Going Bananas: A Glimpse into WTO's Dispute Settlement Mechanism

ABSTRACT

The paper seeks to comment on the efficiency and fairness of the World Trade Organization by examining its Dispute Settlement Mechanism. The study has attempted to achieve the same by focusing on the legal and economic analysis of 'The European Communities – Regime for Importation, Sale and Distribution of Bananas Case', a landmark judgement in the Dispute Settlement Body's history that spanned two decades. The paper has analysed trade data from 1993-2016 to arrive at its conclusions and infer the legal rationale behind the verdict while scrutinizing the sectoral as well as overall economic impact of the case on the parties to the dispute.

***Keywords**: World Trade Organization; Dispute Settlement Body; EC Bananas case; European Union; African, Caribbean and Pacific countries.*

1.0 Introduction

One basic rule of civilization is that it demands regulation. It is rules, standards and procedures meticulously thought out by governments and institutions that lay the foundation to society as we know it. Keeping this in mind, when trade established itself as an ever-growing international phenomenon rather than a purely domestic one, it led to the formation of the General Agreement on Tariffs and Trade in 1947 to lay the first building blocks of regulation. However, the signatories soon realized that regulation alone does not guarantee fair and proper observation of the formulated rules, it also necessitates implementation and surveillance – mechanisms the GATT failed to provide for. In the absence of a system to uphold these mutually agreed upon regulations, the rise of conflicts and unfair trade practices was inevitable. This highlighted the need for an institution to regulate, propagate and implement the principles of free, fair and liberal trade practices among signatories.

This debate for free and fair trade, a demand by both developed and developing economies, led to the birth of the World Trade Organization in 1995, an institution established to overcome the shortcomings of its predecessor, GATT. Born out of numerous negotiations, the WTO at its heart is an organization which overlooks international trade, aids in negotiating trading agreements and partakes in dispute settlement. It bases its workings on five major principles i.e. freer, unbiased, competitive,

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predictable and stable trade which is beneficial for less developed economies. Along with increasing its purview, by not only imbibing the rules pertaining to trade in goods established under GATT, but also including trade in services, intellectual property and investment measures; the WTO most notably brought about a change no international organization had been able to achieve – it introduced the system of one country one vote, along with the promise of an impartial mechanism for resolving disputes, demonstrating that the notion of non-discrimination lay at its heart.

Ever since its inception, WTO's dispute settlement body has been at the center of many debates. Its viability, fairness and efficiency has been scrutinized on various occasions, with the aim to improve its working procedures while providing a suitable grievance redressal platform. Whether it has appropriately served its purpose is still a question that remains to be answered in its entirety.

The dispute settlement body has overseen and adjudged many convoluted conflicts, a glimpse into which promises to provide a certain amount of clarity with regards to WTO's promises of freer, unbiased and liberal trade. This paper seeks to glean this clarity by conducting an in-depth analysis of one of the most complex cases to land on the DSB's (Dispute Settlement Body) docket – The European Communities – Regime for Importation, Sale and Distribution of Bananas case, famously known as 'EC-Bananas'. In doing so, the paper will delve into the dispute settlement mechanism's working procedures with an aim to gauge its efficiency, impartiality and ability to rectify WTO inconsistent behaviour while analysing the economic and social impact of WTO's verdicts on the parties involved.

1.1 Objectives of the study

- The study aims to appraise the level of efficiency and fairness practiced by the Dispute Settlement Body pertaining to the EC-Bananas case.
- The study seeks to establish the legal rationale behind the verdict given in the case by comparing it to the provisions given under the Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

- It seeks to assess whether, keeping in line with the final judgement of the case, the respondent – namely the EU brought about relevant and satisfactory policy reforms in the banana sector to provide fair and non-discriminatory market access to the complainants.

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- The study also aims to briefly elaborate upon the opportunities available to developing and least developed countries under the WTO dispute settlement body to put forth their interest amidst these powerful nations.
- The study also intends to analyze the economic impact of conducting such major proceedings between two nations who dominate world trade, namely the EU and the USA, on the banana sector and overall trade of the relatively smaller, ACP (African, Caribbean and Pacific Countries) Countries.

2.0 Review of Literature

Since the case spans almost two decades, there is ample literature available to document its proceedings over the years. Not only has the World Trade Organization itself published legal texts and documents, coupled with interpretations of the case, Ministries and Commissions of the parties involved in the dispute have also taken to publishing reports with policy reforms, opinions and updates.

Cali, Abbott, and Page (2010) delves into the case by giving a year by year analysis of its proceedings, basing its conclusion off of future implications of the case's verdict on the parties involved by studying the banana sector's trade trends from 1993-2010. The study has also tried to gauge the shift in banana exporting countries with regards to EU's market share. In Anania (2010), the author has made a quantitative assessment of the case's overall economic impact on ACP countries and their banana sector, analysing their involvement since the days of the Lomé Convention to the present Economic Partnership Agreement they have established with the EU.

