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Banana Splits and Slipping over Banana Skins:
The European and Trans-Atlantic Politics of Bananas

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1. Introduction

In summer 2000, good seven years after they had first broken out, the conflicts between the EU (European Union) and various of its trading partners, including especially the US, over the EU's banana trade regulation had still not been resolved.¹ True, the threat that the conflicts might destroy the 'broader relationship between the US and the EU' and discredit the dispute settlement process of the WTO (World Trade Organization) (de Jonquières 1999) had not yet materialized. Nonetheless, despite a renewed WTO ruling in April 1999 that the regulation was illegal under international trade law, the conflict's successful resolution could still not be taken for granted. Although the EU had declared its willingness – in principle – to revise the regulation to make it conform with international trade law, it was unclear whether a qualified majority for such a revision could be found in the Council and whether a revised regulation, if adopted, would not be challenged again in the WTO. In short, there was still some doubt whether the 'banana splits' within the EU and between the EU and the US could be very swiftly or easily repaired. Diplomats involved in the dispute reckoned in late 1999 that it could 'go on for months yet' and in March 2000 that it would not be resolved before the second half of the year (*Financial Times*, 1999a; *European Voice* 2000a).

Few, if any, product-specific conflicts had proven so immune to mediation either within the EU or in trans-Atlantic relations as those generated by bananas. No other issue had been contested so frequently and over such a long time in the WTO disputes process. In the recent history of the EU, no other issue had tested so severely the robustness of the doctrine of the primacy of European law over that of the member states. Indeed, as of July 2000, the German Constitutional Court was still to pronounce its verdict in a case in which the plaintiff argued that the EU regulation was incompatible with the German Basic Law and should therefore be declared unconstitutional in Germany. Legal scholars had long since begun to speculate whether the whole EU might 'slip over bananas' (Everling 1996; Kumm 1998). The conflict over the original regulation in 1992 had already been unusually long in a decision-making process in any case not renowned for its speed – bananas had actually been the last agricultural product for which a single European market had been created within the framework of the '1992' programme.

¹ This paper is based partly on more than 20 interviews conducted with officials and representatives of the European Commission, the Council of the European Union, ministries of the German, French, British, Belgian and Dutch governments, the US federal government, the World Trade Organization, banana traders' associations and European and American fruit trading companies. For reasons of confidentiality, these persons are not referred to by name in the text. Only their general institutional affiliations are mentioned. The authors would like to thank these persons for their helpfulness and cooperation in the conduct of their research.

Why have the EU-internal and, even more so, the external conflicts over this ostensibly harmless little yellow fruit proved to be so intractable? And why in the first place did the EU come to adopt such a controversial regulation? To answer these two – interrelated – questions is the objective of this article. Neither the available theoretical literature on public policy nor the available empirical literature on EU trade policy or trans-Atlantic trade relations provides many clues to explain the ‘mystery’ of the ‘banana splits’. These have not been provoked by the factors that have occasionally been identified as lying at the root of numerous recent trans-Atlantic trade conflicts. Some of the literature suggests indeed that a quite different regulation – which should not have produced such intense conflicts – should have emerged from the EU decision-making process. Notably, Hanson (1998) has shown that the liberalization of the EU’s internal market was not accompanied by a general increase in the level of external protection because, under EU decision-making rules, protectionist measures could be blocked by a minority of free-trade-oriented member states.

The outcome in the case of bananas was the reverse of that in most other sectors. The new EU regulation extended to more or less free banana markets the level of protection that had hitherto existed in the most protected and regulated markets. Our explanation of the adoption of this regulation prioritizes the role in the EU Council of ‘package dealing’, which led on the bananas issue to an extreme, virtually ‘winner-take-all’ outcome atypical of the EU’s consensus-oriented decision-making process, because some of the free-trade-oriented member states attached less importance to this issue than to others up for resolution at the same time. The ‘winner-take-all’ character of the (initial) outcome provided a strong incentive for the ‘defeated’ – external as well as EU-internal – interests in the conflict to mobilize to overturn the regulation. At the same time, however, once the regulation had been adopted, the very EU decision-making rules and norms identified by Hanson as a barrier to a ‘Fortress Europe’ made the new ‘protectionist’ status quo very difficult to change.

The proponents and opponents of the regulation required not only motives or incentives to try to influence EU banana trade policy. They also required the *capacity* or resources to do so. The explanation for the strength of the opposition to the regulation as well as for its initial adoption, and therefore for the intractability of the conflict, lies, we argue, in the extent to which the banana policy making process on both sides of the Atlantic was ‘captured’ by narrow, antagonistic and politically very influential producer and especially trading interests. However, although the explanation for the unusual intractability of the banana ‘splits’ is located necessarily in the politics and economics of the product itself, several international, regional and national variables have combined to form a trade policy context that has facilitated the emergence and continuation of the conflicts.

The article is organized as follows. In the next section, we provide a short description of the ‘economics’ of the European and world banana industries and markets and of EU member states’ pre-1993 ‘national’ banana policies. In the following section, we explore some of the relevant theoretical and empirical literature for trying to make sense of the banana ‘splits’ and set out in greater detail our own explanations of the adoption of the EU regulation and the seemingly intractable trans-Atlantic conflict that it provoked. The empirical evidence in support of our explanations is provided in the subsequent sections, in which we explore the internal and external dimensions of the banana ‘splits’ in several stages. Finally we discuss the implications of our analysis in particular for the future evolution of wider trans-Atlantic trade relations.

2. Davids & Goliaths: The European & world bananas industries & markets

In the late 1980s, some 75 per cent of the world’s banana exports originated from Latin America, where the biggest growing states were Ecuador, Costa Rica and Colombia. African and Caribbean states (ACPs) and overseas territories of EU member states accounted for no more than 15 per cent (Borrell 1994: 5). Most of the Latin American bananas were marketed by three then American multinational companies: Chiquita, Dole and Del Monte, which together sold close to two-thirds (64 per cent) of the world’s exported bananas in 1994 (Hallam and Peston 1997: 44). The EU consumed almost 40 per cent of the world’s bananas, making it the world’s biggest market. At around two-thirds, the market share of Latin American bananas in the EU was significantly lower than in the rest of the world, and so was the market share of the three American multinationals, just under 50% in 1991 (Cadot and Webber 1996: Exhibit 2). The EU market was nonetheless Chiquita’s most profitable (interview with fruit-trading company manager). One-third of the bananas eaten in the EU came – in roughly equal proportions – from African and Caribbean states, on the one hand, and EU overseas territories, some of which are also located in the Caribbean, on the other. The EU’s level of self-sufficiency in bananas was thus a great deal lower than for most other agricultural products, including most fruits.

