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The Banana Dispute: Survey and Lessons*

by

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1 Introduction

The dispute around the European Common Market Organization for Bananas (CMOB) is one of the most prominent trade disputes. Already before the CMOB was introduced in 1993 and continuously since then, its design was discussed heavily in the public and by major trading partners under the heading of the World Trade Organization (WTO). In economic analyses of the CMOB, it has been shown that its tariff-rate quota (TRQ) policy introduced new trade barriers with negative allocative impacts as well as strong redistributive effects within the marketing chain for bananas and across countries [BORRELL (1994); GUYOMARD/LAROCHE/LE MOUËL (1999); HERRMANN (1999); KERSTEN (1995)].

Despite being strongly criticized, the EU Commission sticked to the general principle of a TRQ policy. The system was changed several times since 1993. However, no strict move towards a tariff-only or free-trade policy occurred, but only smaller changes which were necessary according to pressure from the WTO. The history of the CMOB and the discussion within the EU and under the WTO can be explained partly by severe rent-seeking activities of the affected groups and countries [PEDLER (1994); KARMATZ/GOLDSTEIN/LEVINSTEIN (2000)]. Additionally, it can be attributed to the fact that general rules on TRQ administration have been fixed and disputed for the first time in the banana case. It is this latter aspect which is the main motivation and focus of our paper.

TRQs have strongly gained in importance in agricultural trade due to the decisions on tariffication and minimum access in the Uruguay Round Agreement on Agriculture [BOUGHNER/DE GORTER (1999); SKULLY (1999)]. A TRQ is essentially a quantitative limitation up to which a relatively low in-quota tariff on imports is applied. On imports beyond that quota quantity, an often much higher out-of-quota tariff is imposed. If the size of the quota relative to excess demand for the commodity in question is small, while the out-of-quota tariff is high or even prohibitive, a TRQ is only formally different from a regular quota, but not so in its economic effects: there is effectively a quantitative limitation, since out-of-quota imports do not pay. This again raises the import price and creates rents just as a regular quota does. Then an administrative means must be found to determine who can import under the quota, which under these circumstances is quite profitable and therefore attractive. This often occurs through distribution of import licenses. A further issue is whether the quota should be subdivided into country-specific allocations, which means that quota shares are reserved for exports from a particular country. Exactly these questions have been a major issue of WTO Panel decisions on the CMOB.

Given this background, it is the objective of our paper to survey concisely the banana dispute and to draw economic lessons from this case study. The survey refers to the historical development of the CMOB itself, but also to the major contents of the WTO Panel Reports on Bananas, which set the stage for many other TRQs in agricultural trade as well. Lessons from the banana dispute will be drawn regarding the linkages between TRQ administration and (i) redistributive impacts arising in the marketing channel as well as (ii) the interests of developing countries. It will be shown that it is very often the details of administrative design of TRQs which have important allocative and distributive implications. We will derive that WTO rules do not provide a clear institutional framework that regulates such administrative design.

The paper is organized as follows.

In Section 2, major impacts of a TRQ scheme are investigated within a graphical presentation. The main features of the CMOB, as they developed over time, are elaborated and summarized. In Section 3, fill-rates of TRQs under the CMOB are presented and interpreted in terms of the efficiency of quota and/or license allocation. Then, we present some of the rulings of the two latest Panel reports which we find are important interpretations of WTO rules and derive their likely economic implications. The preferences for ACP countries, the allocation of country shares, the GATS (General Agreement on Trade in Services) relevance of licensing as well as the issue of export certificates are cases in point. We then draw lessons from the banana case in Section 5 and finalize with conclusions.

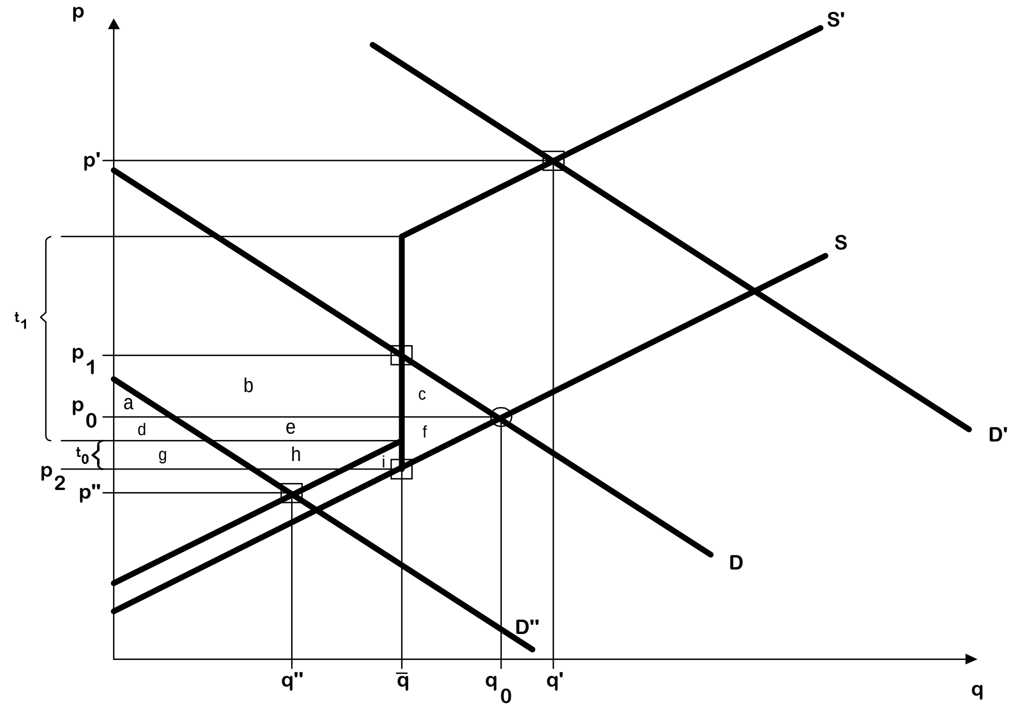
2 Microeconomics of TRQs and the Design of the CMOB over Time

The CMOB is based on a TRQ scheme. Hence, we first survey the basic microeconomics of a TRQ policy and discuss then the design of the CMOB over time.

2.1 Microeconomics of TRQs

Some major effects of a TRQ policy can be outlined with Figure 1. S is the export supply of a commodity to a specific market under free trade and D is the respective importing country's import demand function. This leads to a free-trade equilibrium where the quantity q_0 is imported at the price p_0. Suppose now that a TRQ is introduced with an in-quota tariff t_0 for all quantities up to $\bar{q}$ and an out-of-quota tariff $(t_0 + t_1)$ for all quantities above $\bar{q}$. This yields a kinked export supply function S'. The import price is raised from p_0 to p_1 and imports are lowered from q_0 to $\bar{q}$.

Figure 1: Basic Economics of Tariff-Rate Quotas with Quota Allocations to Importing Countries



There are different prices for various actors on the market under the TRQ policy which are crucial for the redistributive implications. The price importers receive in the importing country rise to p_1, whereas the price foreign exporters receive at the border of the importing country fall to p_2. Both prices were identical, at p_0, in the free-trade situation. The price importers receive, i.e. p_1, can be disaggregated into the exporters' price p_2, the in-quota tariff t_0 and a quota rent per unit. The quota rent occurs as the willingness to pay for $\overline{q}$ on the demand side is higher than marginal costs plus the in-quota tariff. If importers receive the licenses, as assumed in Figure 1, the quota rent is distributed to traders in the importing country.