Guyomard et al. (2005) have made an effort to understand the shift of the banana sector from a Tariff Rate Quota regime (TRQ) to a Tariff Only regime, mandated by the negotiations accepted by the EU in exchange for the US and Ecuador suspending their trade sanctions in 2001. Grynberg (1998) has given insight into the reasoning for WTO declaring the Lomé Convention WTO inconsistent – a major victory for the complainants of the EC-Bananas case, which ultimately led to a verdict against EUs preferential practices towards traditional ACP banana suppliers.

Heboyan et al. (2002) have given insight into the US-EU negotiations between 1999-2006, the culmination of which finally led to a satisfactory reform by the EU in its banana importing policies. The fueling fire behind this reform can be accredited towards the retaliatory action US and Ecuador imposed on EU exports after gaining authorization from the WTO compliance panel. It discusses in detail the implications of the trade sanctions had they continued.

'The Banana Market Review' (2015-16), published by the Food and Agriculture Organization of the United Nations (2017) also paints an adequate picture of the impact of EC-Bananas case on the world market for bananas. It showcases the shift in the composition of countries exporting to the EU over the years as a direct result of policy reforms in the sector. Albashar and Maniruzzaman (2010) take up the EC-Bananas case as a landmark judgement, the case being the first major proceeding to grant 'enhanced third party rights' to countries not direct respondents or complainants to the dispute. The study focuses on the rationale behind this decision, and the gateway it opens for other countries to obtain similar rights in future proceedings given they have substantial trade and economic interest at stake in the dispute.

Covelli (1999) has taken up the issue of Third Party Rights granted under the WTO panel proceedings, discussing in detail its viability and implication as a measure available to countries who have substantial interest in a particular dispute but do not possess the resources to be at the helm of the conflict.

3.0 Research Methodology

3.1 Research design

The study aims to fulfil the parameters of analytical research being conceptual in nature. It has met the requirements of analytical data collection pertaining to concepts such as the working procedures of the WTO's Dispute Settlement Body, facts of the EC-Bananas case, trade data related to the bananas sector of all the parties involved and a review of the current status of the case in question. The study has also made use of certain quantitative statistical tools such as bar graphs, pie charts and line graphs in order to classify and support the analytical data obtained.

3.2 Sources of data

The study primarily focuses on relevant secondary data which has been obtained from the following sources -

- The initial Panel Report, followed by the Appellate Body Reports and Compliance and Arbitration Panel Reports published by the WTO pertaining to the EC (European Communities) Bananas case (The European Communities – Regime for Importation, Sale and Distribution of Bananas Case).
- Reports and statistics published by the European Union elaborating upon its trade policies with regards to the Bananas sector.
- Data pertaining to the Banana Industry of the three major players in the dispute – The EU, the African, Caribbean, and Pacific (ACP) Countries and the Latin

American Countries gathered from World Integrated Trade Solutions and the online UN COMTRADE database.

- Secondary data of banana imports by the EU from ACP and Latin American countries has been taken from 1992-2017 dividing the years into three phases to showcase a detailed analysis of the dispute from its beginning to end. The data collected has been taken from the online UN COMTRADE database using World Integrated Trade Solutions. Moreover, out of the 77 ACP countries exporting to the EU, the 11 major banana exporters, whose economy was susceptible to changes made in the EU banana sector have been identified through the data available by the European Union Commission and Food and Agriculture Organization of the United Nations. Similarly, the five major Latin American banana exporting countries – also the main complainants to the dispute – have been identified.

3.3 Rationale of selection of this case

Out of over 520 disputes currently adorning WTO's repertoire at various stages of settlement process, this study focuses on one major case, which proved itself to be a landmark judgement passed by the WTO in its initial days against a powerful trading bloc, namely the EU. The rationale behind analysing the EC-Bananas case originates from the sheer number of firsts it gave the WTO in the form of compliance and arbitration panels, retaliatory actions and the initiation of enhanced third-party rights; a turbulent journey which nearly spanned two decades.

4.0 Analysis and Discussion

4.1 The EC-bananas case

The beginning of the dispute can be traced back to 1993 when, the then European Communities decided to adopt a Common Market Organization for its bananas sector. The import regime consisted of a tariff quota of 2 million tons for Latin American countries and non-traditional ACP countries' bananas; and a quota allocation of 857,700 tons for traditional ACP banana suppliers. The Latin American Countries faced a within quota duty of 75 Euros/ton, while there was zero duty for ACP countries, in line with the obligations of the trade and aid agreement between the EU and the ACP, known as the Lomé Convention.

This preferential treatment given to EU's previous colonies, the African, Caribbean and Pacific Countries, sparked an outrage within Latin American suppliers. The change in banana importation policies led to widespread losses for the latter, which directed them to file a complaint under GATT twice, in 1993 and 1994. Even though the

GATT panel ruled in favour of the complainants, it could not do much to bring about rectification in EUs behaviour.

