Order Code RS20130
Updated December 11, 2001

CRS Report for Congress

Received through the CRS Web

The U.S.-European Union Banana Dispute

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Summary

The United States and the European Union (EU) reached an agreement in April 2001 that resolved a long-standing dispute over the EU's rules for importing bananas. Objections to the agreement by other banana exporting countries, such as Ecuador and Caribbean banana exporters, have been withdrawn. The U.S.-EU banana agreement provides for a transition to a tariff-only system of imports in 2006. In the meantime, the EU will establish quotas and a licensing system based on historical trade shares that should increase the prospects for Latin American banana imports in the EU market, especially bananas marketed by U.S. firms like Chiquita Brands International. In November 2001, the WTO granted waivers of WTO rules allowing the EU to continue preferential treatment for banana exports of developing countries that are former EU member country colonies. These waivers paved the way for full implementation of the agreement by January 2002. Trade policy officials on both sides of the Atlantic expressed hopes that the banana agreement would contribute to a climate for resolving other thorny trade disputes and for bilateral and multilateral cooperation. Members and committees of the 107th Congress will be monitoring implementation of the agreement and its effects on U.S-EU trade relations.

Background and History

The Banana Regime and WTO Rulings. In 1993, the EU implemented a single EU-wide regime to regulate banana imports. The regime gave preferential entry to bananas from the overseas territories and former colonies of EU member countries and restricted entry from other countries, including several in Latin America where U.S. companies predominate, and Ecuador.

The banana regime was part of the EU's move toward a single, unified market which was inaugurated in 1992. Before the single market, individual EU member countries imported bananas under an assortment of national practices. For example, France imported bananas from its Overseas Departments of Guadeloupe and Martinique and from former colonies, Cote d'Ivoire and Cameroon; Spain was supplied exclusively by domestic production in the Canary Islands; other EU countries imposed a 20% tariff while Germany allowed tariff-free entry.

The EU regime, which entered into force on July 1, 1993, established a multilayered system of quotas for banana imports. Imports from EU or overseas territories' producers were unrestricted. Imports from traditional suppliers in the African, Caribbean, and Pacific (ACP) countries, former colonies of EU countries, were tariff-free up to 857,000 tons. Imports from nontraditional ACP suppliers were assessed a tariff of 150% ad valorem. Imports from third countries (including Latin American countries) were assigned a tariff-rate quota (TRQ) of 2.2 million tons, with in-quota tariffs of about 20% ad valorem for countries that had signed a framework agreement with the EU (Colombia, Costa Rica, Nicaragua, and Venezuela) and 30% ad valorem for non-framework countries. Above the quotas, there was a 250% ad valorem tariff. In addition to the quotas and tariffs under the regime, the EU issued licenses which allocated the quotas among banana distributors. Import licenses were distributed to traditional importers from third countries (approximately two-thirds of the TRQ) and to European and ACP importers and new importers in the market since 1992 (about one-third of the TRQ).

The banana import regime was challenged in World Trade Organization (WTO) dispute settlement by the United States, Ecuador, Guatemala, Honduras, and Mexico. The WTO found the import regime illegal in 1997 on grounds that its system of allocating licenses discriminated against growers and marketing companies in the complaining countries. A revised import regime was established on January 1, 1999. The revised system consisted of a 2.553 million metric ton TRQ with an additional quantity (850,000 MMT) assigned to ACP countries. The new system was also ruled illegal by a WTO dispute settlement panel because it set aside a quantity of banana imports reserved exclusively for ACP imports and because the licensing system continued to discriminate against suppliers of Latin American bananas.

Subsequently a WTO arbitration panel ruled that compensation of about $192 million was due the United States for lost banana sales. The EU, foregoing its right to appeal, indicated that it would abide by the decision and bring its banana import regime into compliance with WTO rules. The United States imposed tariffs of 100% on $192 million worth of EU imports into the United States, none of which were agricultural products.[1] The United States and EU continued discussions over what would constitute a WTO-compatible banana import regime during much of 2000.