Consequential welfare implications of the TRQ policy are as follows. Due to the price rise from p_0 to p_1, a loss of consumer surplus in the magnitude (a+b+c) arises in the importing country.

Budget revenues in the importing country rise by area (g+h+i). The quota rent amounts to the area (a+b+d+e) and is allocated to traders in the importing country. For the exporting country, the price falls from p_0 to p_2. This induces a loss in producer surplus by area (d+e+f+g+h+i). The exporting countries realize a net welfare loss from the introduction of the TRQ compared with free trade in this magnitude. For the importing country and the exporting countries together, a net welfare loss of the area (c+f) arises, too, as trade is depressed below the socially optimal level. The importing country might win or loose due to the introduction of the TRQ depending on whether (d+e+g+h+i-c) is positive or negative. In any case, income is redistributed away from exporting countries compared with free trade. If there is a net gain for the importing country, it occurs at the expense of the exporting countries, which are welfare losers in any case.

It can be shown that these welfare effects may change strongly when model assumptions are modified. Figure 1 illustrates how shifts of the demand curve matter. If import demand is characterized by D'' rather than D, the price rises by much less on the import market and no quota rents occur. The price difference between the importers' and the exporting countries' sale prices equals the in-quota tariff. If import demand is characterized by D', quota rents do exist and the price rise due to TRQ policy is even higher than under D'. The price difference between the importers' and the exporting countries' sale prices amounts to the out-of-quota tariff, but this tariff is only applied to all quantities above $\bar{q}$. It can be shown that the welfare effects compared with free trade differ strongly under these varying demand conditions [BOUGHNER/DE GORTER (1999); HERRMANN/KRAMB/MÖNNICH (2001)].

The welfare effects of TRQs depend on market structure and conduct, too. If TRQs are introduced on the market of a small country, no burden is placed on exporting countries in the sense that their price does not fall. If TRQs are introduced under imperfect rather than perfect competition, the welfare effects are again different [HERRMANN/SEXTON (2000)].

Figure 1 contains further simplifications. It compares only the situation with TRQs and free trade. The analysis becomes more complicated if TRQs are introduced on already regulated markets, as was typical in the EU banana market prior to 1993. The benchmark situation matters then and, in formerly regulated market segments, the new policy may lead to welfare gains compared with the old policy although welfare losses arise in comparison to free trade [GUYOMARD/LAROCHE/LE MOUËL (1999)]. Additionally, administration of TRQs matter, a point we will discuss in Section 5.

2.2 The Design of the CMOB over Time

The CMOB is different in several respects from other TRQs in agriculture: First, its origin is not the Uruguay Round, where TRQs were established as a means of tariffication of non-tariff trade barriers and of opening or securing market access to restricted markets. Its origin is the Single European Act of 1993 which aimed at creating a Single European Market for Bananas. Before, the EU member countries had pursued very heterogeneous policies with respect to banana imports, ranging from a free trade regime in Germany to highly protectionist markets in France or the United Kingdom.

Second, the CMOB's quite elaborate rules of the game changed very frequently. In the seven years of its existence, three different versions have already been in force, with a fourth under way. The changes were or are necessary because different aspects of the CMOB have been found to be inconsistent with WTO rules by the WTO Panel, and, in one case, with European law by the European Supreme Court.

Third, the CMOB intends to fulfil multiple aims: It not just provides a deficiency payment system for European producers up to a limit of 854,000 metric tons as a means to protect "national" banana production. It also grants preferential treatment to African, Caribbean and Pacific (ACP) banana producing countries according to the Lomé Convention. Furthermore, it aims to secure sufficient supply at constant prices to meet consumer demand.

We will mainly focus, in our analysis, on aspects of the CMOB that relate to external trade. Table 1 surveys the main features of the CMOB over time.

Table 1: The CMOB 1993-Present: Overview

Regime	**Original Common Market Regime 1993-1994**		**BFA-Reform 1995-1998**		**WTO-Ruling Reform 1999-Present**	
Country-Category	**ACP**	**MFN**	**ACP**	**MFN**	**ACP**	**MFN**
Quota Allocation	**Country-Specific** Allocation	**Global** Quota	**Country-Specific** Allocation	~ 50% **Country-Specific** Allocation for BFA Signatories; ~ 50% **Global** Quota	**Global** Quota	~ 90% **Country-Specific** Quota for Substantial Suppliers; ~ 10% **Global** Quota ("others")
Country-Specific Quota Transfer				Partly Transferable		No Transferability
Quantities	857,700 t	2,000,000 t[a] (1993) (2,200,000 t)[a] (1995)	857,700 t	2,553,000 t[a]	857,700 t	2,553,000 t[a]
Tariffs 1st tier	0 ECU/t[b]	100 ECU/t[b, c]	0 ECU/t	75 ECU/t[c]	0 ECU/t	75 ECU/t[c]
2nd tier	750 ECU/t[b]	850 ECU/t[b, c]	722 ECU/t	822 ECU/t[c]	537ECU/t	737 ECU/t[c, d]
License Regime		Operator Categories + Activity Functions		Operator Categories + Activity Functions		Distinction only: Traditional Operators and Newcomers

a = Including non-traditional; b = green ECU; c = The tariffs for traditional ACP imports apply also to non-traditional imports from ACP countries within the MFN quota; d = Will be reduced to 680 ECU/t as negotiated in the Uruguay Round.

Source: Own compilations based on different publications of the EUROPEAN COMMISSION; THAGESEN AND MATTHEWS (1997); WTO (1997); WTO (1999).

a. The Original CMOB

The EU meant to set up two separate import regimes: First, what we call the ACP quota. It was exclusively reserved for "traditional imports" from ACP countries which were duty free. The level of 857,000 t was the result of summing up all the export quantities that had been the maximum of each individual country before 1991. Accordingly, traditional imports are defined as imports from countries that had exported to the European Community before the CMOB[1] up to the respective country's best-ever export quantity. The intention of this quota was, according to EC Regulation 404/93, to "[maintain] traditional trade patterns as far as possible". To this end, country-specific shares in the size of those best-ever exports were reserved for each country.

In contrast, the so-called Most Favored Nation (MFN) Quota was, when it was first set up, a global quota. That is, up to two million tons of bananas from no matter where could be imported under this quota. Soon, this quantity was increased to 2.2 million tons and, in 1995, to 2.553 due to the EU enlargement from EU-12 to EU-15. Imports from ACP countries under this quota were labeled "non-traditional imports" and were more favored than all other imports. They were duty-free, while for all other imports an in-quota tariff of 100 ECU/t and later of 75 ECU/t was applied.

These preferences for ACP countries were justified by the Lomé Convention which requires that no ACP State should be worse-off with respect to market access to its traditional markets and "advantages" on these markets. So, this Art. 183 applies to the ACP quota. In contrast to this, Art. 168 provides that imports from ACP countries which are subject to the EU's common agricultural policy, i.e. also non-traditional banana imports, are to be granted more favorable treatment than imports from third countries [WTO (1997)].

With respect to the licensing procedures, imports from ACP countries were favored as well. While apparently it has never been an issue to obtain licenses under the ACP quota, the licensing regime that governs the distribution of licenses for imports under the MFN quota is highly complicated. First, available quantities were rationed according to operator categories. These depended on the source of previously marketed bananas. Therefore, traders who had marketed Latin American "dollar bananas" were categorized as category A operators, those who had marketed ACP or EU bananas were categorized as category B operators and

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[1] Belize, Cameroon, Cape Verde, Côte d'Ivoire, Dominica, Grenada, Jamaica, Madagascar, Somalia, St. Lucia, St. Vincent and the Grenadines and Suriname.

newcomers as category C operators. 66.5%, 30% and 3.5% of the licenses were reserved for category A, B and C operators respectively.