The EU, as an aftermath of the complaint, conceded to increasing the tariff rate quota to 2.2 million tons in 1995, following the Banana Framework Agreement, however this policy did nothing to satiate the Latin American exporters. Finally, the Latin American countries backed by the USA instated a request for consultations in the newly formed WTO in 1996, the failure of which led to the initiation of an official case against the EU. The facts of the case have been outlined in Table 1 below.

Table 1: Facts of the Case

Complainant	Ecuador, Guatemala, Honduras, Mexico, United States
Respondent	European Communities
Third Parties	Traditional ACP Banana Suppliers -Belize; Cameroon; Dominica; Grenada; Jamaica; Saint Lucia; Saint Vincent and the Grenadines; Côte d'Ivoire; Suriname; Non-Traditional ACP Banana Suppliers - Dominican Republic; Ghana; Madagascar Latin American Suppliers - Colombia; Costa Rica; Mauritius; Nicaragua; Panama; Senegal; Venezuela, Bolivarian Republic of; Brazil; Others - Canada; India; Japan; Philippines
Provisions of WTO invoked	GATT 1994 – Most Favoured Nation principle, Preferential Tariff Rate Quota, Import Licensing

Source: www.wto.org

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4.1.1 WTO panel and Appellate body proceedings

The case can be effectively broken down into four basic points of contention, as can be assessed by the Panel Report[1] published by the WTO in 1996.

- Preferential trade quotas assigned to ACP countries for trade in bananas by the EU under the Lomé Convention.
- The consistency of the Lomé Convention with WTO principles.
- Whether this preferential treatment infringes upon the rights of WTO members with regards to the Most Favoured Nation and National Treatment Principles.
- If they do, what reforms must the EU bring to eliminate this inconsistency.

Keeping these points in mind, the EC-Bananas Panel found the EU regime for sale, distribution and importation of bananas in contravention of the WTO Agreement. It affirmed this judgement through the reasoning on the basis that Firstly, the Lomé Convention (Trade and Aid Agreement between the EU and the ACP), under which traditional ACP countries were granted preferential trading rights for certain

commodities such as beef, sugar and bananas was not compatible with the MFN principle and contrary to WTO's non-discrimination policy. Secondly, EU's argument of protecting the ACP suppliers, which are small, poor and sparingly developed economies dependent on banana exportation, with no resources to fight against the Latin American mechanized and bulk production of bananas fell short. Thirdly, the Panel found that under the WTO, in order to uphold the preferential treatment given under the Lomé Convention to traditional ACP banana suppliers, the EU was required to extend similar preferential rights to all WTO members falling under the Least Developed Countries (LDC) bracket. Favouring a certain group of LDC members was considered inconsistent. Fourthly, in addition to this, EUs last attempt of acquiring a WTO waiver for the Lomé Convention under the Free Trade Area exception granted under GATT was not able to persuade the panel to change its decision. Fifthly, the Lomé Convention could not be considered a Free Trade Agreement under the provisions of WTO since, even though it was based on the concept of economically developing poor ACP countries, it did not follow the concept of reciprocity i.e. while the EU gave market access to ACP goods, the ACP countries were not required to open their markets to EU commodities. This invalidated EU's argument of a right to give preferential treatment to certain countries on the basis of non-WTO established trade agreements. Lastly, the EU's licensing procedures, which involve the purchase of EU and/or ACP bananas in order to obtain rights to import some Latin American (or other third countries') bananas, were contrary to the MFN rule and the national treatment rule.

4.1.2 The aftermath

Following the verdict of the Panel in 1996, the EU appealed the decision in 1997. However, after carefully reviewing the case and hearing arguments from all parties, the Appellate Body[2] upheld the decision of the previous report, there by ordering the EU to take reformative action.

What followed was a game of cat and mouse between the EU and the complainants, mainly the US. As a consequence of the ruling, the EU greatly simplified its licensing procedures. However, it still elected to maintain its preferential treatment towards the ACP countries, sparking another round of legal proceedings against it in the WTO. While the US was keen on getting the EU to comply, the latter was biding its time since in 2000 the Lomé Convention was set to be renegotiated. Therefore, till the time came, the EU continued to evade its responsibility of bringing about satisfactory policy changes in the sector.

Finally, in 1999 the US and Ecuador requested the formation of a compliance panel[3] at the WTO. After due consideration, the Compliance Panel authorized the US to

impose substantial trade sanctions on EU exports. The US mainly imposed increased duties on 9 types of commodities, leading to sanctions worth 191 million USD. Similarly, Ecuador was successful in obtaining an authorization from the WTO, in 2000, to impose sanctions worth 201.6 million USD per year. When the EU still failed to respond favourably, the US decided to up the ante in 2000. The US Trade Representative's office under the Trade and Development Act of 2000, threatened to modify its sanctions on the EU. It proposed a 'Carousel Trade Policy' wherein the commodities sanctioned would be changed every six months with increasing duties.