In October 2000, the EU floated a new proposal for bringing its banana import regime into compliance with WTO rules.[2] The proposal called for three quotas for bananas comparable to the TRQs proposed earlier–850 thousand tons for ACP countries; 2.2 million tons for Latin American bananas; and an additional 353,000 tons for Latin American bananas. The in-quota duty on Latin American bananas would be 75 Euro (around $66) per ton, while ACP bananas would enjoy a 300 Euro ($255) per ton tariff preference. Effectively, ACP bananas would enter the EU duty free. The quotas would be administered on a "first-come, first-served (FCFS)" basis that would establish a pre-allocation procedure. Companies would declare their intention to import a specified

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[1] The retaliation list can be found at http://www.ustr.gov/releases/1999/01/ban1-14.pdf

[2] Commission of the European Communities, *Communication from the Commission to the Council on the 'First Come, First Served' Method for the Banana Regime and the Implications of a 'Tariff Only' System,* Brussels COM(2000), October 4, 2000.

quantity of bananas when vessels were a sailing distance from Europe to avoid discrimination against countries that are farther away. The pre-allocation procedure would be managed on a fortnightly or weekly basis. This transitional TRQ system would be changed to a tariff only system in 6 years.

The United States also rejected the October 2000 proposal.[3] The basis of the U.S. opposition was that maintaining a separate quota for ACP bananas virtually guarantees that those countries would be able to export their entire production, while Latin American countries would be severely restricted. The proposal, according to the Office of the U.S. Trade Representative (USTR), also would have continued the discrimination between companies that supply the EU with Latin American bananas and companies, primarily European, that supply the EU with ACP bananas. The U.S. statement noted also the opposition of nearly all Latin American countries, with the exception of Ecuador, to the FCFS system and the opposition of Caribbean countries together with the lack of support from the African countries for the EU proposal. Rather than FCFS, the United States insisted on the allocation of banana import licenses based on an historical reference period which would maintain or enhance market share for U.S. companies. Despite lack of agreement, the United States did not re-enter WTO dispute settlement on the banana dispute, but continued discussions with the EU.

Recent Developments: the U.S.-EU Agreement

In April 2001, the United States and the EU reached an agreement on their long-standing dispute over banana imports. Under the Agreement, the EU will establish a tariff-only regime for imports of bananas by January 1, 2006. As of July 1, 2001, the EU will implement an import regime for bananas on the basis of historical licensing, although a quota with tariff preferences would be maintained for developing country exporters of bananas to the EU. Licenses mainly would be allocated to traditional exporters, i.e., those who held licenses during the reference period, 1994-1996, with a smaller proportion of licenses allocated to newcomers, i.e., those not operating in the historical reference period. Once the new regime is in place, the United States will terminate its imposition of increased duties on $192 million of imports from the EU. These duties were suspended as of July 1, 2001 and will be terminated on January 1, 2002.

The Agreement calls for the establishment of a bound tariff-rate quota, (quota A) of 2.2 million metric tons and an additional quota of 350,000 mts (quota B) which will be managed as one, with a tariff of E75 per ton (about $66). A TRQ, designated as quota C, will be set at 850,000 mts. Although within each TRQ, licenses may be used to import bananas from any source, the A and B quotas are essentially for Latin American bananas, while the C quota is for ACP bananas. Within each TRQ, licenses may be used to import bananas from any source. However, licenses to import bananas into TRQ “C” cannot be used to import bananas into TRQs “A” or “B” and vice versa.

Import licenses for 83% of the A and B quotas will be distributed to “traditional” operators based on their 1994-1996 average annual final reference volume of imports. The

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[3] Office of the U.S. Trade Representative, *United States Position on European Commission Proposal for a First Come, First Served Licensing System for Importation of Bananas*, October 5, 2000.