Then, quantities of category A and B operators were further subdivided according to activity functions, which depended on the position within the supply chain, namely primary importers, secondary importers and ripeners, each of which received 57%, 15% and 28% respectively. Consequently, an importer who had, on an annual average, imported 100,000 t of bananas and then sold them right after customs clearing (primary importer), could only claim a reference quantity of 57,000 t. In contrast, a ripener who had ripened, on average, 100,000 t of bananas was allotted a reference quantity of 28,000 t. Some operators may have performed more than one activity and could thus obtain a weighting coefficient of up to one hundred per cent.

Category A operators were essentially multinational firms with origin outside the EU, namely Chiquita Brands (US), Dole Foods (US), Noboa (Ecuador), Del Monte (Mexico), Uniban (Colombia) and Banacol (Colombia), whereas category B operators were European companies whose origin countries were those which formerly had protected markets.[2] While those multinational fruit companies were mostly primary importers, EU-based firms are dominating in the groups of secondary importers and ripeners.

By means of these rules and their many discretionary elements, the EU intended to preserve the historical structure of the supply chain [EUROPEAN COMMISSION (1993)] and limit the bargaining power of the large multinational fruit companies and cross-subsidize bananas from EU or ACP origin [WTO (1997)].

So the licensing procedure worked the following way: First, the sum of all claimed reference quantities was adjusted to the available quantities reserved for category A and B operators. This was, in particular, relevant for the introduction of the CMOB. In the preceding years, for instance, more dollar bananas had been imported than those 1,463,000 t available for category A reference quantities. The such adjusted quantities were then called "annual entitlements". This was the upper limit up to which an importer could apply for licenses.

Each quarter, the European Commission determined "indicative quantities" which were mainly based on historical trade volumes and seasonal trends. Based on these quantities, a fraction of the yearly tariff quota was opened, which again led to according "quarterly

[2] Operators classified in Category **B** for most of their past trade volume: e.g., Geest (UK), Fyffes (Ireland), Pomona (France), Compagnie Fruitière (France), CBN/Durand (France), Gipam (France), Coplaca (Spain), Bargoso SA (Spain). (Information submitted by the Complainants) [WTO (1997), p.380)].

entitlements" for the importers. Only newcomers were free to use their annual entitlements how and in which quarter they wanted.

The European Commission then collected all applications. If importers had overbid the indicative quantity, the Commission applied a reduction coefficient proportionally to all applications. The remaining quantities of each importer were transferred to the next quarter. So this single-step procedure takes account of all applications at the same time and leads to a pro-rata distribution.

Reference quantities were not tradable, in contrast to the licenses themselves[3]. With the purchase of additional licenses, an importer could not only increase his import volume of the current year, but also the reference quantities for the following years. An importer who wants to expand his market share and his share of the quota rent must therefore buy licenses from other license holders first.

Theoretically, the value of an import license consists of the value of the present quota rent and of discounted future quota rents[4] minus a risk discount. Therefore, last year's price of an import license of 200 ECU/t [HÖLTSCHI (1999)] cannot be equated with "the" quota rent.

b. The Banana Framework Agreement

The so far outlined original CMOB was heavily disputed from the very beginning. A GATT Panel concluded in January 1994 that it was inconsistent with various GATT rules [THAGESEN/MATTHEWS (1997)]. However, this Panel Report was never adopted, since the EU reached an agreement for 1995 with four of the five countries which had initiated this and an earlier GATT Panel. The agreement is known as the Framework Agreement on Bananas (BFA) and is laid down in Council Regulation 3290/94 of 22 December 1994.

The major change brought by the BFA was the introduction of country-specific allocations to the MFN quota. Almost half of the overall quota were reserved for imports from Costa Rica (23.4%), Colombia (21%), Nicaragua (3%) and Venezuela (2%). Unused portions of country shares could be transferred within this group of countries. In addition, these countries (except Venezuela) were granted the right to issue export certificates. On the import side, category B operators, i.e. traders who had previously marketed ACP or EU bananas and who had access to 30% of all licenses, were exempted from the requirement to present an

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3 Newcomers, however, could not sell licences to established operators, i.e. A or B operators.

4 As a consequence of the three-year reference period, purchased licenses led only to a 33% increase of the reference quantity of the buyer. Therefore, only a third of the value of future quota rents can be counted.

export certificate. Hence, the exporting countries could issue certificates for up to 70% of their country-specific quota share. One stated goal of this arrangement was to alter the distribution of quota rents partly towards the exporting countries.

The other half of the MFN quota remained – besides 90,000 t that were allocated for non-traditional imports from ACP countries – a global quota which was mainly used by Latin American exporters not participating in the Agreement, i.e. Ecuador, Panama, Honduras and Guatemala.

With the introduction of country-specific allocations within the MFN tariff quota share in addition to the remaining operator categories and activity functions, the quantities for which importers could apply were further fragmented. This was reflected in the fact that a two-step procedure replaced the former single-step procedure. After the first round which was the same as described above, the Commission published which reduction coefficients had been applied and which country-specific shares had not been exhausted yet. The importers could then decide whether they wanted to apply for these quantities in the second round or transfer the unused portion of their quarterly entitlement to the next quarter.

For strategic reasons it made sense to apply first for quantities from Latin American low-cost suppliers, because the second round made this riskless[5]. For category A and C operators quantities from the BFA countries were far less attractive, because for these, export certificates were needed. This costly administrative requirement therefore led to a reduction of quota rent that accrued to the importers.

After the introduction of the BFA, a dispute settlement procedure in the WTO was initiated by the USA, Ecuador, Guatemala, Honduras and Mexico in September 1995. The Dispute Settlement Panel concluded in March 1997 that the CMOB is not consistent with several GATT and GATS rules. It ruled not only on the distribution of quota shares to particular exporting countries, but also on the details of the complicated licensing regime, in particular on operator categories and activity functions as well as on GATS issues. Although the EU appealed against this conclusion, the decision was confirmed in September 1997. The EU had to develop a modified policy until the end of 1998.

c. The 1999 Reform

[5] If, for some reason, an importer wished to import less than his quarterly entitlement allowed, but did not want to sell his licences, it made sense to apply for tariff quota shares that "guaranteed" a reduction. Then part of the entitlement could be transfered to the next quarter.

The policy change that resulted from a difficult bargaining process between EU member countries and market participants from in- and outside the EU, all with conflicting views, was laid down in Council Regulations 1637/98 of 28 July 1998 and 2362/98 of 28 October 1998 and came into effect by January 1, 1999.

WTO rules require that if country-specific quota shares are allocated at all, each substantial supplier has to receive a share. Even though there is no official, quantifiable definition of "substantial supplier", it has become a convention to mean countries that have a market share of more than 10%.[6] Consequently, more than 90% of the MFN quota are now allocated to the substantial suppliers Colombia (23%), Costa Rica (26%), Ecuador (26%) and Panama (16%). The remaining 9% are a global quota for which non-substantial suppliers compete, irrespective of their origin being an ACP country or not. Unused portions of country allocations are no longer transferable. Furthermore, export certificates are not involved any more.