Before 1993, there had been no unified EU banana market, but rather a collection of mutually insulated national markets regulated by quite different policies. Accounting for more than one-third of EU consumption in the early 1990s, the German market was the largest and the most dynamic. The volume of bananas sold in Germany doubled between the first halves of the 1980s and 1990s, partly as a consequence of German unification in 1990 (Hallam and Peston 1997: 30). It was also the most open, having no import tariff or quantitative restriction. As a consequence, Latin American (“dollar”) bananas

had a 90% share of the German market and the great bulk of these was sold by the American multinational firms, especially Chiquita. Most bananas sold in Italy also originated in Latin America. At the other end of the spectrum were France, Britain and Spain, all of which had heavily administered and protected, practically closed, bananas markets. All of Spain's bananas came from the Canary Islands. More than a half of the bananas eaten in France were from its Caribbean territories, Martinique and Guadeloupe, and almost all of the rest were from two African states, the Ivory Coast and Cameroon. Roughly three-quarters of bananas imported into Britain came from the Caribbean, more than half of them from the Windward Islands (Dominica, Saint Lucia and Saint Vincent and the Grenadines). The trade in bananas from the EU overseas territories and the former British Caribbean colonies was dominated by European firms, among which the largest were the British firm, Geest, and the Irish-owned company, Fyffes.

The economic costs of the protectionist policies of several EU member states were substantial. Calculations (Borrell and Yang 1990, Borrell and Yang 1992) suggest that consumers paid far more than they would otherwise have done for bananas and that importing companies benefited far more from high prices than banana growers in EU overseas territories and ACP countries, although the official purpose of such policies was the need to protect the latter and not the importers.² In the early 1990s, unit production costs of bananas in the French and former British Caribbean and the Canary Islands were more than twice as high as in Latin America. According to a critical study of EU banana policy, 'climate, topography and soil' as well as 'competitive production and marketing arrangements' favoured Latin American bananas over those from Africa, the Caribbean and other EU overseas territories (Borrell 1994: 5-6). In addition, producers in some of the overseas territories were subject to labour regulations patterned after those of metropolitan Europe. EU bananas, according to a French government official, were 'outclassed all down the line: in terms of quality, product standardization, presentation, costs, operator resources, and integration' (interview). Given the productivity 'gulf' between them and the rest of the world, the creation of a single *and open* European banana market would likely have destroyed the bananas industries in the French and former British Caribbean and in other EU overseas territories. This could have had serious economic and social consequences, as the Martinique reputedly earned between 60 and 80 per cent and the Guadeloupe over 40 per cent of their 'export' revenues through the sale of bananas (Hallam and Peston 1997: 2-4). Bananas also accounted for between 15 and 20 per cent of the Windward Islands' GDP. Representatives of these states and territories argued – rightly or wrongly – that

² According to Borrell and Yang, consumers subsidized the industry to a total of \$1.6 billion through higher prices, but, of this sum, only \$302 million accrued to banana growers, compared with \$917 million to importers.

climatic conditions prevented them from diversifying easily into other products and that the abolition of preferential trading arrangements for bananas would lead to their economic ruin. The prospect of the creation of a single and liberal EU bananas regime was equally unpalatable, moreover, to those – predominantly British, French and Spanish – trading companies which drew their bananas primarily from these regions.

In establishing a new regulatory framework for bananas, the EU had, at least on paper, a wide range of options. Of these, German-style free trade was, for reasons explained above, politically infeasible. But a number of policy instruments could have been used, alone or in combination, to shelter overseas producers from all-out competition. Apart from tariffs, these included deficiency payments (subsidies) and quantitative restrictions. Deficiency payments were the least distortionary option. Relative to the overall level of spending on the Common Agricultural Policy, the cost of maintaining banana producer support at its pre-1992 level (\$302 million per year, see footnote 1) would have been limited. In principle, this expenditure could have been financed by a tariff on all imported bananas at a rate of 17 per cent (Borrell and Cuthbertson 1991; Borrell 1999: 10). However, this solution would have raised internal budgeting issues, as, under current budgetary law, EU tariff revenue can not be earmarked for deficiency payments (interview with official of international organization). The advantage of deficiency payments would have been that they are fully “GATT-consistent”. The preferential access to ACP producers enshrined in the Lomé Convention could have been granted by exempting ACP bananas from tariffs altogether. Such a preferential system, being covered by the so-called “Lomé Waiver”, would have been GATT-compatible, as was repeatedly confirmed by the WTO’s dispute-resolution body (WTO 1999: 74-79).

By contrast, trade regimes based on quantitative restrictions, such as the one adopted by regulation 404, are far more distortionary. When competition is less than perfect, quantitative restrictions preserve the market power of domestic operators more than tariffs, leading in general to greater welfare losses (Bhagwati 1965) Quantitative restrictions must also be administered through import licences which give rights to the high profits that trade protection generates and whose allocation is by itself a source of distortions and “rent-seeking”.

The regulation 404 on bananas actually adopted by the EU contained a mixture of tariffs, quotas and direct subsidies. First, it imposed a tariff of 100 ecus a tonne on a quota of two million tonnes of dollar bananas, 400,000 tonnes fewer than the EU had imported in 1992. Any dollar bananas imported above this quota would be liable to a punitive tariff of 750 ecus a tonne. Second, ACP bananas could be imported duty-free, as agreed in the Lomé Convention, up to a

quota of 857,700 tonnes, more than the EU normally imported from these states. Third, EU growers were to receive direct subsidies for their bananas, up to a quota of 854,000 tonnes, a figure that far exceeded the volume of EU bananas recently consumed in the EU. Fourth, and most controversially, licences for 30 per cent of the dollar bananas imported into the EU were allocated to companies that traded traditionally in EU and ACP bananas. This provision had a profound impact on market shares and revenues, redistributing them from Chiquita and north European ('Hanseatic') banana traders to their south European ('Mediterranean') as well as British and Irish counterparts (Van de Kastele 1998:12, Borrell 1999: 16, Thagesen and Matthews 1997: 619).³ The latter group of traders actually benefited more strongly from the regulation than EU banana growers. According to one analysis, only one-sixth of the costs imposed by the regulation on EU banana consumers went back to growers as direct aid (Borrell 1994: 12-16 and 1998). The author of this analysis concluded that traders of EU and ACP bananas were 'clearly the main beneficiaries of the policy', while 'EU consumers, other marketers and Latin American suppliers are clearly big losers' (Borrell 1994: 16).

Given the availability of policy options that were economically more efficient and that would undoubtedly have generated less trade friction, why did the EU choose this policy - one that was highly distortionary, unpopular in numerous member states, unacceptable to numerous of its trade partners and, as subsequent events were to confirm, violated fundamental GATT rules?

3. Explaining the 'banana splits'

An atypical and extreme policy outcome

The implementation of the EU's Single Market programme, of which the bananas regulation was one component, was not accompanied by a general increase in the level of external trade protection. Contrary to widespread initial fears that the Single Market programme would lead to the construction of a 'fortress Europe', internal and external trade liberalization have actually gone hand in hand. Hanson attributes this plausibly to a combination of the distribution of preferences among the EU member states on external trade issues and the effect of the EU's decision-making rules. Specifically, as trade policy decisions can be adopted only by a 'qualified' (roughly 70 per cent) majority, a 'blocking minority' coalition of free-trade-oriented, north-west European member states has typically been able to prevent the adoption of protectionist

³ As the licences were made tradable, EU and ACP banana traders promptly sold many of them straight back to dollar banana traders.

external trade measures. Thus, in the case of the automobile industry that Hanson analyzes, the policy outcome in the face of '1992' reflected 'the relative bargaining strength of the producing state favouring the most liberal policy', i.e. Germany (Hanson 1998: 79). A crucial question relating to the EU's adoption of an extremely protectionist bananas regulation is why, on this issue, there was no blocking minority of liberal member states.