This threat coupled with the culmination of the Lomé Convention persuaded EU to enter into trade negotiations with the complainants once again. The three countries, namely US, Ecuador and EU came to a mutually agreed solution of slowly shifting EU's banana sector from a TRQ regime to a Tariff only regime by 2006, provided both the countries rescinded their current sanctions. Herein all countries will be subjected to an MFN Tariff Rate with no quotas except for the ACP countries whose products will be allowed duty free.

This agreement now begged the question of arriving at a favourable MFN tariff rate via consultations with all trading partners in the banana sector. This mammoth of a task took EU years to achieve, at the end of the which the result was again rejected. This can be attributed to the fact that after numerous consultations, the EU, decided to cap the MFN Tariff at 230 Euros/ton. This saw widespread protest from the Latin American Countries and led to further reduction of the tariff to 187 Euros/ton and a 775,000-ton tariff quota on imports of bananas of ACP origin. The original complainants, however, invoked arbitration proceedings due to the unsatisfactorily high tariff rate.

Finally, in 2006, the TRQ was completely abolished leading to an MFN rate of 176 euros/ton with the ACP bananas entering duty free. Their allotted quota of 775,000 tones was also phased out by 2007. However, there was still much left to be desired.

4.1.3 The final outcome

Finally, the countries agreed to come to a side, mutually decided[4] upon agreement before the 2008 Doha Round. This led to the following provisions under what is now known as the 'Geneva Agreement on Trade in Bananas' which was signed in 2009:

- The EU starting from 2008 would decrease its MFN Tariff of 176/ton to 114/ton in 8 consecutive steps by 2017, with a possibility of it extending to 2019.
- In return, the MFN countries would drop the topic from the future Doha negotiations and withdraw any legal proceedings against the EU in the WTO, thus bringing the two-decade long banana dispute between the EU and US to an end.

- Since the phasing out of the TRQ established for the ACP countries and the culmination of the Lomé Convention, the EU decided to address the non-reciprocity issue related to its trade agreement by initiating an Economic Partnership Agreement. The provisions of the agreement were similar to that of an FTA (Free Trade Agreement) under the WTO, meaning now the ACP economies were also granting preferential rights to EU commodities. In addition to this, the EPA(Economic Partnership Agreement) is said to be a better version of an FTA since not only will it grant reciprocal market access but it upholds EU's responsibility of aiding the ACP countries in their economic and social growth.
- Moreover, ACP bananas would be allowed to enter the EU duty free and would get the benefit of what is known as Banana Accompanying Measures. Over and above the aid of 450 million euros to ACP countries, the EU would grant another 200 million directed towards the banana sector so as to help the ACP countries adjust to the newly competitive Latin American bananas.
- Having said that, the sector was made accessible to all LDC members of the WTO with the provision of entering the EU banana market duty free under its General System of Preferences and Everything but Arms Convention (an agreement which allows commodities from LDC countries into the EU duty free).

It was this agreement that finally resolved the EC-Bananas case, a dispute, which had lasted close to two decades before a solution could be arrived at. The resolution of the dispute also saw new opportunities for the EU to negotiate with its Latin American suppliers in the following ways:

- In 2010, the EU signed Free Trade Agreements with two of its biggest banana exporters namely Columbia and Peru, and Central America which would further decrease their tariff to 75/ton by 2020. As of 2013, these countries are paying a tariff rate of 96/ton in consideration with the FTA.
- Ecuador as of January 2017 has also signed an agreement with the EU leading to a tariff charge of 97/ton, which will be further reduced to 76/ton in 2020. To alleviate concerns by European Union producers, who fear that excess supply from Ecuador might harm demand for European Union bananas, the European Union has adopted a safeguard clause that limits Ecuador's preferential access to an annual threshold. In 2017, this threshold is set at 1,801,788 metric tons, significantly above Ecuador's 2015 exports to the European Union of 1.36 million tons (Table 2).

Table 2: Tariff Applied by the EU on Banana Imports (2018)