In contrast to this, the country-specific allocations within the ACP quota have been removed, so that this is a global quota now.

The licensing system has been drastically changed. Operator categories and activity functions have been abolished. Now there is only a distinction between traditional operators and newcomers, who have been allocated 92% and 8% of the MFN quota respectively. For traditional operators, there is a so-called single-pot license-allocation procedure, which means that no matter under which quota bananas have been previously imported, these quantities establish reference quantities for the allocation of licenses for imports under the MFN quota. In order to prove that one has "actually" imported bananas, proof of customs duties is generally deemed sufficient. Therefore, this comes much closer to a historical allocation rule than it used to be.

Despite of all these changes, a new banana Panel was set up in January 1999 in order to investigate whether Ecuador's complaints that the modified European policy was still inconsistent with WTO rules were justified or not. In March 1999, the U.S. decided on unilateral trade sanctions against the EU, a measure which itself was heavily disputed among WTO members. In April 1999, the Panel decision was again unfavorable for the EU. While tariff preferences of ACP countries according to the Lomé provisions were accepted, the

[6] „Paragraph 7 to the Note Ad Article XXVIII:1 states that "[t]he expression ' substantial interest' is not capable of a precise definition ... It is, however, intended to be construed to cover only those Members which have ... a significant share in the market ...". It was indicated in 1985, however, that a 10 per cent rule has been applied generally. Analytical Index: Guide to GATT Law and

allocation of country reserves and the licensing regime were still found to be inconsistent with WTO rules.

In November 1999, the EU proposed to return to a tariff-only policy in a two-step plan [EUROPEAN COMMISSION (1999)]: First, a TRQ system would remain in place but be replaced, no later than January 1, 2006, by a tariff-only system. The transitional TRQ regime would maintain the existing MFN quota of 2,553,000 tons with a tariff rate of 75 Euro per ton. ACP countries could import tariff-free within this quota. The European Commission favors a licensing system based on historical trade, if an agreement with the trading partners can be found. Otherwise, a first-come first-served rule is suggested.

In addition, a new quota of 850,000 tons would be introduced, similar in size to the old tariff-free quota for traditional imports from ACP countries. This quota would now be open for all exporters, but a tariff preference of 275 Euro/ton would be given to ACP bananas. The idea for allocating this quota is to apply a striking-price tender system.

On 23 June a "Partnership Agreement" between the ACP States, on the one hand, and the European Community and its Members States, on the other hand, was signed in Cotonou. The so-called 'Cotonou-Agreement' is to replace the fourth Lomé Convention which expired on 29 February [AGRA-EUROPE (2000)]. In 2008 a free trade area is to be introduced. However, for a transition period of ten years, preferential treatment in favor of the ACP-States will be maintained. Until 2008, the EU will continue its policies towards ACP countries essentially as under Lomé and therefore has required a new waiver from the provisions of Art. I:1 GATT.

3 Fill-rates of the TRQs and the Institutional Design of the CMOB

It is worthwhile to analyze the various fill-rates of the CMOB's different quotas and country reserves in detail, since these reflect the impact of policy changes as well as competitive conditions. Averages are generally weighted by trade shares.

Table 2: Fill-rates of the MFN and ACP Quotas, 1994-97 (%)

Source	1994	1995	1996	1997
Total MFN	**95.7**	**87.4**	**91.9**	**97.4**
Total ACP	**73.4**	**78.2**	**79.6**	**71.6**
within MFN:				
av. BFA		84.0	97.3	96.2
other third countries		91.5	95.6	102.87

Source: Own computations with data from EUROSTAT (1998) and EUROPEAN COMMISSION.

Practice, 6th rev. ed. 1995, p. 941, citing TAR/M/16, p. 10."[WTO (1997), p. 317]

Three main trends become apparent from the data: First, the fill-rates generally increased over time. Second, there is much variation within the fill-rates of particular countries or groups of countries. Third, there is generally a big difference between ACP countries and third countries. Even though the first enjoy a tariff preference, the ACP quota always had fill-rates of less than 80%, while the MFN quota fill-rate was considerably higher.

Table 3: Fill-rates[a] of the ACP Quota: Country-specific Traditional Imports from ACP Countries 1994-1997 (%)

Source	Country Reserve	1994	1995	1996	1997
Côte d´Ivoire	155,000 t	96.18	100.00	100.00	100.00
Cameroon	155,000 t	100.00	100.00	100.00	100.00
Suriname	38,000 t	86.11	73.64	68.33	76.99
Somalia	60,000 t	7.72	36.17	41.87	36.00
Jamaica	105,000 t	72.66	79.76	85.23	73.31
St. Lucia	127,000 t	72.08	79.91	83.96	55.66
St. Vincent & the Grenadines	82,000 t	39.09	58.14	53.87	36.56
Dominica	71,000 t	60.38	46.85	55.12	49.70
Belize	40,000 t	100.00	100.00	100.00	100.00
Cape Verde	4,800 t	0.00	0.00	0.00	0.00
Grenada	14,000 t	38.04	32.56	14.34	0.72
Madagascar	5,900 t	0.00	0.00	0.00	0.00
Total	857,700 t	73.40	78.16	79.58	71.57

a = Imports in excess of country-specific ACP quotas are non-traditional imports.
Source: Own computations with data from EUROSTAT (1998) and EUROPEAN COMMISSION.

Table 4: Fill-rates of Country Reserves for Non-traditional Imports from ACP Countries within the MFN quota (in % of 90,000 t)

Source	1995	1996	1997
Côte d'Ivoire	70.24	342.07	149.96
Cameroon	137.19	149.04	28.31
Belize	7.51	94.05	87.62
Dominican Rep.	136.45	111.24	88.88
"Other" ACP Countries	31.78	91.12	62.84
Total	78.31	98.52	83.10

Source: Own computations with data from EUROSTAT (1998), different publications of the EUROPEAN COMMISSION, THAGESEN/MATTHEWS (1997) and WTO (1999).

A closer look at the fill-rates of ACP countries shows that these are quite heterogenous in their ability to fill their country reserve. Cameroon, Belize, Côte d´Ivoire and the Dominican Republic, where substantial increases in production have been achieved in recent years [GUYOMARD/LAROCHE/LE MOUËL (1999)], are exceptions from the general rule that ACP fill-rates are low. Apparently, investments to improve international competitiveness have been successful. The Dominican Republic, which in 1997 had a market share of 80% of all fair trade banana imports to the EU [AGRA-EUROPE (1999)], has successfully occupied an important market niche. These countries were the main beneficiaries of the MFN quota share reserved for non-traditional imports from ACP countries.

Table 5 : Fill-rates of the MFN Quota (%)[a]

Source	1994 global quota	Allocations BFA	1995	1996	1997
Costa Rica		0.2445	88.35	97.50	100.47
Colombia		0.2194	80.59	113.42	100.78
Nicaragua		0.0313	.	15.90	56.50
Venezuela		0.0209	69,83	48.06	58.78
Subtotal BFA		**0.5161**	**84.11**	**93.79**	**96.53**
„Other“ Third Countries		**0.4839**	**91.51**	**95.54**	**102.87**
Total Third Countries		**1.0**	**87.70**	**91.61**	**97.92**
Total ACP[b]		**90,000 t**	**78.31**	**98.52**	**83.10**
Total	**95.66**	.	**87.39**	**91.85**	**97.40**

a = Due to the available data which do not allow to distinguish between different types of licenses, it was impossible to allocate over-quota imports due to hurricane licenses. These were therefore left out.
b = Dominican Republic and non-traditional imports from ACP countries.