One venerable strand of thought in public policy analysis, pertinent in particular to regulatory conflicts, attributes patterns of political conflict and policy choices or outcomes to the perceived distributional implications of any given policy proposal (Wilson 1980: 366-372). According to Wilson's famous classification, policy proposals whose costs and benefits are widely distributed are unlikely to mobilize interest groups and will give rise to 'majoritarian politics'. Proposals that concentrate benefits while distributing costs widely tend to lead to outcomes that favour producer interests ('client politics'). Proposals that distribute benefits widely, while concentrating the costs, may succeed in the presence of a 'skilled' political 'entrepreneur' who can 'mobilize latent public sentiment ... put opponents of the plan publicly on the defensive ... and associate the legislation with widely shared values' ('entrepreneurial politics') (Wilson 1980: 370). Finally, proposals that concentrate both costs and benefits create strong incentives to organize and try to exercise political influence and are therefore conducive to what Wilson labels 'interest-group politics'. Legislation in such conflicts is likely to represent a compromise between the antagonistic interests, to contain something, in Wilson's words, 'to please each affected party' (Wilson 1980: 368).

The conflict(s) over the EU's bananas regulation approximates most closely to Wilson's model of 'interest-group politics'. The EU's proposed bananas regulation promised to distribute big benefits to a narrow range of affected interests (traders and growers of EU and ACP bananas) and threatened to impose heavy costs on a narrow range of other interests (traders and growers of dollar bananas) as well as penalizing consumers in some EU markets by raising banana prices. The conflict over the proposed regulation did not lead, however, to the outcome expected by Wilson's model. Rather than being a compromise between two sets of narrow interests, the adopted regulation amounted to a 'winner-take-all' outcome in favour of EU and ACP bananas traders and growers. There was nothing in it at all to 'please', and a great deal to antagonize, dollar banana traders or growers.

This outcome diverges sharply not only from the outcome that might have been expected based on Wilson's analysis, but also from that which is typical for the EU's own policy-making process, which is characterized by a strong orientation towards consensual policy solutions (Hayes-Renshaw and Wallace

1997: 18, 275, 295; Westlake 1995: 103-104, 110-111; Spence 1995: 375-376; Nugent 1994: 145-146; Van Schendelen 1996: 541; Nicoll 1994: 193). Although the European Commission, which has the formal right of policy initiation according to the European treaties, has relatively wide-ranging trade and agricultural competences, almost all decisions in these policy areas require the collective approval of the member states represented in the Council. During the 1990s, especially since the conclusion of the controversial Blair House accord on agricultural trade between the US and the EU in 1992, the trend has been for the member governments to curtail the external trade policy making autonomy of the Commission (Meunier 2000: 132). Depending on the issue area, the Council may adopt decisions by a qualified majority or unanimously. In practice, there is a strong informal norm to take consensual decisions even where, according to the treaty, qualified majority decisions are permissible. The history of the EU contains numerous examples - most recently that of the takeover directive, adopted after more than 10 years of negotiations – of issues whose resolution has taken extremely long periods of time and has occurred only after virtually all members states' preferences have been accommodated to a greater or lesser extent in the decision finally reached. The bananas regulation, with its 'winner-take-all' outcome, seems to constitute a striking exception to this rule.

Our explanation of this 'exceptional' case is located in three specific traits of the agricultural (trade) policy making process in the EU. The first of these relates to the division of labour in EU trade policy making. In general, the competent directorate-general for trade policy is the DG I (in charge of external economic relations) and the competent Council that for General Affairs (the foreign ministers). According, however, to a division of labour agreed already in the 1960s, the 'lead' DG for agricultural trade is the agricultural DG VI and the 'lead' Council the Agricultural Council. This division of labour is important for understanding the banana split in as far as, compared with DG I and the General Affairs Council, the DG VI and the Agricultural Council give greater priority to the satisfaction of domestic (agricultural) interests than to adherence to international trade rules and the maintenance of stable and good relations with the EU's trading partners.⁴ The second relates to the high degree of sectoral segmentation of EU policy making. Compared with that of member governments, policy in the EU is less closely coordinated across sectoral or departmental boundaries, given that there is no EU 'cabinet' and no government based on political parties with clear programmatic profiles (Héritier 1993: 442). As the council formally charged with coordinating inter-Council conflicts in the EU, the General Affairs Council may overrule other councils, including that for agriculture, but the role and influence of the General Affairs Council has been in

⁴ On the insularity of the Agricultural Council, see Hayes-Renshaw and Wallace 1997: 32.

a process of decline.⁵ Increasingly, the role of arbiter of inter-council conflicts in the EU has been exercised, if at all, by the European Council, the organ comprising the national heads of government or state.

The third and most important trait of EU agricultural (trade) policy making processes that helps to explain the ‘exceptional’ character of the bananas regulation relates to the practice of package-deal making used to facilitate conflict resolution in the Agricultural Council.⁶ Critical to the regulation’s adoption in this council’s meeting in December 1992, as we shall see below, was the way in which it was incorporated into a larger package containing proposals on a large number of different agricultural policy issues. Given the legal and/or normative requirement of consensual or near to consensual decision-making in the Council and the normally considerable diversity of interests among member governments, package-deal making frequently amounts to the only available and feasible means of averting political gridlock. A pre-condition of successful package-deal making, however, is that member governments hold preferences of differing intensities on the issues included in the ‘package’ and are prepared to ‘lose’ on some issues as the price for ‘winning’ on others. The critical question concerning the adoption of the bananas regulation is why the preferences of the member states that supported the regulation were more intense on this issue than on most others up for resolution in the December 1992 meeting, while, for the states belonging to the ‘Hanseatic’ coalition, the reverse was the case. Why, in other words, did the ‘Mediterranean’ states, plus Britain and Ireland, ‘care’ more about bananas than the ‘Hanseatics’?

The principal reason for the lower priority attached to the bananas issue by the ‘Hanseatic’ states is summed up in the remark by a Belgian government official that the ministers from these countries had ‘no constituency for bananas’ (interview; see below). Of course, they had traders’ and consumers’ interests to defend (or not), but the trading companies in these countries had no *producer* interests in the EU (or ACP states) with which they could coalesce. In the political debate about the bananas regulation, the ‘Hanseatic’ ministers, unlike most of their Mediterranean counterparts, were not under pressure from any growers, at least not within their own states or, for that matter, former colonies.

⁵ On the decline in the coordinating role and influence of the General Affairs Council vis-à-vis other councils, see Hayes-Renshaw and Wallace 1997: 64-65, *Der Spiegel* 1998b, Turner 1998, Barber 1998 and *Bulletin Quotidien Europe* 1998a.

⁶ On the general use of ‘package deals’ as a means of conflict resolution in the EU, see Westlake 1995: 119, Spence 1995: 385-386 and Hayes-Renshaw and Wallace 1997: 254. According to EU officials (interviews), the Agricultural Council is ‘better’ than other councils at making package deals, in their view because a relatively large proportion of the conflicts it has to resolve are distributive issues more amenable than others to compromise.