<table>
<tr><th colspan="3">ACP COUNTRIES</th><th colspan="3">LATIN AMERICAN COUNTRIES</th></tr>
<tr><th>Country</th><th>Tariff Rate</th><th>Agreement</th><th>Country</th><th>Tariff Rate</th><th>Agreement</th></tr>
<tr><td>Belize</td><td rowspan="11">0% Preference Tariff</td><td rowspan="11">Cotonou Agreement, 2002 - lead to the establishment of Economic Partnership Agreement with effect from 2008</td><td>Columbia</td><td>89 Euro/1000 Kg</td><td>Free Trade Agreement, 2012 between the EU and Andean Countries</td></tr>
<tr><td>Suriname</td><td>Costa Rica</td><td rowspan="3">89 Euro/1000 Kg</td><td rowspan="3">Free Trade Agreement, 2012 between the EU and Central America</td></tr>
<tr><td>Cameroon</td><td>Guatemala</td></tr>
<tr><td>Cote d’Ivoire</td><td>Honduras</td></tr>
<tr><td>St. Vincent and Grenadines</td><td>Ecuador</td><td>90 Euro/1000 Kg</td><td>Accession to the Free Trade Agreement, 2012 between the EU and Andean Countries in 2016</td></tr>
<tr><td>Jamaica</td><td rowspan="2">Other Third Counties</td><td rowspan="2">117 Euros/ 1000 Kg</td><td rowspan="2">MFN Tariff Rate</td></tr>
<tr><td>Grenada</td></tr>
<tr><td>St. Lucia</td></tr>
<tr><td>Ghana</td></tr>
<tr><td>Dominican Republic</td></tr>
<tr><td>Dominica</td></tr>
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Source[5]: http://madb.europa.eu/madb/indexPubli.htm

4.1.4 The hidden narrative

(i) USA’s stake in the proceedings

While observing the case proceedings, there is one question which remains unanswered from the documents published by the WTO panels. The extensive dispute which lasted for almost two decades was fought by two of the biggest trading blocs dominating world trade, namely EU and US, even though neither of them directly exports the commodity in question i.e. bananas. This dilemma especially rings true for the USA, who at the surface does not seem to have a major stake in the proceedings.

This answer reveals itself when we look a little further into the Latin American countries and their banana producers. Most of the multi-dollar producers and owners of banana plantations in Latin America are American by origin. Before 1993, over 80% of the banana exports originated from Latin American Countries into the EU controlled by major American Companies such as Chiquita, Del Monte and Dole. These giants with

their heavy resources and investments were able to produce cheap bananas in bulk, generally known as ‘dollar bananas’. These companies were seeking more market access, however the policy implemented by the EU in 1993 in favour of ACP countries had an opposite effect.

Therefore, it was at the urging of these American companies, with major stakes in Latin American plantations, that the USA first took part in the dispute in 1996. Even though the US did not itself engage in banana production or export, it brought an action against the EU due to the influence of these companies, mainly Chiquita which filed a complaint in Washington due to accumulating losses amounting to billions of dollars as a result of the new EU banana regime. Its representatives were active participants in the proceedings. Due to the delay in reaching a decision by the countries, Chiquita at one point was on the verge of filing for bankruptcy but has recovered considerably since the dispute has come to an end.

After the formation of the common market, different Latin American countries were assigned various shares in the 2.2-million-ton quota limit, which restricted the amount these companies could export from specific plantations, thereby increasing their costs of production exponentially. Moreover, Chiquita was a well-known donator of the Republican Party in power at the time the dispute arose. Therefore, pressure from it in the form of rising losses egged the United States on to take control of the situation.

(ii) Enhanced third party rights

Another interesting aspect of the case is the involvement of various ACP countries. Even though they were not directly party to the dispute, they played an incisive role in the proceedings. Keeping in mind the fact that these countries are extremely small and poor members, falling in the bracket of least developed nations, it was impossible for them to fight the dispute as a co-respondent due to the sheer amount of resources such major proceedings require.

The WTO at the behest of these countries deliberated upon the rights they might have in the dispute. Considering the exponential economic impact and vulnerability these nations faced as a direct consequence of the verdict, moreover their direct involvement in the agreement at issue, namely the Lomé Convention; the Panel decided to profess upon them something, that has since been deemed ‘enhanced third party rights’.

Due to this the EC Bananas case became a landmark decision, delineating the first time a WTO panel took into consideration the substantial economic and trade interest of third parties and granted them more than observation rights in the first Panel meeting. As per the provisions of the DSU, third parties are entitled to give their arguments in favour or against the parties to the dispute. However, that is where their

rights end. They can observe the first panel meeting and have their arguments acknowledged, but that does not guarantee a right to be heard in further proceedings or access to all essential documentation submitted by parties to the dispute.

The Panel decided to extend the purview of this provision and grant enhanced rights to the ACP countries due to their major stake in the outcome of the dispute. This has opened a gateway for LDCs to partake in proceedings they cannot afford to initiate on their own. Even though the granting of such enhanced rights is entirely subjective to the case in question, it gives hope to smaller countries that it is not entirely implausible.

Ever since the dispute, the WTO has received various communications from lesser developed and developing economies such as Jamaica, Costa Rica and India in favour of legislating enhanced third party rights in the DSU provisions so as to paint a clearer picture. The scope of these rights has also been the subject matter of the Doha Development Agenda; however, no consensus has been reached so far.

Tables 3 and 4 as shown above provide sufficient proof of substantial economic and trade interest on the part of ACP countries in the EC-Bananas dispute. Most of these smaller economies depend upon banana trade conducted with the world. Moreover, from Table 3 it can be seen that their trade with EU constitutes more than 95% of their overall banana trade. Therefore, the panel was justified in granting enhanced third-party rights to these nations.

