the original panel decided on the compliance of the New Banana Regime’s reforms that took effect on January 1, 1999.

The WTO Dispute Settlement rules indicate that the WTO first must examine whether the New Banana Regime complies with the WTO’s earlier ruling before it authorizes the US to proceed with sanctions. Despite the Dispute Settlement Understanding (DSU) rules, the US threatened to use “Super 301” sanctions anyway. In response, on March 2, 1999, the EU requested a separate WTO panel to examine the legality of the US’ threats vis-à-vis international trade and dispute settlement rules under the WTO DSU. On March 3, 1999, the US imposed $520 million US worth of sanctions on EU imports, mostly luxury items, defying the WTO Article 23 which explicitly prohibits unilateral action by a WTO member without WTO authorization, and violating other articles banning suspension of concessions.

66 The US/EU Banana Dispute, Modifications to the EC Banana Regime, DIRECTORATE GEN. OF TRADE, Nov. 10, 1998.
67 Id.
68 Id.
69 Id. Attached to this report is a chart outlining the original Banana Regime, the WTO comment, and the revised Banana Regime that the EU believes is WTO compatible.
71 EC Request for Establishment of a Panel on Section 301 of the US Trade Act of 1974, DIRECTORATE GEN. FOR TRADE.
73 The US/EU Banana Dispute, Modifications to the EC Banana Regime, supra note 66.
while arbitration is taking place. The WTO Dispute Settlement Body may grant authorization to impose sanctions only after it has concluded that a Member State has failed to implement a ruling.

In response to the US sanctions, the EU argued that it had revised its system to comply with the WTO ruling. However, if the US disagreed, it was a matter for the WTO to resolve via the DSU process. The EU publicly announced its vehement opposition to the US' retaliatory sanctions and requested a WTO order to discontinue the illegal sanctions on March 5, 1999.

On April 19, 1999, the WTO decided that various elements of the EU's revised banana import regime were inconsistent with WTO trade rules. At the same time, the WTO informed the US that it was entitled to impose, temporarily, $191.4 million US of retaliatory tariffs on various European products. This amount was a sharp reduction from the original US request of $520 million in sanctions. Since the WTO's April decision, the EU has been trying frantically to come up with a viable solution to end the US sanctions because of the extensive damage they are causing many EU industries.

II. Discussion of Issues

The EU maintains two distinct obligations as (1) a global trading partner under the WTO and (2) a trading block allowing preferential

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76 Id.; EU Requests WTO Panel Against US Section 301 Legislation, supra note 74.
77 EU Requests WTO Panel Against US Section 301 Legislation, supra note 74.
78 Sheryle Bagwell, Banana Row Sets Scene for Bigger Trade Wars, AUSTRALIAN FIN. REV. 12, 1999 WL 5068468 (Mar. 11, 1999).
79 The US/EU Banana Dispute, Modifications to the EC Banana Regime, supra note 66; see EU Files Complaint in Banana War, THE COLUMBUS DISPATCH, Mar. 5, 1999.
80 EU-US Banana Dispute: Latest Developments in the Bananas Trade Dispute, DIRECTORATE GEN. FOR TRADE (last modified Apr. 12, 1999), available at http://europa.eu.int/comm/dg0/1204bana.htm; Barlett & Steele, supra note 55, at 44.
81 EU-US Banana Dispute: Latest Developments in the Bananas Trade Dispute, supra.
82 Id.
83 See The European Commission Outlines Options for a New Banana Regime, DIRECTORATE GEN. FOR TRADE, May 27, 1999. The US' punitive tariffs also are causing many small American businesses to suffer because they can no longer afford to pay to import the targeted goods. Barlett & Steele, supra note 55, at 45. On May 18, 2000, President Clinton signed into law a bill that includes a provision on "carousel retaliation," which requires the USTR to revise every six months the list of goods targeted for retaliatory tariffs. The EU/US Bananas Dispute, "Carousel Retaliation," DEPT. OF TRADE AND INDUSTRY, Apr. 1999, available at http://www.bananalink.org.uk/trade_war/trade_war.htm (last visited Sept. 10, 2000).
treatment to certain lesser developed nations.\textsuperscript{84} One crucial difference between the two commitments is that the EU’s WTO obligations are non-negotiable whereas its Lome IV Convention commitments are negotiable.\textsuperscript{85} Abiding by certain conditions is the sacrifice each WTO member must make in order to receive the benefits of joining a group of trading partners.\textsuperscript{86} Thus, the WTO has made it clear that the EU must satisfy its WTO obligations or it will continue to be punished in the form of economic sanctions by the US.\textsuperscript{87} Therefore, the EU’s Lome IV Convention commitments must yield in light of the EU’s predicament in order for the EU to create a banana import regime that satisfies the WTO rules.\textsuperscript{88} The Lome IV’s renewal in February 2000 gave the EU an ideal opportunity to re-examine its position in the global economy.\textsuperscript{89} The EU re-evaluated the entire concept behind the Lome Conventions and decided to alter its ACP commitments in order to comply with global trade rules. However, the EU has not yet reached a satisfactory compromise with the ACP nations.\textsuperscript{90}