Hence, they were inclined to prioritize other issues, where important domestic agricultural constituencies could be satisfied. This does not mean that the banana growers in the EU overseas territories and the former British Caribbean were the most influential actors on the issue. Rather, our research suggests, the big ‘Mediterranean’, British and Irish banana trading companies were more closely involved than growers’ organizations in the policy’s design. These companies (see above) also benefited more from the regulation than EU and ACP banana growers. The point is that, by coalescing with growers whose survival was crucial to the ‘macro-economic’ situation of the banana-growing islands and territories and therefore a political issue, the companies could bolster their own influence on the regulation.

A further reason for the greater priority attached by the ‘Mediterranean’, British and Irish governments than by the ‘Hanseatic’ governments to the bananas issue is that the trading companies in the former group of states have, over time, developed closer relationships with their respective national administrations than their counterparts in the ‘liberal’ national banana markets, as the markets in their states have traditionally been more highly regulated or ‘administered’ and the relationships between the companies and the administrations have consequently been closer. The British company, Geest, for example, had participated in the making of British banana policy since the 1950s (interview of British government official). The contrast in this respect between the countries whose banana traders supported the regulation and those whose traders opposed it is illustrated by the fact that, while, for example, the Irish government was ‘open to an understanding of how Fyffes would like to see the market work’ (interview of fruit-trading company manager) and, in the view of one participant in the bananas, Geest exercises ‘the same political clout in the UK as Chiquita in the US’ (interview of Ecuadorean government official), the main banana trading company in the biggest ‘Hanseatic’ state, Germany, had quite problematic relations with its national administration, which had no tradition of intervention in the bananas market (Wessels 1995).⁷

In addition to the above two factors, the bargaining position of the member states in favour of a liberal bananas market regulation was prejudiced by the stance of the Commission, which was important, given that the Council can act only on the basis of a Commission proposal. The Commission’s proposal was motivated partially by its analysis of the distribution of preferences on the issue in the Agricultural Council. But the Commission, which, like the Council,

⁷ The apparently close relationship between Geest and the British government in respect of banana trade policy confirms Grant’s characterization of Britain as a ‘company state’ in which the most important form of business-state contact is the ‘direct one between company and government’ rather than, for example, between the government and trade or industry associations (Grant 1993: 14).

was split on the issue, also has (multiple) preferences of its own. The directorate-general in charge of drafting the regulation, the DG VI, undoubtedly had a strong preference for a regulation protecting growers and traders of EU bananas. Above and beyond this, according to critics of the regulation, it had an additional or wider agenda: to create a European counterweight or European counterweights to Chiquita and Dole in the world banana market. Chiquita in particular insists that the principal purpose of the regulation was to ‘break the power of American multinationals’ (interview of fruit-trading company manager). If this was DG VI’s real agenda, it is predictable that the traditional traders of EU bananas exercised a powerful influence over EU bananas policy, since, given the close ties between Chiquita and the ‘Hanseatic’ banana importers, only the former could be European banana ‘champions’ and the DG VI’s agenda could be realized only by a regulation which strengthened them vis-à-vis their North American competitors.⁸

The bananas regulation was thus able to be adopted because the ‘Hanseatic’ EU governments were compensated for their ‘loss’ on this issue with ‘victories’ on other agricultural policy issues on the Council agenda at the same time. For the governments, the package *as a whole* was more or less balanced. For the ‘Hanseatic’ and North American banana traders, which, of course, had no stake in other issues, the regulation was or at least threatened to be disastrous.

An intractable conflict

Current discussions of trans-Atlantic trade relations tend to emphasize two reasons for their alleged deterioration in recent times. The first of these is the end of the Cold War. According to Gilpin (2000: 9), for example, this and the consequent ‘decreased need for close cooperation among the United States, Western Europe, and Japan have significantly weakened the political bonds that have held the international economy together’. American foreign and economic policy has become ‘more unilateral and self-centered’ at the same time as the Europeans have grown ‘much more parochial in their economic and political concerns than in the past’ (Gilpin 2000: 11). Deteriorating trade relations are a function in this view of a fundamental change in the structure of the

⁸ The European Commission refutes this argument, saying that dollar bananas traders could benefit as much from the regulation as other traders, provided they were prepared also to sell EU and ACP bananas on the EU market and that, in contrast to Chiquita, Dole’s share of the EU market has actually risen since the introduction of regulation 404 (interview of European Commission official). Chiquita rejects this argument and maintains that, owing to exclusive buying and transport agreements, it was practically impossible for traditional dollar banana traders to purchase EU or ACP bananas and transport them to the European mainland (interview of fruit-trading company manager).

international system. The problem with this analysis is that it exaggerates the degree of change in trans-Atlantic (and Japanese-US) relations during the last decade. As Ikenberry (2000: 148) has pointed out, 'economic disputes have remained quite muted' and it is 'difficult to argue that the conflicts between the United States and its European and Japanese trade partners ... have been more frequent or intense than such spats were during the Cold War'. In any case, this perspective would not be of any assistance in explaining why the most intractable trans-Atlantic dispute of the post-Cold War period should have been over bananas rather than other products or sectors. In as far as the '1992' internal market programme created the pressure to establish a single banana market in the EU, the banana 'splits' were certainly fostered by the EU's push to closer integration, but this initiative dates back to the early and mid-1980s and has nothing to do with the end of the Cold War as such.

The other, increasingly frequently cited, reason for an alleged exacerbation of trans-Atlantic trade tensions relates to a widening of the trade policy agenda, to the emergence of a 'new politics' of international trade. Two trends have arguably fuelled this development. The first is that trade liberalization efforts are increasingly targeting 'behind-the-border' barriers to trade or 'domestic institutional arrangements' (Ruggie 1994: 516). Such moves challenge existing interests more directly and fundamentally and therefore arouse more opposition than do, for example, tariff reductions. This is why, in Ruggie's view, 'highly politicized trade policy disputes and potential instability in trade relations appear to be the virtually inevitable consequence of successful liberalization' (Ruggie 1994: 516). The second, not unrelated, trend relates to the growth of 'post-materialist' values and politics. This development has broadened the agenda of trade politics to include the impact of trade liberalization on, for example, the environment and endangered species and whether, for example, market access should be granted to products from countries where human rights are abused or extensive use is made of child labour. It has also, of course, brought new participants into the trade policy-making process (Destler and Balint 1999).

Some of the tenacious trans-Atlantic trade conflicts that have taken place during the 1990s, such as over genetically-modified food and hormone beef, may well fall into this category. These conflicts, according to Vogel (1997: 59) have been driven by the pressures of 'NGOs [Non-Governmental Organizations] and public opinion'. They are, he argues, especially difficult to resolve because NGOs and citizens on the two sides of the Atlantic have 'deeply held and widely divergent social and cultural values' (Vogel 1997: 61). The banana splits, however, had as little to do with the growth of post-materialist values and politics as they had to do with the end of the Cold War. 'Public opinion' played at best a marginal role, as did Third World-oriented European NGOs critical of

the practices of the US banana multinationals, although, at their insistence, the revised regulation adopted by the EU in 1998 did contain some incentives for 'fair trade' in bananas. The banana splits had very much to do with simple 'old-fashioned' trade politics, in which the stakes in the conflicts were market shares and revenues and the principal players were narrow organized economic interests.