Source: Own computations with data from EUROSTAT (1998) and different publications of the EUROPEAN COMMISSION.

Within the MFN quota, the regime change imposed by the introduction of the BFA led to a considerable decline of fill-rates. It apparently took market participants more than a year to adjust to the change in rules. Furthermore, fill-rates of the country-specific allocations of BFA signatories on the one hand and the global quota for other third countries on the other hand seem to diverge. The introduction of country-specific quota shares, combined with the already existing operator categories and activity functions led to a fragmentation of importable quantities, which might have made country-specific imports less attractive. Resulting quantities might have been too small to cover risks and fixed costs. It is a general disadvantage of country-specific allocations that varying harvests in different regions lead to varying fill-rates. But far more important in this case were the effects of the export certificates which led to a reduction of the quota rent for the importers. Therefore, banana imports under the global "other" quota share from other Latin American countries we re relatively more profitable [OSÓRIO-PETERS (1998); WTO (1999)]. This probably explains most of the difference between BFA signatories and non-signatories.

The fact that fill-rates generally increased over time can best be explained with adjustment processes which were forced by governmental intervention. The administrative design of the licensing regime and the arbitrary distribution of licenses to market participants who had never imported bananas before destroyed existing business relations which had to be rebuilt. Some importers could only reach their pre-CMOB quantities by buying licenses from those favored by the licensing regime, but at least this option was available since licenses are tradable.

Since the Lomé Convention had distributional aims rather than maximizing allocative efficiency, the ACP quota is far too large. But it can well be reckoned that its fill-rates would have been even lower if there had not been the incentive to purchase ACP bananas in order to increase one's reference quantities under the B category so that one could reap a higher quota rent later. So importers "overpaid" ACP bananas in order to get import licenses for Latin American bananas [TANGERMANN (1998)]. Therefore, the cross-subsidization effect intended by the EU seems to have worked. This is also a possible explanation for quota-overfills which can be seen in Table 4. The scope of some of these can surely not be explained with the overlapping validity of licenses[7] alone.

4 The WTO Panels' Views on TRQ Administration under the CMOB

As mentioned above, WTO Panel reports led to the Banana Framework Agreement and to the 1999 modifications of the CMOB. It is not clear yet how the latest report will be adapted, but it is for sure that new changes are under way. In this section, we summarize those arguments from this and the preceding report which we considered being of most general interest for the implementation of TRQs in general. In particular, we focus on questions concerning the preferences for ACP countries, the allocation of country-specific reserves, the licensing regime and export certificates.

4.1 Preferences for ACP countries

The EU had been accorded a waiver under the WTO so that it could follow its obligations under the Lomé Convention and grant preferential treatment to ACP countries. In the 1997 dispute, the fundamental question what exactly is waived by the Lomé waiver was clarified: only inconsistencies with the Most-Favoured-Nation rule of GATT Art. I:1 are

[7] Fill-rates of more than 100% can be explained with the validity of licenses, which begins seven days before the first quarter and last seven days following the last quarter [EUROPEAN COMMISSION (1995 b)].

waived. Art I:1 demands that any advantage with respect to customs duties or similar charges that is granted to any country has also to be granted to all other countries which are WTO members. Originally, the Panel had argued that inconsistencies with Art. XIII GATT, which requires "Non-discriminatory Administration of Quantitative Restrictions",[8] are also covered, but this interpretation was overruled by the Appellate Body. Therefore, tariff preferences for ACP countries are allowed, but only "to the extent necessary (...) to provide preferential treatment (...) as required by the Fourth Lomé Convention" as the waiver states.

In the 1999 dispute, Ecuador claims that several provisions of the EU's banana regime are not required by the Lomé Convention and consequently not covered by the Lomé waiver. There is a legal distinction between traditional and non-traditional imports from ACP countries. According to previous WTO interpretations, it is only to traditional banana imports that the provision of Art. 183 Lomé Convention applies. This in turn demands that no ACP State should be worse-off with respect to market access to its traditional markets and "advantages" on these markets. In contrast to this, Art. 168 provides that imports from ACP countries which are subject to the EU's common agricultural policy, i. e. also non-traditional banana imports, are to be granted more favorable treatment than imports from third countries.

In the view of Ecuador, the ACP quota of 857,000 t is too high. However, the Panel decides that it is reasonable that this quantity collectively reflects all pre-1991 best-ever exports by traditional ACP suppliers, even though the EU went back to 1965 to justify some of the numbers provided. It emphasizes, however, that it is not allowed to take account of investments that raise a country's productive capacity.

The panel further decides that quantities a particular ACP country exports in excess of its individual pre-1991 best-ever level are not covered by the Lomé waiver. Therefore, the preferential tariff on such excess volumes is inconsistent with Art. I:1. Since in its newest revisions, the EU abolished country-specific allocations within the ACP quota, such excess quantities of more competitive countries at the expense of less competitive ones are possible, and, as the analysis of fill-rates has shown, they are also very likely.

Ecuador and the EU also have differing views on the tariff preference for non-traditional imports from ACP countries which previously was limited to 90,000 t. Ecuador claims that now these imports have a competitive advantage over imports from Latin American suppliers, so that ACP countries could fill the whole "other" category of the MFN

[8] Even though TRQs are legally not quantitative restrictions – which have been prohibited, along with other non-tariff barriers in the Uruguay Round – Art. XIII is applied to them. We have anyhow seen earlier that economically, their effect often is the same as of regular quotas.

quota. The EU's view (as well as such of ACP countries) is that the removal of country-specific allocations in fact removes protection, so that the preferential tariff per se is insufficient to prevent the displacement of non-traditional imports from ACP countries. The Panel agrees with this view of the actual competitive conditions. Given that the EU has some discretion on how to provide the preferential treatment required by the Lomé Convention, it can well be considered necessary by the EU to grant a zero tariff preference to all non-traditional imports from ACP countries.

The Panel should have restricted that statement to non-traditional imports from non-traditional suppliers only. Since quantities of traditional suppliers in excess of their historical best-ever quantities, are, by definition, non-traditional imports as well, the Panel Report is in itself inconsistent in this point.

The Panel also applies this same argument, namely that the EU has some discretion on how to provide preferential treatment, with respect to the tariff preference of 200 Euro/t for out-of quota, non-traditional imports from ACP countries.

So it can be summarized, to this point, that in most respects, the preferences granted to ACP countries by the means of tariffs are approved by the WTO Panel. However, preferences can, in principle, also be granted through the allocation of country reserves, which, in turn, is regulated by Art. XIII GATT. But, as was mentioned above, the Lomé waiver does not legitimate discrimination in this area.

Along these lines, the Panel had found, in 1997, that separate regimes are inconsistent with Art. XIII GATT. In the last dispute, Ecuador claims that the MFN tariff quota of 2,553,000 t on the one hand and the 857,700 t reserved for duty-free traditional imports from ACP countries on the other hand constitute separate regimes. The EU's view is that the 857,700 t are not a tariff quota but an upper limit for the zero tariff preference granted to traditional imports from ACP countries. This view is rejected by the Panel, since a tariff quota is, by definition, a "quantitative limit on the availability of a specific tariff rate", which in this case is zero.