A. Why Lome IV Is Outdated and Needs to Be Replaced

The Lome IV Convention has fallen into disfavor with many sectors in the EU.\textsuperscript{91} First, the European banana trade system, specifically the Lome IV Convention, is largely economically inefficient and ineffective.\textsuperscript{92} The estimated cost of the arrangement is approximately $2 billion and only approximately $150 million actually finds its way into the hands of the farmers in the former colonies.\textsuperscript{93}

Second, the global economy of the 1990’s is very different from the economic climate of the 1970’s which fueled the first Lome Con-

\textsuperscript{84} See Commission Proposes to Modify the EU’s Banana Regime, DIRECTORATE GEN. FOR TRADE, Nov. 10, 1999.
\textsuperscript{86} See id.
\textsuperscript{87} Id.
\textsuperscript{88} See EU to Present New Banana Import System, REUTERS ENGLISH NEWS SERV., Reuters Limited 1999, Nov. 8, 1999.
\textsuperscript{89} Sheppard, supra note 7, at 88, 89.
\textsuperscript{91} Id. at 89.
\textsuperscript{92} Fairclough & McDermott, supra note 4.
\textsuperscript{93} Id.
vention.\textsuperscript{94} The "new international economic order" designed to redistribute wealth to benefit the developing countries is an outdated paradigm, and the newer EU members are less sympathetic to this post-colonial tie.\textsuperscript{95}

In addition, Lome IV "perpetuates ACP dependence on the EU, and promotes paternalism and clientism rather than a partnership."\textsuperscript{96} The system has created ACP economies that are dependent on banana trade preferences, thereby making any attempt at re-negotiation very difficult.\textsuperscript{97} Furthermore, the ACP nations have failed to diversify their exports, relying instead upon a few principal products.\textsuperscript{98}

Finally, public opinion in the EU increasingly questions why the EU should provide aid to the ACP nations when, at the same time, its own Member States confront serious economic and social problems.\textsuperscript{99} Furthermore, the trend in EU aid has been to help the newly emerging democracies of Eastern Europe join the EU.\textsuperscript{100} Consequently, aid allocations historically reserved for ACP programs are currently being diverted to Eastern Europe and the Mediterranean to promote privatization and democracy.\textsuperscript{101}

\section*{B. ACP Perspective}

The ACP nations have underlined the EU’s obligations under the Lome Convention and its banana protocol.\textsuperscript{102} The countries call for the preservation of the present regime and resent that the WTO panel has made application of Lome IV so difficult.\textsuperscript{103} The ACP nations harbor a legitimate fear that their bananas will not be able to compete with Latin American bananas in an open market and are,