The atypical intractability of this 'old-fashioned' trade dispute was related to the 'winner-take-all' character of the EU's regulation and the powerful incentive that the threat of severe financial losses created for its 'victims' to mobilize against it, both inside and outside the EU. And mobilize they did – with such tenacity in fact that, seven years later, they were still campaigning to defeat it, with (see conclusions) an increasing probability of success. In this sense, in the long run, Wilson's analysis may not be far off the mark. Contrary to the theory's prediction, the regulation imposed heavy costs on a concentrated group of interests. Owing to their tenacious opposition, however, the ultimate outcome of the conflict may be more balanced than the original regulation. In this regard, our two 'puzzles' – why was the EU's banana regulation so 'extreme' and why was the conflict over it so intractable – are, of course, two faces of the same coin. If finally the banana 'splits' are settled in a way that offers something to 'please each affected party', however, it will have been due to the internationalization of the conflict, a phenomenon of which Wilson, in his work on regulatory politics in the US, did not take account.

To account for the intractability of the banana splits, it is necessary to explain not only why the regulation's critics fought it with such zeal, but also why they were able to sustain their opposition over such a long period of time and to enlist – in the US in particular – the support of powerful political allies as well as why the regulation's exponents were so uncompromising and so effective in preventing the regulation's reversal or substantial revision. In addressing these questions, we distinguish between several different types of variables – international, regional, national, sectoral and product-specific - each of which in turn may be divided into two different sub-types, structural factors whose 'value' is constant and conjunctural factors whose 'value' may change. Logically, to the extent that the bananas conflict is unique in terms of its intractability, the ultimate explanation of this phenomenon must be located at the level of the (politics and/or economics) of the sector. However, the intensity and longevity of the banana 'split' have also been facilitated and aggravated by characteristics of the broader – 'temporal' and 'spatial' – setting in which the conflict has unfolded.

At the regional level, one of the factors, in this case conjunctural, that was conducive to the intensity and intractability of the trans-Atlantic banana split was that it took place in an era when the supranational organs and member governments of the EU were forcing the pace of European integration. Indeed, in as far as the internal market programme put a single bananas market on the political agenda in the first place, this process and the banana splits were inextricably intertwined (see above). In addition to this, however, it is probable that the pressure not to imperil major integration projects, such as the common currency, induced some member governments not to ‘rock the boat’ on bananas once the original regulation was adopted. This was almost certainly one of the motives for Chancellor Kohl’s restraint vis-à-vis the French government in the bananas conflict in the late 1990s (see below). This ‘closing of the ranks’ in the EU intensified the split with the US because it destroyed any hope that the American administration might otherwise have had that EU would change the regulation at its own initiative. A further conjunctural factor that fuelled the trans-Atlantic conflict was the fact that the EU regulation was adopted at virtually the same time as the WTO was set up with its new, compared with the GATT, tougher dispute settlement rules and procedures. The bananas case was the first involving the EU and the US under the new dispute procedures. How the two parties dealt with each other in the dispute could set an important precedent and help to determine reciprocal expectations of behaviour in future WTO conflicts. In particular, the Clinton administration did not want to give the EU the impression during the bananas conflict that it would be a ‘soft touch’ in simultaneous or pending trade disputes, such as those concerning ‘hormone’ beef and genetically-modified foods. This certainly explains in part its resolve not to let the EU ‘off the hook’, but rather to insist that the EU implement the WTO panel decisions (as the US interpreted them).

The Clinton administration’s tough stance vis-à-vis the EU on bananas was not motivated solely or even mainly by the concern not to let a – for the US – negative precedent be established. Starting even before the end of the Cold War, attitudes in the American public and in the Congress towards free international trade and the multilateral trading system grew increasingly critical. If the administration had adopted a more accommodating stance towards the EU in the bananas dispute, this could have helped to undermine support for the WTO and free international trade in the Congress. Congressional sentiment on the bananas issue mattered all the more because, from the 1980s onwards, the Congress had begun to re-assert its powers in trade policy in the way that it had not done since the early 1930s. The US’s pursuit of an overall very liberal trade policy after the Second World War was possible only because Congress tied its own hands in trade policy by delegating its competences to the executive branch (Destler 1995). In so doing, it deflected particularistic interests that could undermine this policy towards the executive and away from Congressional

representatives, who, given their accountability to constituencies in districts or states, are more likely to defer to such interests, other things being equal, than the federal administration. As Destler shows (1995: 175-199), for a number of reasons, including the demise of the pro-free trade elite consensus and the collapse of Democratic-Republican bipartisanship on trade issues, this system has been eroding since the 1970s and 1980s. The Congress has imposed increasing constraints on the use of powers that it 'loaned' to the executive, but never gave away permanently. US trade policy has consequently become more exposed to the influence of particularistic interests than it used to be and more prone to bouts of 'aggressive unilateralism' (Bhagwati and Patrick 1990).

Some of the structural traits of the American trade policy-making process as it has developed during the 1980s and 1990s are replicated on the other side of the Atlantic, in Brussels. The need to bring, or at least the norm of bringing, as many member states 'on board' as possible on any given issue gives (at least in a territorial sense) narrow interests greater scope to influence decisions than would be the case in a more highly centralized and majoritarian policy-making process. This consensually-oriented decision-making system makes it hard for the EU to make radical changes in *existing* policies, at least as long as the underlying structure or distribution of interests remains unchanged. According to Hanson (1998: 56, 70), this explains, of course, why the implementation of the single market programme has been accompanied by an overall liberalization of EU trade policy – the most free-trade-oriented member states were in a strong bargaining position because, if no agreement was reached on measures of external trade protection where none already existed, the fall-back position was an open market. This was also the 'point of departure' in the bananas conflict within the EU. Once the 'blocking minority' of 'liberal' banana states was broken and the regulation adopted, however, the new fall-back position was extremely protectionist and the EU's decision-making rules now made it very difficult for the proponents of a liberal banana market to overturn this position or even to have it substantially modified. To the extent that they amplify the bargaining power of the EU vis-à-vis third states, because the EU can plausibly claim that they 'tie' its hands (Meunier 2000: 115-117), the same rules also strengthened the EU's resistance to the pressure of the US and other trading partners.

So far we have identified a number of factors, located at the international, regional or national levels and either structural or conjunctural in nature, that shaped the context in which the trans-Atlantic banana split developed. Concretely, this context has been moulded by the progression of the European integration process, the increasingly prominent role of Congress in the making of US trade policy, the propensity of individual or small groups of member states to wield strong influence on EU trade policy, and the way in which the

practice of package-dealing in the EU Council is used to facilitate the adoption of decisions which, if they were voted upon individually, would fail.

Neither individually nor collectively, however, can these variables explain why, of all the possible trade issues over which a major trans-Atlantic trade conflict could have erupted in the 1990s, bananas was the most intractable and most prolonged. One possible answer to this puzzle is that the banana split was simply characteristic of a generally conflictual trans-Atlantic relationship on issues of agricultural trade. A substantial proportion of trans-Atlantic trade disputes – a higher proportion than might be expected, given the size of the agricultural sector in the overall economy – has to do with agricultural products. Thus, of the other trade issues which have led to major trans-Atlantic ‘splits’ in the 1990s, two – ‘hormone’ beef and genetically modified foods – are agricultural. Certainly, the politics of the sector in both the US and the EU does exhibit traits that make agricultural trade disputes more probable and more likely to be intense and difficult to resolve than those in other sectors. Foremost among these is a long history of state intervention and protectionism, especially in the EU. In addition, as mentioned above, EU agricultural trade policy, unlike trade policy in any other sector, is made by the Agricultural DG in the Commission and in the Agricultural Council by the agricultural ministers of the member governments.⁹ Policy made under these conditions is more likely than that in other sectors to prioritize the interests of domestic constituencies over the adherence to international trade rules or the maintenance of good relations with trading partners where these come into conflict.