Table 3: Banana Imports from ACP Countries in 1996

ACP Countries	World Imports (Quantity in tons)	EU Imports (Quantity in tons)	EU Imports as a % of World Imports
Belize	54301.355	54271.551	99.9 %
Cote d'Ivoire	197315.55	192265.183	97.4 %
Cameroon	202905.061	202867.487	99.9 %
Dominica	39627.399	39554.567	99.8 %
Dominica Republic	64830.795	57935.933	89.3 %
Ghana	3084.919	3082.482	99.9 %
Grenada	2007.312	2007.312	100 %
Jamaica	89834.302	89802.983	99.96 %
St. Lucia	107547.437	107545.687	99.99 %
Suriname	27473.41	27473.41	100 %
St. Vincent and Grenadines	44175.356	44175.356	100 %

Source[5]: http://wits.worldbank.org/

Table 4: World Imports from ACP Countries in 1996

ACP Countries	Total Imports (Trade Value in 1000 USD)	Banana Imports (Trade Value in 1000 USD)	Banana Imports as a % of Total Imports
Belize	238471.709	34426.306	14.4%
Cote d'Ivoire	3829597.186	129765.773	3.38 %
Cameroon	2024387.066	149003.529	7.3 %
Dominica	67350.699	27336.173	40.58 %
Dominica Republic	4177578.128	44335.268	1.06%
Ghana	1342976.09	2226.4	.16 %
Grenada	16716.489	1451.494	8.83 %
Jamaica	1817605.017	66984.029	3.68 %
St. Lucia	110272.309	79887.773	72.4 %
Suriname	481465.456	22225.902	4.61%
St. Vincent and Grenadines	76991.425	32500.445	42.2%

Source: http://wits.worldbank.org/

4.2 Economic impact

While observing the case, it is important to interpret and understand the economic impact, which led to its inception. Moreover, observing the economic impact on the banana sector during the dispute's tumultuous journey also helps shine a light on why certain policy and reform decisions were contested. We can study the trade patterns of banana imports by the EU from ACP and Latin American countries over the years to get a clearer picture.

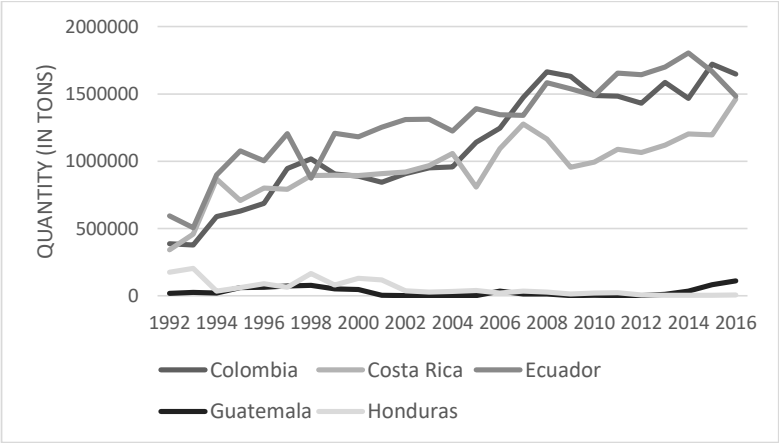
From Figure 1, the trade pattern of bananas imported by EU from ACP countries can be inferred. In the ACP countries group, the major banana exporting countries can be further divided into three categories.

- The traditional ACP banana suppliers namely Belize, Cote d'Ivoire, Cameroon, and Suriname.
- The smaller Caribbean and Windward Islands also given the same preferential treatment as traditional ACP banana suppliers namely Dominica, St. Lucia, Jamaica, Grenada and St. Vincent and the Grenadines.
- Lastly, the non-traditional ACP suppliers who were tariffed on similar lines to Latin American/MFN suppliers namely Dominican Republic and Ghana.

From Figure 1, it can be observed that while the ACP countries were under the preferential tariff regime the small Caribbean islands, especially Jamaica, Dominica and St. Lucia were able to export relatively considerable number of bananas. Whereas non-

traditional ACP LDCs such as Dominican Republic and Ghana were nowhere on the map. It is only after 2001 that we start seeing an exponential growth in their exports.

Figure 1: EU Imports of Bananas from ACP Countries



Source[5]: http://wits.worldbank.org/

On the contrary, the exports from the Caribbean and Windward Islands seem to be the most affected as a result of the preference erosion from 2001. So much so that their exports have almost become negligible. The reasoning behind this seems to be the fact that as compared to larger traditional ACP suppliers such as Cameroon, Cote d'Ivoire and Belize, these smaller islands lack the labour, land and capital to compete in the now heavily competitive banana market. This made their market share an easy target for the larger traditional ACP suppliers and the now duty-free exporters from non-traditional ACP countries. They seem to have suffered the most economic loss during the dispute.