\begin{thebibliography}{99}
\bibitem{Note 7} Sheppard, \textit{supra} note 7, at 89.
\bibitem{Note 57} \textit{Id.} at 89 n.57 (citing \textit{Beyond Lome IV: Exploring Options for Future ACP-EU Cooperation}, \textit{European Center for Development Policy Management}, Chap. 3 Redrawing the Map: The Scope for Differentiated Approaches (1996)).
\bibitem{Note 63} \textit{Id.} at 89 n.63 (citing Dipankar De Sarkar, \textit{Welcome to the Era of Development Non-Cooperation}, \textit{Inter Press Serv.}, at 1).
\bibitem{Note 65} \textit{Id.} at 89; see Khansari, \textit{supra} note 16 at 198 n.158 (citing Frances Williams, \textit{WTO Ruling Could Ruin Poor Banana Economies}, \textit{Fin. Times}, Sept. 10, 1996, at 4).
\bibitem{Note 7} Sheppard, \textit{supra} note 7, at 89.
\bibitem{Note 90} \textit{Id.} at 90.
\bibitem{Note 63} \textit{Id.} at 89 n.63 (citing Dipankar De Sarkar, \textit{Welcome to the Era of Development Non-Cooperation}, \textit{Inter Press Serv.}, at 1).
\bibitem{Note 90} \textit{Id.} at 90.
\bibitem{Note 100} \textit{Id.} at 90.
\bibitem{Note 101} \textit{Id.}.
\end{thebibliography}
therefore, resisting any change in the EU’s system.\textsuperscript{104} Unfortunately for the ACP nations, however, the power to change the banana import regime resides with the EU.\textsuperscript{105}

III. Analysis of the EU’s New Proposal

On September 13, 1999, the EU Directorate General for Trade convened, and the EU Member States expressed to the Commission a desire to try to reach a solution to the banana trade war,\textsuperscript{106} specifically, a solution “which seems to meet the needs of the ACP countries, is not prohibitively expensive, and complies with the WTO rules, as we believe they should be interpreted.”\textsuperscript{107} In response, the Directorate General for Trade proposed replacing the present Tariff Rate Quota (TRQ) system with the establishment of a tariff only system, a single tariff without the quota for bananas imported from outside the ACP.\textsuperscript{108}

On November 10, 1999, the EU announced a new tariff only system that will eliminate the complex mix of import quotas and tariffs of the New Banana Regime, meet the objective of bringing the regime into line with the commitments of the WTO, respect the Lome IV Convention, and protect the interests of EU producers and consumers.\textsuperscript{109} A two-step approach was proposed.\textsuperscript{110} Phase One is a transitional period consisting of the current TRQ system, accompanied by a tariff preference for the ACP countries.\textsuperscript{111} On January 1, 2006, at the end of the transitional period, Phase Two would replace the tariff-quota system with a tariff-only system.\textsuperscript{112}

The transitional period will maintain two existing tariff quotas and also will establish a new quota that would be open to all producers, while extending preferential treatment to ACP countries.\textsuperscript{113} The

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\textsuperscript{104} Chen, \textit{supra} note 27, at 1299.
\textsuperscript{105} \textit{EU to Present New Banana Import System}, \textit{supra} note 88.
\textsuperscript{106} Communication to the Commission: Settlement of the Banana Dispute, \textit{supra} note 85.
\textsuperscript{107} Id.
\textsuperscript{108} Id.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
\textsuperscript{111} Communication to the Commission: Settlement of the Banana Dispute, \textit{supra} note 85; EU/US Dispute on Banana: Commission Gives New Impetus to Resolve Banana Dispute, \textit{supra} note 90.
\textsuperscript{112} Commission Proposes to Modify the EU’s Banana Regime, \textit{supra} note 84.
\textsuperscript{113} Id.
\end{flushleft}
ACP preference would allow ACP bananas to enter at zero duty. 114 This is a key practical aspect of the transitional quota system and, in order to avoid further WTO challenges, the agreement of interested countries will be sought. 115 Tariffs likely will be set through an auctioning system, while ACP countries would be given tariff preference through a lower rate. 116 Ideally, this interim plan will give ACP countries time to adjust to the new import system and to adapt appropriately to a new market dynamic. 117

The tariff only system will enter into force automatically on January 1, 2006. 118 At that time, the level of the flat tariff would have to be negotiated under Article XXVII of GATT. 119 However, the plan will give ACP nations an appropriate tariff preference, which would be possible with the re-negotiation and renewal of Lome IV under the waiver. 120

The Commission’s proposal must be approved by EU Member States, which have been sharply divided between those who favor the current system and those who want lower banana prices for their consumers. 121 Thus far, the new proposal has not alleviated or defused the EU/US trade tensions. 122 The Commission submitted its plan to the foreign ministers of the Member States for consideration on November 15, 1999 and, as of July 2000, minimal progress had occurred. 123 The only headway made is that it appears that allocating import licenses during the proposed transitional tariff-quota system is best managed on a “first come, first served” basis. 124