The CAP budget and the EU’s budgetary rules of procedure constitute a further sectoral-level variable that has exacerbated the banana split. In principle, the trans-Atlantic conflict could have been easily resolved by the EU dismantling its quotas and licence allocation system and relying on a combination of tariffs and direct payments to growers to protect EU (and, for that matter, ACP) production (see above). However, the EU’s budgetary rules prevented revenues from tariffs on dollar bananas being ‘earmarked’ to finance direct subsidies to producers (Laffan 1997: 37; Weidenfeld and Wessels 1997: 231-232; interview of official of international organization). Consequently, the level of banana tariff revenues had no direct impact on the capacity or at least willingness of the EU to fund direct subsidies. Such revenues flowed into the general EU budget and could be extracted from it by the agricultural ministers only with the consent of the finance ministers, who, if asked, would hardly have been agreeable to changing their budgetary rules of procedure for the sake of EU

⁹ As Destler (1995: 33-34) points out, the existence of separate committees for agriculture in the House of Representatives and the Senate equally has given agricultural interests greater leverage over US trade policy in agriculture than is the case for other interests in their respective sectors.

banana growers, not least since such a change would have created an ominous precedent for other products and sectors. Of course, the agricultural ministers could have decided to fund increased expenditure on direct subsidies to banana growers by increasing overall CAP expenditure or re-allocating resources to bananas from other budgetary titles. Even substantially increased spending on direct aids to banana growers would not have amounted to a very significant proportion of the overall CAP budget. This relativizes the Commission and the Council's argument that such a measure would have been 'disproportionately expensive and burdensome for the Community budget' (as quoted in Kuilwijk 1996). However, the option of raising CAP spending nonetheless became less and less feasible in the 1990s, as the member governments became increasingly concerned to curb the growth of the EU budget and increasingly tight ceilings were imposed on CAP spending. The option of budgetary re-allocation was possible only to the extent that agricultural ministers could agree to reduce spending on other products, especially other fruits and vegetables. It seems, however, that no such consensus existed – thus, in 1999, the Italians in particular resisted the idea because 30 per cent of fruit and vegetable spending in the CAP budget was already devoted to bananas (rather than to fruits and vegetables produced, unlike bananas, in Italy) (*Bulletin Quotidien Europe* 1999c). Quite apart from the fact that EU banana growers naturally preferred 'trade to aid' and feared that direct aids, given their highly visible cost, would be more vulnerable to being reduced or abolished than primarily tariff- and quota-based protection, these internal budgetary constraints also disposed the EU to shift the cost of the banana regulation on to external actors, namely the growers and sellers of dollar bananas.

Even if the above remarks go some way to explaining the more frequent occurrence of agricultural trade disputes than disputes in other sectors between the EU and the US, they nonetheless tell us little about why, of all possible agricultural products, bananas should have precipitated the most tenacious trans-Atlantic trade dispute in the last decade. In as far as trade conflicts may be considered more likely to occur in products or sectors where the protagonists have substantial producer interests to defend, bananas were a rather improbable candidate for such a status. Compared with most other agricultural products, the EU has a low level of self-provision of bananas, while, Hawaii excepted, bananas are not grown at all in the US. Why therefore the banana split rather than a beer battle, wine war, chicken conflict, cereals crisis or fights over other kinds of fruits? All the variables – international, regional/national or sectoral – identified above formed collectively a favourable or propitious context for the occurrence of the banana split, but they were not its actual *causes*.

In part, the outbreak of the banana split may be attributed to the fact that the regulation 404 effected a sudden and very substantial aggravation of the terms of access of American banana traders to the EU market – for which there was arguably no parallel for other products and services in the same period of time. Also, the Clinton administration saw in the regulation a flagrant violation of international trade rules at a time when, as outlined above, it was under pressure from Congress to demonstrate that multilateral trading rules and procedures could be used effectively to defend US trading interests. Thus, the virtual coincidence of the bananas conflict and the creation of the WTO probably made the administration's stance on the issue more rigid than it would otherwise have been. For a time, according to EU sources at least, this rigidity was reinforced by President Clinton's perceived need to shore up his support in Congress as impeachment proceedings were pending against him.

The longevity and intensity of the trans-Atlantic banana split may thus be attributed at least partly to the fact that the conflict originated at approximately the same time that the WTO was created and sentiment towards multilateral trade in the Congress was becoming increasingly hostile – sentiment that the administration felt it had to try to assuage. The additional reasons related to the banana industry as such lie in the industry's economics and geography as well as in its politics. The salient trait of the economics of the sector is the productivity disparity between the dollar banana-growers, on the one hand, and the EU and ACP banana industries, on the other. As a consequence of this enormous disparity, it was evident that some form of state intervention to protect the EU and ACP growers was necessary to prevent the realization of the single European banana market resulting in their decimation. The task of designing this protection in such a way that it would not fall foul of international trade rules was never going to be easy, albeit, for reasons explored above, the EU actually chose instruments that just about maximized the likelihood that regulation 404 would be successfully challenged. The salient trait of the geography of the industry is the fact that, almost without exception, the EU banana growers are located in peripheral, overseas territories that are more or less heavily dependent on the banana trade for their economic survival (Hallam and Peston 1997). If these industries were to be decimated, the task of generating alternative employment and incomes would be significantly harder than in less monostructural locations. Moreover, the member states would have to bear follow-on costs (in the form of public expenditure for unemployment benefits, etc.) that, under regulation 404, were either imposed on third countries (tariffs and quotas) or 'socialized' among the member states as a whole (direct subsidies). The domestic political fall-out of such a development could have been disastrous for incumbent governments or political leaders. Thus, Commission officials claimed that the French Prime Minister from 1993 to

1995, Edouard Balladur, would have committed political suicide if he had accepted the abolition of regulation 404 (quoted in Hanke 1994).¹⁰

The salient trait of the politics, as opposed to economics and geography, of the industry is the political pressure mobilized, and influence wielded, by the highly concentrated particularistic interests that benefited from the regulation in the EU and the equally highly concentrated and particularistic interests offended by it in the US. Both sets of interests exploited to the full the potential to mobilize political support afforded to them in the organization of (agricultural) policy-making in their respective political systems. In the case of the US, this was, first and foremost, Chiquita, as the only other significant banana trader, Dole, had accommodated itself to the regulation. Chiquita's principal political resource in Washington was campaign donations. Chiquita's determination of US policy on bananas provided, a US government official familiar with the banana split told us, 'a classic case for [justifying] campaign finance reform ... The level of legal corruption has been very extensive' (interview of US government official). The view that Chiquita's donations and the administration's banana policy are causally related is supported by the fact that, on the US side, the White House itself was 'very much involved' in determining US strategy in the banana split (interview of US government official). There are, of course, many historical examples of individual companies or narrow sectoral interests exercising a powerful influence over US foreign trade or more general foreign policy (Garten 1997: 68; Peterson 1994: 413; Nolan 1999; Mann 2000).¹¹ Indeed, Chiquita, whose influence on US policy towards Latin America is legendary, itself furnishes some of these examples (Garten 1997: 68). President Clinton devoted 'more time and effort to fund-raising than any of his predecessors' (Mann 2000: 349). Not only his administration's banana policy, but also its stance on trade with China appears to have been strongly influenced by individual companies, especially donors to the Democratic Party (Mann 2000: 349ff.).