Furthermore, the Panel finds that the general requirement of non-discrimination of Art. XIII:1 has been violated on the ground that suppliers under the ACP quota and suppliers under the MFN quota are not equally restricted. Whereas traditional ACP suppliers have the possibility to export bananas under the "other" category of the MFN tariff quota share once their "own" quota share is exhausted – these exports are then labeled "non-traditional" - , this option does not exist the other way round.

4.2 Allocation of Country Shares

In this long-lasting dispute, there have been more conflicts with Art. XII GATT. SKULLY [1999] calls this article a "sickly child", since it demands non -discrimination, but does not provide just one distributive principle on how to reconcile this with the rationing problem inherent in a TRQ whenever there is effectively a quantitative limitation of imports. Instead, Art. XIII allows conflicting principles to coexist. The banana dispute was also used to generally clarify on how this article is to be applied.

Art. XIII:2 requires that the distribution of trade within the quota be as close as possible to the distribution in a hypothetical free trade situation. To this end, an importing country can either set up a global quota or allocate country-specific shares. In this latter case, XIII:2(d) provides that the importing country should seek an agreement with all substantial suppliers to fix their country-specific shares. If this is not practicable, these can be imposed unilaterally by the importing country, based upon the respective proportions supplied during a previous representative period. With respect to the remaining amount, i.e. imports by non-substantial suppliers, the Panel points out that there is either the option to allocate a global "other" share or country -specific shares for each and every single non-substantial supplier.

In the 1997 dispute, the EU had been criticized for allocating country shares to some, but not all non-substantial suppliers: ACP countries, which are all non-substantial suppliers and the BFA signatories Nicaragua and Venezuela had received a fixed share, while Guatemala, for instance, had not.

In consequence, the EU has allocated, in its newest CMOB modifications, country-specific shares only to the substantial suppliers Colombia, Costa Rica, Ecuador and Panama and has picked the years from 1994-1996 as representative period. In this time, the quota share for traditional imports from ACP countries was filled, on average, only up to about 80%, whereas the MFN quota share always had a fill rate of more than 95%. This allocation of quota shares is therefore found to be inconsistent with the proportionality requirement of Art. XIII:2.

Ecuador, which has a country-specific share of 668,100 t, challenges the allocation based on a representative period altogether, given the history of trade distortions on the European Union's banana market. The Panel agrees in that the period from 1994 to 1996 cannot be representative. It would theoretically still be possible, in such a case, to adjust country shares for special factors, e.g. for changes in relative productive efficiency. Given that the EU did not do so and that Ecuador's share of the European as well as the world market has been growing significantly, the Panel concludes that Ecuador's share is not the share that might be expected in the absence of restrictions. The Panel also states that in cases where there is no representative period, it is still possible either to have a global tariff quota or to find country-specific allocations by agreement.

4.3 The Licensing Regime – GATS Issues

As section II has painfully shown, the first two versions of the CMOB had a highly complicated licensing regime. This, in turn, determines to a large part who will be able to capture the rent that is brought about by a binding quota which the MFN quota, in fact, is. So it is not surprising that the dispute in this front was carried out vehemently. But, it was probably a surprise to many observers that the General Agreement on Services was brought forward as a means to force changes of the system and, was in fact, applied to the CMOB.

Claims under the GATS were for the very first time brought up during the dispute that led to the 1997 Panel Report. There was a big controversy concerning the question whether the GATS was relevant at all to this case. The EU essentially maintained that its licensing regime governed trade in goods and not trade in services[9] and that the provisions of GATT and GATS were mutually exclusive. The complainants[10] argued that the banana regime's licensing procedures were aimed at modifying competitive conditions in favor of EU and ACP wholesale firms.

According to the Panel, GATT and GATS were never meant to be mutually exclusive.[11] This is also reflected by the wording of Art. I:1 GATS stating that the latter "applies to measures [...] affecting trade in services". This was interpreted to mean that it does not matter whether or not regulations directly govern trade in services. The actual effect on competitive conditions in the service sector is the crucial point.

[9] Article I:2 of GATS defines its coverage as including four modes of supply of services: cross-border supply, consumption abroad, commercial presence and presence of natural persons. [...]
Article I:2 of GATS provides:
"For the purposes of this Agreement, trade in services is defined as the supply of a service:
(a) from the territory of one Member into the territory of any other Member;
(b) in the territory of one Member to the service consumer of any other Member;
(c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
(d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member" [WTO (1997)].

[10] Ecuador, Guatemala, Honduras, Mexico and the United States.
[11] In fact, the licensing regime was also found to be inconsistent with several GATT rules.

The Panel found that the licensing regime was inconsistent with the MFN as well as the national treatment clause of GATS, since it did change competitive conditions in favor of firms of EU or ACP origin.

Even though the EU had claimed that the distribution of quota rent was to its discretion and not within the scope of WTO rules, the Panel blamed precisely the fact that firms of complainants' origin, which were mostly category A operators, had to purchase licenses from EU/ACP firms, which were mostly category B operators, in order to maintain their previous market share within the sector of Latin American Bananas. The price of these licenses was potentially up to the whole amount of quota rent. This distribution effect was intended by the European Commission which had reported that the licensing regime was designed to "cross-subsidize" bananas of EU and ACP origin.

To sum up, this previous Panel decision makes clear that quota rent cannot be used at will to manipulate competitive conditions in a discriminating way in service sectors which are tied to the supply of the import-restricted good[12].

The 1999 Panel report analyzes the question whether the EU licensing system within its banana regime is still inconsistent with its obligations under GATS. Ecuador claims that the revised licensing system perpetuates the discrimination of the old system.

Under the new licensing regime, operator categories and activity functions have been abolished after the previous Panel and the Appellate Body had found the allocation of import licenses to category B operators and ripeners discriminating against third country wholesale service providers.

Now import licenses are allocated to traditional operators[13] on the basis of reference quantities, which in turn consist of "actually" imported quantities in 1994-96. To prove that one has "actually" imported bananas, one has to prove payment of customs duties. The crucial question is therefore whether allocation of licenses based on this criterion prolongs the de-facto discrimination found before.

According to the European Union's perspective, the new system is not discriminating since the old one has been abolished. The new criterion not only eliminates carry-on effects, but also ensures that "true and real" importers obtain license entitlements. Referring to the

[12] This is generally true with respect to the MFN clause. In constrast to this, discrimination in favor of national service suppliers is only illegal if the WTO Member has made commitments in that specific (sub)sector in its GATS schedule.

[13] In order to be eligible as a traditional operator, firms must have been established in the EU during the respective reference period and must have imported a minimum quantity of bananas.

requirement of the Import Licensing Agreement that consideration to "full utilization of licenses" is given, the EU claims that the only objective and indisputable way of proving effective importation is the payment of duties. Furthermore, Ecuadorian operators are primarily exporters and not importers, and since these two businesses are different, it can well be that operators export more than they import to the European Union.

Ecuador in contrast defines actual importers as those who physically import goods. Many European operators are not equipped, for example with refrigerated cargo ships, to "actually" import bananas. But since they of ten hold the required licenses, Ecuadorian suppliers are forced into unfavorable contractual arrangements[14] with the initial license holders, the result of which is that these can prove payment of duties.

The Panel does not get involved into the discussion about semantics by simply stating that the distinction between "exporter" versus "importer" is not relevant. Relevant is that the Ecuadorian company Noboa is a service supplier which provides wholesale services. Therefore the relevant question is whether it is adversely affected in its conditions of competition.