Similarly, when we interpret the trade patterns of Latin American banana exports (Figure 2), we can see the rationale behind instating the dispute. Even though, in 1993 they still possessed 75% of the market share, looking at the graph the constraints imposed on their production become clear. As we move towards the end of the TRQ regime and the adoption of a mutually agreed upon MFN Tariff we see a steady increase in their banana exports to the EU. This makes their reasoning of loss of potential trade for filing the dispute clearer.

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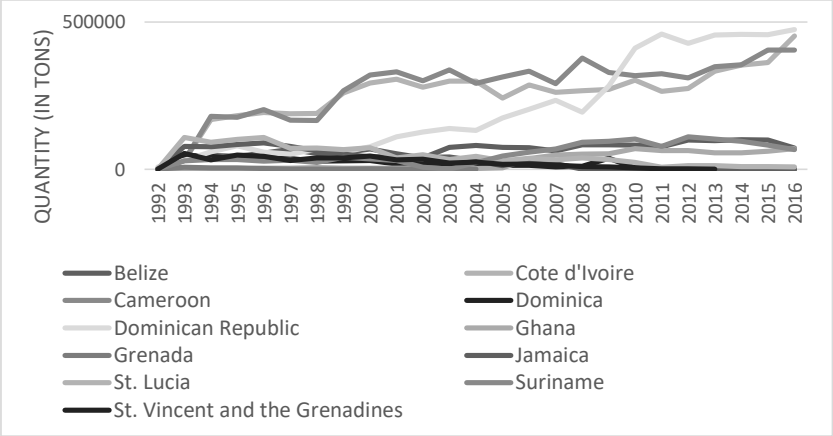
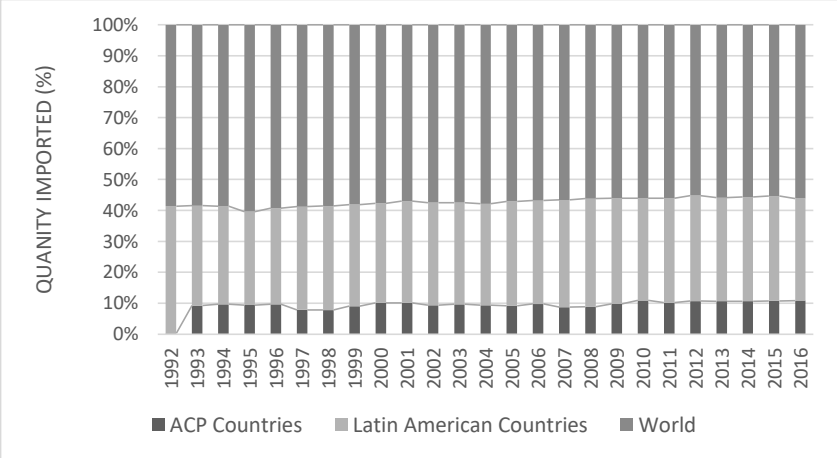
Figure 2: EU Imports of Bananas from Latin American Countries



Source[5]: http://wits.worldbank.org/

Figure 3: Total EU Imports of Bananas from ACP Countries, Latin American Countries and the World



Source[5]: http://wits.worldbank.org/

When we observe the exports of bananas by Latin American and ACP countries as a percentage of the total banana exports entering the EU, over the years, the trade trends seem almost stable (Figure 3). This is attributed to the fact that the reform in the sector did not have extreme adverse effects for all the ACP countries as a whole. The composition of ACP suppliers in itself is so complex that the reforms resulted in a change of market share among them, and not in totality. We see that among the ACP group while some remained stable throughout the dispute, other smaller nations were phased out with their share going to larger players and new entrants in the sector. Therefore, readers should not interpret the above graph to mean that there were no economic or social implications of the dispute.

6.0 Conclusion and Implications

From the analysis of the EC-Bananas case, some important points can be inferred pertaining to the WTO dispute settlement mechanism, the EU banana regime and the impact of the dispute on ACP and Latin American countries. Firstly, the verdict of the Panel in the aforementioned case can be rationalized and upheld. It is clear from the proceedings that the EU acted in a WTO inconsistent manner with its trade policies in the Bananas sector. Secondly, this can be justified by the trade data observed in the previous section. Since one of the arguments of the WTO panel was that preferential treatment should be extended to a group in its entirety, the results of this can be seen by observing the data trends of Ghana and Dominican Republic. Both the nations are considered LDCs, however they were being tariffed like other MFN countries in the EU Common Market for Bananas Regime. However, once the playing field was leveled for all LDCs as a direct consequence of the verdict we see a rise in their banana exports over the years. This is consistent with WTO's principle of non-discrimination since all its LDC members should have equal market access. Thirdly, the observation of the trade patterns of Latin American Suppliers also justifies the decision. The constraints enforced upon them in the TRQ regime led to widespread losses for the producers. We see a steady rise in their exports in the absence of the same. Fourthly, In addition to this, it can be agreed upon that the WTO acted in an efficient and fair manner while giving their judgement. This can be verified by the fact that the first judgment, which has been upheld since the beginning of the dispute, came in 1997 itself. Moreover, in every report since the beginning, the WTO has urged the EU to reform its trade policies in a manner, which would not eradicate the smaller banana suppliers from ACP countries. EUs decision to provide aid in the form of 190 million euros to ACP banana suppliers can be seen as a consequence of this request. Fifthly, the power WTO holds as a regulatory