The influence of particularistic interests on EU trade and other policies is less well explored and known. Alone from the recent past, however, there have been suggestions at least that EU environmental policy has been shaped strongly

¹⁰ It is not French public opinion that could have cost Balladur his office if he had capitulated on bananas. It is rather that such a step, especially if it had precipitated social unrest in the French Caribbean islands, would have been used against him by the then chairman of his party, the current French president, Jacques Chirac, against whom Balladur was shaping up to compete for the French presidency in 1995. Spain's tough stance on the second revision of the regulation in 1999-2000 was attributed to the Spanish Prime Minister's concern to maximize his party's electoral support in the banana-growing Canary Islands. Diplomats speculated that, following the governing coalition's election victory in spring 2000, its opposition to such a revision might weaken (*European Voice* 2000a).

¹¹ Garten was, for a time, a leading trade official in the Clinton administration.

by German car manufacturers and EU policy on aircraft anti-noise pollution technology has been tailored to protect the principal European aircraft engine manufacturer, Rolls Royce, from American competition (*Financial Times* 1999b and Dunne 1999). The capacity of particularistic interests to influence EU policy, compared with that in member states, is enhanced by the relative weakness of organizations of collective interest representation in Brussels. This is certainly the case for bananas, where, so far as EU banana traders are concerned, their European association is prevented by the diversity of its members' interests from taking any clear public stand on EU banana policy and the firms look after their political interests by themselves (various interviews). The influence of particularistic interests is also bolstered, of course, by the veto powers exercised by single or a minority of member governments that may, for electoral-political or other reasons (see, for example, footnote number eight above), be vulnerable to sanctions threatened by domestic interest groups.

4. Splitting over bananas: The EU's adoption of regulation 404

Bananas have always been an extremely contentious issue within the EU. Differences between the member states, mainly France and Germany, over bananas threatened to postpone the adoption of the Treaty of Rome in 1957. At the final scheduled intergovernmental meeting before the signing of the treaty, amid 'scenes which resembled a bazaar' (Müller-Armack 1971: 189), the German delegation steadfastly refused to acquiesce in a proposal that a 20 per cent tariff be applied to all dollar bananas imported into the EU. An agreement permitting Germany to continue importing duty-free dollar bananas was finally reached at a special bilateral Franco-German meeting convened before the treaty-signing ceremony and appended to the treaty as a protocol.

Without the galvanizing force of the '1992' project, the issue of creating a single banana market may never have reached the EU agenda. As it was, the deliberations within the Commission over what was to become regulation 404 lasted five years. The three principal directorates-general involved – DG VI for agriculture, DG VIII for development aid and DG I for external economic relations – had strongly conflicting priorities (see also Stevens 1996: 331). DG VI strove to apply to bananas the same principles of community preference, 'financial solidarity' and a common market that had historically underpinned the CAP (Common Agricultural Policy). DG VIII's primary concern was to maintain the undertakings made by the EU to the ACP banana-exporting states in the Lomé Convention, the last version of which had been agreed in 1988. By contrast, DG I's principal preoccupation was that any regulation be compatible with the EU's international trading obligations laid down by the GATT (later the WTO) (interview of European Commission official).

By early 1992, the inter-service discussions on bananas had not produced an agreed draft regulation. Nor was there any consensus between the organized interests with a stake in the regulation. Although the Commission claims to have been in 'constant contact with the different lobbies' and to have 'consulted as widely as possible' (interview of European Commission official), the 'lobbies' reactions to its thinking varied greatly. DG VI's ideas were particularly unacceptable to Chiquita, which identified the main purpose of the proposed regulation as being to break or reduce the power of the multinational US banana companies. Convinced that it would 'never get its way in Europe', Chiquita decided that it had to 'go through Washington' to try to influence EU policy (interview of fruit-trading company manager).

The European banana trading companies, by contrast, appear to have been far more effective in shaping the Commission's, or at least DG VI's, proposals. According at least to a vehement critic of the ultimate regulation, a seconded official from the British Agricultural Ministry played a central role in drafting the proposed regulation and the actual architect of the regulation was the British fruit trading company, Geest, which had historically exercised a strong influence on the British banana regime (Wessels 1995: 136).¹² Together with Fyffes, Geest allied itself closely with the (non-French) Caribbean banana growers and governments, which, from the beginning, actively lobbied the EU institutions, focusing their effort in particular, however, on the British government, which they perceived as being their most reliable champion in the Council (Pedler 1994: 75-76). Similarly, French Caribbean banana-growing interests appear to have liaised closely with the French Agricultural Minister (Soisson 1993: 47).

The draft regulation adopted by the Commission at DG VI's instigation corresponded closely to the preferences of the Caribbean-Mediterranean coalition hostile to a much greater opening of the EU market to dollar bananas. Essentially, the regulation approved by the Commission foresaw the introduction of a quota on imports of dollar bananas at more or less existing levels, the imposition of a 20 per cent on dollar bananas within this quota, and the creation of a licence allocation system for dollar bananas according to which 30 per cent of the licences for such bananas would have been allocated to traders who had hitherto dealt in EU or ACP bananas. The latter measure was proposed to give traders in EU or ACP bananas an 'additional incentive' to continue selling such bananas, as it was anticipated that, following the introduction of the proposed single bananas market, the sale of these bananas would become less profitable (interview of European Commission official; Stevens 1996: 343; Thagesen and Matthews 1997: 618).

¹² Majone (1996: 74) describes a perhaps comparable case in which an EU machinery directive was strongly influenced by a single British official.

The Commission's proposal was motivated partially by its analysis of the distribution of opinion in the issue in the (Agricultural) Council: 'When the Commission makes a proposal, it has to be able to reckon on winning a [qualified] majority of votes for it' (Interview of former member of the European Commission). In the EU of the 12 in the early 1990s, there was indeed a majority of member states in favour of a 'protectionist' banana regime: apart from Britain, France and Spain, this majority included all the other southern member states, which, except for Italy, were concerned to protect their banana-growing islands, and also Ireland, which had no producer interests to defend on bananas, but which was close to Fyffes (see above). There was not, however, a *qualified* (i.e., five-sevenths) majority for the proposal, as the four states – a 'Hanseatic' coalition comprising Belgium, Holland, Denmark and Germany – hostile to the proposal wielded a blocking minority of 23 votes.

German banana traders alarmed at the Commission's proposals and its drastic implications for their business were reassured by the Bonn Agricultural Ministry that it had built up a 'strong front' against the proposals with Denmark and the Benelux states and that this blocking minority would hold in the Council (Wessels 1995: 27). Ominously, however, the Agricultural Minister warned them that other issues would have to be weighed up against bananas in any 'package deal' that the Council discussed (Wessels 1995: 37).