EU will finalize licensing procedures for C quota bananas. Additionally, a nontraditional or newcomers operator category will be created for 17% of the A and B TRQs. Non-traditional importers cannot become traditional in subsequent periods. In phase II of the agreement(which begins "as soon as possible" and which requires both approval of the EU Council of Ministers and European Parliament), the ACP quota will be reduced by 100,000 mts which will be added to B quota. The 750,00 mts remaining in the C quota will be reserved for bananas of ACP origin.

Compatibility of the agreement with World Trade Organization (WTO) rules was an issue. Ecuador or other banana exporting countries in Central and South America or the Caribbean could have requested a review of compliance of the new regime with WTO requirements. Or these same countries could have challenged the new regime under WTO dispute settlement as discriminatory because the new regime does not treat all WTO members equally. The WTO has ruled in the past against discriminatory licensing systems for bananas, but has not spelled out what would be a non-discriminatory licensing system. Waivers of Articles I [4] and XIII,[5] which the EU sought, could defuse arguments about the WTO compatibility of the new regime.

As part of the agreement, the United States pledged to support the EU's bid for a waiver of Article 1 of the GATT 1994 that the EU had requested for the preferential access it accords goods originating in former EU member country colonies (the ACP countries) under the ACP-EU Partnership Agreement (which governs trade relations between the EU and former colonies). The United States agreed also to promote the acceptance in the WTO of the EU's request for a waiver of Article XIII of the GATT 1994 needed for managing the quota extended to ACP country banana exports. The approval of both these waivers during the WTO's Fourth Ministerial Conference (in Doha, Qatar, November 9-14), removed the final obstacles to full implementation of the banana agreement.[6]

Implications of the Agreement

U.S.-EU Trade Relations. The banana agreement removed a significant dispute from the U.S.-EU bilateral trade agenda. The agreement contributes, some say, to a more favorable climate for resolving other contentious trade disputes and for cooperation both bilaterally and multilaterally in the WTO. Others do not think, however, that it gets at fundamental differences that complicate, for example, the U.S.-EU meat hormone dispute or disagreement on the agenda of a new round of multilateral trade negotiations.[7]

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[4] Article I of GATT 1947 is the general most-favored nation treatment provision which requires that member countries conduct trade on the basis of non-discrimination.

[5] Article XIII Of GATT 1994 requires nondiscriminatory administration of quantitative restrictions.

[6] For the texts of these WTO waivers see http://www-heva.wto-ministerial.org/english/thewto_e/minist_e/min01_e/mindecl_acp_ec_agre_e.htm and http://www-heva.wto-ministerial.org/english/thewto_e/minist_e/min01_e/mindecl_ec_bananas_e.htm.

[7] For a discussion of U.S-EU differences over agriculture in the new round of multilateral trade (continued...)

Banana Marketing Companies. According to analysts, the U.S. banana marketing companies, Chiquita Brands International and the Dole Food Company, will be the primary beneficiaries of the banana agreement. Estimates are that these two will share about 44% of the licenses issued under the agreement. That share would be virtually guaranteed until 2006 when the transition to a tariff-only regime would occur. Chiquita and Dole benefit from the definition of "primary operators", i.e., those that either grew or bought green bananas to sell them in Europe during the 1994-96 reference period. According to analysts, two-thirds of the 44% would go to Chiquita and the remaining third to Dole. Although Dole is expected to experience a net loss of licenses under the new regime, the USTR calculates that it and other U.S. firms will obtain a substantial increase in the volume of bananas they are able to import into the EU market. Dole, nevertheless, expressed its opposition to the agreement.

U.S. Businesses and Consumers. Overlooked to some extent are the effects of the agreement on U.S. businesses that import products on the retaliation list and on consumers of those products. Lifting sanctions means that the 100% duties will be eliminated as of July 1, 2001, thus importers and consumers of products like handbags, bed linens, or folding cartons and boxes will be economically better off. Legislation to exempt small businesses from inclusion in such retaliation was introduced in the 106th Congress.