body while dealing with dominant trading blocs like the EU is still in question. Even though the final verdict was given in 1998 itself, EU continued to evade its responsibilities till 2001. It took retaliatory action from the US and Ecuador to get the trading bloc to cooperate. Even though the action was authorized by the WTO, and is a built-in failsafe to get the nations to cooperate, it is not an incisive measure of WTOs hold over its members. In disputes where smaller, developing countries go head to head with dominant nations such as the EU and the USA, this approach would prove to be innocuous. Therefore, there is still something left to be desired with regards to WTOs ability to rectify the WTO inconsistent behavior of dominant members. A similar game of cat and mouse can be observed in another major dispute, dubbed the EC – Hormones dispute wherein it took retaliatory action by the US to get the EU to comply. Lastly, as for the opportunities present with developing and less developed nations to use the dispute redressal system, it can be concluded that third party rights are an efficient measure. They allow smaller nations who lack resources to observe and learn about panel proceedings, while putting forth their own arguments in case they face similar problems. Moreover, ever since the EC-Bananas Case, enhanced third party rights have become a possibility wherein third parties can be granted rights almost similar to co-respondents/co-complainants while bearing a fraction of the cost. The members in the Doha Development Agenda are still considering legislation of these, with many developing nations such as Jamaica, Costa Rica and India in favour of the same.

Endnotes

1. Panel Reports, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/R/ECU *(Ecuador)*/WT/DS27/R/GTM, WT/DS27/R/HND *(Guatemala and Honduras)*/ WT/DS27/R/MEX *(Mexico)*/WT/DS27/R/USA *(US)*, adopted 25 September 1997, as modified by Appellate Body Report WT/DS27/AB/R, DSR 1997:II, p. 695 to DSR 1997:III, p. 1085.
2. Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, p. 591.
3. Decision by the Arbitrator, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS27/ARB, 9 April 1999, DSR 1999:II, p. 725.
4. Appellate Body Reports, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Second Recourse to Article 21.5 of the DSU by Ecuador*, WT/DS27/AB/RW2/ECU, adopted 11 December 2008, and Corr.1 / *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States*, WT/DS27/AB/RW/USA and Corr.1, adopted 22 December 2008, DSR 2008:XVIII, p. 7165.

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5. Trade Data retrieved from the Online UN COMTRADE DATABASE available at http://wits.worldbank.org/WITS/WITS/AdvanceQuery/RawTradeData/QueryDefinition.aspx?Page=RawTradeData

References

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Albashar, F. A., & Maniruzzaman, A. F. M. (2010). Reforming the WTO dispute settlement system: A rethink of the third party right of access to panel and appeal processes from developing countries' perspectives. *Journal of World Investment and Trade*, 11, 311.

Anania, G. (2010). The implications for bananas of the recent trade agreements between the EU and Andean and Central American countries. *Policy Brief*, 5, September. Retrieved from https://www.ictsd.org/sites/default/files/research/2011/12/the-implications-for-bananas-of-the-recent-trade-agreements-between-the-eu-and-andean-and-central-american-countries.pdf

Cali, M., Abbott, R., & Page, S. (2010). The EU Banana regime: Evolution and implications of its recent changes. *Report prepared for Policy Department. Directorate-General for External Policies*, European Parliament.

Covelli, N. (1999). Public international law and third part participation in WTO panel proceedings. *Journal of World Trade*, 33(2), 125-39.

Food and Agriculture Organization of the United Nations. (2017). *Banana Market Review (2015-16)*. Rome. Retrieved from http://www.fao.org/3/a-i7410e.pdf

Grynberg, R. (1998). The WTO incompatibility of the Lomé convention trade provisions. *Asia Pacific School of Economics and Management Working Paper 98/3*, Australian National University. Retrieved from https://crawford.anu.edu.au/pdf/wp98/sp98-3.pdf

Guyomard, H., Le Mouël, C., Levert, F., & Lambana, J. (2005). The tariff-only import regime for bananas in the European Union: Is setting the tariff at right level an impossible mission? In *XIth EAAE Congress: The future of rural Europe in the global agri-food system* (p. 13). Copenhagen, Denmark, August 24-27, 2005.

Heboyan, V., Ames, G. C., & Epperson, J. E. (2002). US-EU banana war: Implications of retaliatory tariffs on Pecorino cheese. *Journal of Euromarketing*, *11*(3), 53-69.