In reply to the EU's reference to the Import Licensing Agreement the Panel informs that the past performance allocation method is an option and not an obligation. If discrimination has been found in the past, the choice of method can be limited by GATS. Furthermore, proof of duty payments does not necessarily prove license usage.

Since the EU denies that those contractual arrangements described by Ecuador even existed, not alone in a relevant number, and further points out that the number of licenses allocated to non-EU/ACP operators has risen in the recent past, it remains quite obscure what really happened during the last years' importation of bananas.

The Panel cannot solve this empirical question. It only states that there is some evidence that Noboa was forced into unfavorable contractual arrangements, even though to which extent is not clear. At the same time there is evidence that license allocation to non-EU/ACP operators has in fact increased. This could be the result of the "cross-subsidization effect" in favor of EU/ACP bananas intended by the EU's institutional design. The point is, however, that the precise extent of the increase is irrelevant, since it only shows that the carry-

[14] According to Ecuador, four types of arrangements were used in practice: (1) License transfers, (2) Licence "leases", (3) Buy-back arrangements, (4) T1 sales, i.e. sales in the EC before customs clearance. The latter two were the ones most often used and at the same time those that allow the initial license holders prove of customs duties.

on effect is less than 100%. The increase by itself is no evidence that conditions of competition are not less favorable for third-country suppliers.

Overall, the Panel reaches its final conclusion by arguing the following way: Given that the previous regime was discriminating and that today's license holders are those favored by that regime, Noboa and other third-country suppliers have a competitive disadvantage. Consequently there are carry-on effects of GATS-inconsistent aspects of the previous regime. The European Commission itself had acknowledged in a Working Document that an allocation on the basis of the "license usage method" would "fossilize license allocation". As a result there is a presumption that the revised license allocation system is inconsistent with Art. II GATS (MFN clause) and Art. XVII GATS (national treatment clause). Given that Ecuador could show that its service suppliers had in cases to enter contracts that did not allow them proof of customs duties, it was up to the EU to bring sufficient evidence to rebut above presumption, which it did not. Therefore, the Panel concludes that there is de facto discrimination in violation of Art. II and Art. XVII of GATS.

4.4 Export Certificates

As mentioned in section II, the BFA required category A and C, but not B importers to match their import license with an export certificate if they wanted to import bananas from Costa Rica, Colombia or Nicaragua. This regulation was intended to transfer part of the quota rent to the suppliers of bananas from these countries. The complaining countries, all not BFA signatories, claimed that this provided an advantage to bananas from those countries which was not granted to all exporting countries, so that this rule was inconsistent with the MFN clause of Art. 1 GATT. The EU pointed out that the bananas from the complaining countries enjoyed an advantage as well, since licenses for these sources are usually oversubscribed already in the first round of the license allotment procedure, while those for the BFA countries are exhausted only in the second round. This, in turn, can be seen as an indication that the intended quota transfer seems to have worked.

The Panel recalled a finding from a different dispute that even if this was in fact an advantage – which it was not, in its view – "Art. I:1 does not permit balancing more favourable treatment under some procedure against a less favourable treatment under others" [WTO (1997)]. It furthermore finds that the requirement to match import licenses with export certificates is in fact an advantage, because it entails the possibility that part of the quota rent is passed on to suppliers. Since this advantage is linked to the product, it is inconsistent with

Art. I:1 GATT. The Panel also points out that the advantage is only effective if a country (share) has been allocated.

Export certificates of this kind were also found to be inconsistent with GATS, since category B operators were exempted from the requirement to present one at importation. The line of reasoning is similar to the one presented above: The fact that category B operators, i.e. mainly European and ACP firms, do not have to share the quota rent with their suppliers, whereas all other importers, i.e. firms from the complainant countries, have to, modifies competitive conditions in favor of the first.

5 Implications of the WTO Rulings

If we try to extract the most essential messages of the many rulings on detailed provisions of the CMOB, these are, in our view, the following:

- Non-discrimination is the underlying recurring theme which serves as a benchmark for evaluating particular regulations, no matter to what aspect of TRQ administration they refer.
- For instance, when allocating country shares, no exporting country shall be restricted more than others.
- Licensing rules that alter competitive conditions such that importers from some countries face less favorable competitive conditions than importers from other countries, are not legitimate.
- Waivers granted to take account of preferential trade agreements do not provide one-for-all excuses for all sorts of discrimination, but are limited in scope to particular trade policy instruments.

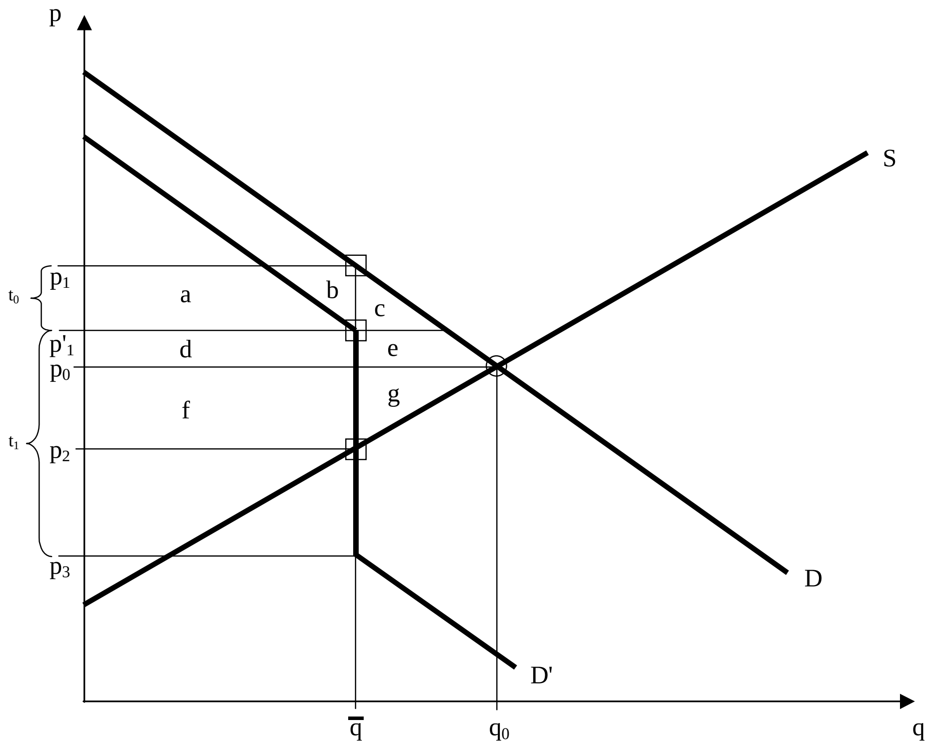
This has many implications within the world banana economy, but also for many other markets with TRQs. Only some implications shall be stressed here which arise (i) for developing countries and (ii) for rent-seeking activities and the existence and distribution of quota rents.

5.1 Distributional Issues

It is impossible to derive a clear-cut conclusion for the distributional implications of these WTO rulings on all developing countries. On the world banana market, various groups of developing countries are affected very differently by the CMOB. Most likely, ACP exporting countries are winners and Latin American exporters are losers compared with free trade[15]. The WTO rulings do not really improve the situation of the losers.

At the heart of distributional effects of TRQs lies the question who receives the rents. As we have seen in Figure 1, import licenses give the "rights to rents" exclusively to importers. However, a TRQ could well be designed to allocate these rights to exporters by issuing export licenses instead. This is illustrated in Figure 2.