Ecuador and Other Latin American Exporters. The 100,000 addition to the "B" quota is intended to benefit Ecuador and other Latin American exporters. Ecuador, however, initially announced its opposition to the U.S.-EU agreement, but at the same time began negotiations with the EU, according to sources, on ways to get additional market share through the "newcomer category" Rules for administering the newcomer category appear to give Ecuador a substantial share, especially of organic bananas, of that category. Ecuador also withdrew its request for consultation with the EU which could have led to a compliance review or to formation of a panel to hear arguments in a formal dispute. While consultation is the first step in WTO dispute settlement, consultation under Article 21.5 of the Dispute Settlement Understanding to determine compliance with a WTO panel decision, according to some legal analysts, does not necessarily lead to formal dispute settlement.

Developing Country Exporters. Among the major beneficiaries of the EU's 1993 banana import regime have been the Caribbean countries, especially those of the Windward Islands in the eastern Caribbean. While the Windward Islands account for only 3% of world banana trade, they supply 20% of EU imports. They and other ACP producers fear that they would be driven out of business if preferences were eliminated since it would force them to compete with more efficient suppliers. Ecuador, the world's largest producer and exporter of bananas, for example, produces bananas at a cost of about $162 per metric ton, while ACP costs can be as high as $515 per ton.

On balance the ACP countries appear to benefit from the agreement. Although the agreement reduces the size of the quota for bananas initially provided to ACP countries, they nevertheless will benefit from an assured market of 750,000 tons. In addition, the

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[7] (...continued)
negotiations, see *Agriculture in WTO Negotiations*, CRS Report RS20185, December 7, 2001.

WTO waiver of Article I of GATT 1947 insures that they will continue to receive preferential treatment. While the EU and the ACP countries are enthusiastic about the continuation of trade preferences, some economists maintain that the ACP countries and especially the Caribbean producers need financial and technical assistance to diversify their agriculture away from high-cost banana production instead of, or in addition to, preferences.

Role of Congress

In the 107th Congress, Members and committees that deal with trade issues will be monitoring implementation of the U.S.-EU banana agreement. Partly in response to EU slowness in implementing WTO banana rulings, the 106th Congress enacted legislation (Section 407 of the Africa Growth and Opportunity Act, P.L.106-200) that requires the President periodically to rotate or change the types of products targeted for trade retaliation.[8] This so-called "carousel" provision was aimed partly at maintaining pressure on the EU to come to a speedy resolution of the banana dispute and also the meat hormone dispute[9] by penalizing a wider range of foreign industries and regions. Supporters of the carousel provision urged the USTR to rotate its retaliation lists for bananas and meat hormones. The USTR, on the other hand, appeared reluctant to invoke the carousel provision because of its potential to aggravate another EU-U.S. dispute over the tax treatment of Foreign Sales Corporations (FSC).[10] With a banana agreement, some of the pressure to use the carousel provision has been mitigated.

Legislation was also introduced in the 106th Congress to prevent the United States from retaliating altogether against the EU for its banana preference system (H.R. 1361). The support of the ACP countries for the agreement, and especially its continuation of preferential treatment for ACP bananas, makes the introduction of similar legislation in the 107th Congress less likely. Similarly, there may be less pressure in the wake of the agreement on banana imports for legislation like H.R. 4478 introduced in the 106th Congress which would have exempted small businesses from increased tariffs imposed against products of the EU in response to the banana import regime.

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[8] See *Trade Retaliation: the "Carousel" Approach* by Lenore Sek, RS20715, October 27, 2000.

[9] See *The European Union's Ban on Hormone-Treated Meat* by Charles E. Hanrahan, RS20142.

[10] The EU successfully challenged U.S. foreign sales corporations (FSC) as an export subsidy in WTO dispute settlement. U.S. and EU negotiators currently are engaged in negotiations over compliance of a U.S. replacement for the FSC and over the level of retaliation that might be imposed by the EU which it estimates at more than $4 billion. See *The Foreign Sales Corporation (FSC) Tax Benefit for Exporting: WTO issues and an economic analysis* by David Lee Brumbaugh, RL30684.