Central American banana producers rejected the EU’s proposal because the it continues to favor unfairly the ACP nations. 125 In addition, the Central American producers are concerned about how im-

114 Id.
115 Id.
116 Newmann, supra note 8.
117 Id.
118 Commission Proposes to Modify the EU’s Banana Regime, supra note 84.
119 Id.
120 Id.
121 Id.
123 Newmann, supra note 8; EU/US Dispute on Banana: Commission Gives New Impetus to Resolve Banana Dispute, supra note 90.
124 EU/US Dispute on Banana: Commission Gives New Impetus to Resolve Banana Dispute, supra note 90.
port licenses would be distributed in the six years before the permanent system is implemented.\textsuperscript{126}

Furthermore, the US also rebuffed the EU’s proposal, claiming that more changes are needed to end its economic sanctions and that it was displeased that the EU rejected the suggestions of the US.\textsuperscript{127} The US encountered difficulty in presenting a united front in its effort to lobby the EU since the two companies involved in the dispute, Chiquita and Dole, have changed their views on their preferred solution.\textsuperscript{128}

The EU Commission’s proposal of a tariff only system is the best solution offered thus far for the EU to satisfy all of its commitments.\textsuperscript{129} However, in order for the proposal to work, the EU must re-negotiate Lome IV and it must obtain the approval of the WTO, the Latin American countries, and the US.\textsuperscript{130} These are realistic barriers to a resolution of the banana trade war because it is unlikely that all parties will agree.\textsuperscript{131} After almost a year of intensive negotiations, the EU is at an impasse with the ACP nations as to a suitable re-definition of their relationship.\textsuperscript{132} However, if the WTO decides that the proposed new system complies with global trade laws, the US and Latin American countries must accept the result and the US must lift its sanctions.\textsuperscript{133} At that point, the EU only needs to worry about placating the ACP nations.\textsuperscript{134} Therefore, the most substantial hurdle is passing the WTO standards; the other parties involved will have less strength in their positions once the EU secures WTO approval.\textsuperscript{135} Unfortunately, the ACP preferences that still exist, especially in the transitional period of the new proposal, might be significant enough to continue to violate the MFN clause and send the EU back to square one.\textsuperscript{136}

\textsuperscript{126} Id.
\textsuperscript{127} US Rejects EU Plan to End Banana Trade Dispute, Reuters Int’l News Serv., Nov. 10, 1999; Commission Proposes to Modify the EU’s Banana Regime, \textit{supra} note 84.
\textsuperscript{128} Commission Proposes to Modify the EU’s Banana Regime, \textit{supra} note 84. Chiquita prefers a tariff-quota system and Dole supports a tariff-only system. Newmann, \textit{supra} note 8.
\textsuperscript{129} See EU to Present New Banana Import System, \textit{supra} note 88.
\textsuperscript{130} See Commission Proposes to Modify the EU’s Banana Regime, \textit{supra} note 84.
\textsuperscript{131} See EU to Present New Banana Import System, \textit{supra} note 88.
\textsuperscript{132} EU/US Dispute on Banana: Commission Gives New Impetus to Resolve Banana Dispute, \textit{supra} note 90.
\textsuperscript{133} See Commission Proposes to Modify the EU’s Banana Regime, \textit{supra} note 84.
\textsuperscript{134} See Fairclough & McDermott, \textit{supra} note 4.
\textsuperscript{135} \textit{EU to Present New Banana Import System}, \textit{supra} note 88.
\textsuperscript{136} See Commission Proposes to Modify the EU’s Banana Regime, \textit{supra} note 84.
CONCLUSION

Both EU and the US wanted to reach a solution to the banana trade war before the launch of the new global trade round in the WTO meeting in Seattle in early December.\textsuperscript{137} This solution did not occur. Although the EU's various commitments are important and difficult to reconcile, the EU has made a genuine effort to appease all parties and, as a result, it should be rewarded with the acceptance of its new proposal and the lifting of US sanctions.

\textsuperscript{137} EU to Present New Banana Import System, supra note 88.