Figure 2: Basic Economics of Tariff-Rate Quotas with Quota Allocations to Exporting Countries



Starting again, as in Figure 1, from the free-trade equilibrium with p_0 and q_0, the TRQ raises sale prices at the importers' level to p_1 and lowers imports to $\bar{q}$. The out-of-quota tariff $(t_0 + t_1)$ is again prohibitive. With export licenses, however, exporters may raise the price at the border of the importing country above marginal costs. Marginal willingness to pay in the importing countries is p_1 for $\bar{q}$. After deducting the in-quota tariff t_0, marginal willingness to pay in the importing country is reduced to $p_1^{'}$. The difference between $p_1^{'}$ and p_2 is the quota rent and is now captured by the exporters.

15 GUYOMARD/LAROCHE/LE MOUËL (1999) derive welfare conclusions on the impacts of the CMOB compared with the pre-CMOB national regulations.

Consequential welfare implications are as follows. Due to the price rise from p_0 to p_1, a loss of consumer surplus in the magnitude (a+b+c+d+e) arises in the importing country. Budget revenues in the importing country rise by area (a+b). Thus, a net welfare loss occurs for the importing country by (d+c+e). In the exporting country, the price falls by (p_0-p_2) for producers[16], and a loss in producer surplus occurs by area (f+g). Exporters, however, like an export marketing board, will get the quota rent (d+f). Thus, the net welfare effect for the exporting country is (d-g). It is theoretically indeterminate but most likely positive in many real-world cases. From a worldwide point of view, we get again an aggregate welfare loss which equals area (c+e+g) due to the introduction of the TRQ.

Under the BFA, the Latin American BFA signatories could issue export certificates. Even though the reality of the BFA differs from this pure "export quota" [17] scenario since the export certificates had to be matched with import licenses, our illustration nevertheless shows that exporters were better off under the BFA. Exporters who had certificates were able to get a share of the quota rent. Their bargaining power was improved so that their sales price moved up from p_2 towards p_1. So, the distribution of rents lies somewhere between the situations described in Figures 1 and 2.

The WTO panel criticized this kind of discriminatory distribution of export certificates. It was found discriminatory on two grounds: first, because only some but not all exporting countries were favored and second, because category B importers were exempted from the requirement to match their licenses with export certificates. So these importers were favored more than others. Essentially, the WTO panel requires that no one is discriminated either on the buyers or sellers side. Accordingly, a pure import license system is WTO-conform as long as the distribution is non-discriminating, even though sellers are altogether disadvantaged relative to the buyers. Given that the sellers are producers or traders from developing countries and that the WTO proclaims to give special consideration to the interests of developing countries, this legitimate disparity in bargaining power is not at all development-friendly. Instead of just criticizing the export certificates the WTO Panel could have encouraged to apply it to all exporters. This would not only have enabled all exporters to capture part of the quota rent so that all can profit from the price increase described above. Furthermore, this price increase will probably be larger, because there is no longer a "competitive fringe" of exporting countries for which no export certificates are required.

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[16] Strictly speaking, this conclusion does only hold if the marginal cost curve of producers lies parallel below the S curve. The S curve characterizes marginal costs at the border of the importing country.

[17] If under an import quota rights to rents are exclusively allocated to exporters, the economic implications are identical to an export quota system.

Altogether this would compensate the developing countries for the welfare loss they suffer compared to a free-trade situation (see Figure 1, the same argument could also be applied to a tariff-only situation). It is not clear, though, whether they are better or still worse off, since this depends on the relative size of area d versus area g.

With respect to the preferences for ACP countries built-in the CMOB which will supposedly be preserved according to the Cotonou-Agreement, the European Commission will argue that these preferences are part of European development policy. However, this kind of trade-tied aid similar the Sugar or Beef protocol of the Lomé policies is inferior to a targeted financial aid. Typically, instruments of trade-tied aid are associated with untargeted redistributive consequences. These are well-known arguments in development economics.

5.2 Efficiency Issues

The introduction of TRQs causes further welfare losses than those described in our figures. In addition to welfare losses described by BORRELL (1994), the introduction of the CMOB induced adjustment and transaction costs as well as incentives for rent-seeking. The many changes of the CMOB caused by the WTO disputes increased all these kinds of costs.

Adjustment costs have been high as a consequence of frequent policy changes within the first six years of the CMOB. Quota allocation, license allocation and administrative procedures have been changed several times. Adjustment costs are visible in fluctuating fill-rates of the quotas. It was revealed earlier that the fill-rates decreased in general with the policy change from the original rules to the Framework Agreement.

Substantial **transaction costs** added to the inefficiencies. Under the original rules of the CMOB, the shares of activity groups in the license allocation did not coincide with trade patterns in a hypothetical free-trade situation. This caused an intensive trade with licenses, which, besides redistributing income, costs significant resources and so diminishes the overall size of the quota rent captured by importers. In general, firms had to invest time and money in understanding and applying a difficult licensing scheme, and so spent resources in a way that was surely not maximizing overall welfare.

Furthermore, **rent-seeking** has risen enormously due to the introduction of TRQs in general and, partly, due to the specific rules of TRQ administration. All market participants in the EU banana economy engaged in the political market and in rent-seeking. PEDLER (1994) documented in detail the lobbying process prior to the introduction of the original CMOB and elaborated how the fruit companies influenced the outcome, and as was mentioned above, lobbying went on after that as well. And the bargaining on the political market is going on, so that up to this date, an agreement on the CMOBs future and hopefully WTO-conform form has not been found.

It can be generally said that the WTO rules governing TRQs are not straightforward and so do not provide clear "rules of the game" which reduce risk by stabilizing expectations. Let alone the fact that it took three Panel reports with hundreds of pages cannot just interpreted as a fact that the EU was reluctant to overhaul its complicated regime, but also that there was no straightforward way how to do this, given that TRQs by themselves as well as country reserves and import licenses are legal and the EU obviously wanted to make use of these instruments. So, it is an expensive process to clarify the rules of the game.

In this context, the GATS relevance of TRQs seems very problematic. The finding of GATS relevance is surely one of the most surprising result of this dispute. For sure, the idea that the implications of TRQs on the wholesale sector could be WTO-relevant as well did not occur to anyone. This opens the door to numerous new and expensive trade disputes.

6 Summary and Conclusions

The disadvantages of the introduction of the CMOB from an allocative point of view have been widely elaborated in the economic literature. Despite this, the EU has tried to safeguard the preferences for EU producers and ACP banana exporters on the market. The EU has reacted by adjusting the CMOB several times according to external pressure without moving consistently towards a liberalized banana regime.

The objective of our paper was to survey concisely the complex banana dispute and to draw economic lessons from this case study. The survey referred to the historical development of the CMOB itself, but also to the main contents of the WTO Panel Reports on Bananas, which are cornerstones for the assessment of many other agricultural TRQs under the WTO. One important implication of the analysis of the CMOBs institutional details is that this type of trade-tied aid induces substantial additional adjustment and transaction costs as well as excessive rent-seeking activities. These are additional arguments for a liberalized banana regime beyond the net welfare losses that arise from price distortions due to the CMOB. From the developing countries' point of view, FINGER and SCHULER [1999] pointed out that the scope and complexity of trade regulations which have been agreed upon during the Uruguay Round put a substantial strain on financial budgets and institutions of developing countries which can amount to an entire year's development budget in the least developed countries. The complexity and instability of the institutional details of the CMOB place a heavy burden on banana-exporting countries, too.

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