Indeed, when the bananas regulation came to a vote in the Council, the 'strong front' of opposition against the regulation disintegrated. The Council president, the British minister Gummer, a strong supporter of the regulation, assessed the ministers' relative priorities in bilateral 'confessional' negotiations and incorporated a revised bananas regulation in a large package comprising some 15 other decisions, on issues ranging from the agri-monetary system to milk quotas, New Zealand butter and an extension of special subsidies for farms in former East Germany. Despite having instructions from his government to reject the proposed regulation, the Dutch minister changed sides and voted for the package. Compared with bananas, he gave 'greater weight to other dossiers' (interview of Dutch government official). Gummer had included in the overall package proposals on other issues, including the Italian milk quota and the agri-monetary system, that were advantageous to Dutch farmers, and the minister decided 'milk is more important for me' than bananas (interview of Dutch government official). For similar reasons, the Belgian minister also abandoned the 'strong' Hanseatic 'front' against the proposed regulation. Although, for reasons unrelated to the bananas issue, the Portuguese minister voted against it,

along with his German and Danish colleagues, the overall package secured a qualified majority in the council.¹³

The incorporation of the bananas regulation into a larger agricultural policy package was decisive for the regulation's adoption: 'If there had been a vote just on bananas, the regulation would never have been adopted' (interview of Dutch government official). The British minister had cleverly broken the 'Hanseatic' coalition by exploiting the greater importance attached by the Benelux (and, for that matter, also German) ministers to the preferences of their core farming clientele as opposed to those of banana traders or consumers. For the British and French ministers, in contrast, the bananas issue clearly belonged to the most important on the council agenda and they were correspondingly prepared to make concessions on other issues to ensure that regulation 404 was adopted (on the French minister's priorities, see Soisson 1993: 118). The British presidency's banana proposals appear to have taken the German minister by surprise. He had turned down a proposal made to him by the French minister, apparently expecting that Gummer would be more accommodating towards the German position, and was 'bowled over' by the presidency's bananas proposals when they were finally made (Soisson 1993: 119-120).

The non-governmental opponents of the Commission's draft regulation were also surprised at the council decision. Chiquita, for example, had hoped up until the 'very last moment' that the proposal would be defeated (interview of fruit-trading company manager). Its adoption provoked an outcry in the 'Hanseatic' states, from ports which handled large volumes of dollar bananas, such as Zeebrugge, Antwerp and Rotterdam, as well as from banana importers, such as the German firm, Atlanta, Chiquita's largest partner in Germany which had invested heavily in expanding its banana-handling capacity in the early 1990s, and from some of the news media (Wessels 1995). At home, the Dutch and Belgian ministers were called to order by their respective governments and instructed to vote against the regulation when the final legal text was submitted to the next council meeting. Atlanta drew hope from the fact that a new German minister appointed in January 1993 appeared to be more strongly opposed to the regulation than his predecessor as well as from the passage of the council presidency from Britain to an opponent of the regulation, Denmark, and the

¹³ A German newspaper reported much later that – in the wake of European monetary system crisis of summer 1992 - the German minister had in fact acquiesced in the regulation in exchange for the preservation of the 'switchover' mechanism in the agri-monetary system that safeguarded German farmers' incomes against the otherwise negative effects of the appreciation of the German Mark against other EU currencies (*Süddeutsche Zeitung* 1995). The retention of this mechanism also benefited Dutch and Belgian farmers and may therefore help to account for the behaviour of their agricultural ministers in the December meeting.

mobilization against the regulation of the Latin American banana-exporting states (Wessels 1995: 53-57).

With Germany and Denmark continuing to oppose the regulation, the reversion of the Dutch and Belgian ministers to their original position should have prevented the regulation's formal approval at the Agricultural Council's February 1993 meeting. Once again, however, the 'Hanseatic' coalition crumbled at the decisive moment. On this occasion, supported by his Spanish and allegedly also British colleagues, the French minister, whose government was facing elections the following month, threatened the Danish presidency that if it did not support the regulation, he would try to veto any other decision being taken by the council in the ensuing five months (Soisson 1993: 178 and Wessels 1995: 62). Ostensibly fearful that otherwise the December council package would fall apart and have to be 're-assembled' and the council would be immobilized during his presidency, the Danish minister capitulated and voted for the regulation (interview of Dutch government official).

5. Slipping over 'banana' Republicans and Democrats: The offensives against the banana regulation

If, in its details, regulation 404 exhibited numerous differences from the Commission's proposal, the proposed and the adopted regulations were nonetheless similar in their essentials (Kuilwijk 1996). The most controversial aspect of the system was the allocation of 30% of the dollar-banana licences to EU importers, which drastically altered market shares. Van de Kastele (1998, Table 4) estimated that Chiquita's share of the EU market declined from roughly a third in 1992 to barely 10% in 1997. The German Agricultural Ministry blamed the regulation for a 25 per cent decline in German banana consumption and for the fact that average retail banana prices in Germany rose by 50 per cent in the second half of 1993 compared with the previous year. The European Commission countered that prices had been atypically low in 1992, as banana traders such as Chiquita had increased their exports to the EU in an attempt to gain market shares, anticipating that licence allocations would be based on past volumes (European Commission 1995: 5).

The internal offensive against the regulation

Within the EU, the principal critics and victims of the new regulation immediately began legal action to try to overturn it. Supported by Belgium, the Netherlands and some German banana importers, the German government brought a case against the regulation to the ECJ (European Court of Justice),

arguing that the 1957 banana protocol still applied, that the regulation was injurious to free competition and infringed on the EU's international trade obligations, and that it had caused a sharp rise in German banana prices and the loss in Germany of several thousand jobs. The court rejected the complaint in October 1994, stressing the wide degree of discretion the Council was entitled to exercise in establishing a common bananas market (Wessels 1995: 160).

The ECJ's decision did not, however, bring to an end to the legal conflicts over the regulation. The German government, again supported by Belgium and Holland, decided to contest the legality of the Framework Agreement meanwhile agreed between the EU and a group of Latin American banana-exporting states (see below). The German importers, for their part, began to contest the regulation through the German legal system. At this level, at least, they had some success. State financial and administrative courts handed down decisions suspending the regulation's application in individual cases and the FCC (Federal Constitutional Court) confirmed these courts' jurisdiction on such issues – an interpretation subsequently contradicted by the ECJ. In 1996, a state administrative court referred a case brought against the regulation by Atlanta to the Federal Constitutional Court, which, in its decision on the Maastricht Treaty in 1993, had reserved the right to review European law for its conformity with the German constitution, thus questioning the doctrine of the supremacy of European over national law that had developed since the 1960s. If the German court ruled that the regulation violated the German constitution, not only would the regulation be suspended in Germany, at least until such time as the ECJ overruled the judgment and this judgment was enforced by the German government, but a fundamental legal conflict would also be opened between the two courts over the relationship between national and European law with uncertain longer-term consequences for the EU's cohesion. The FCC apparently indicated that it would indeed declare the regulation illegal, on the grounds that it violated international law. The government, whilst allegedly sharing the FCC's concrete objections to the regulation, asked the court to consider the political damage that would be done if, for the first time in the EU's history, it were to decide explicitly against the ECJ (*Der Spiegel* 1997). The government was reputedly 'bringing intense political pressure to bear on the court' to rule against Atlanta (*European Voice* 1998). This pressure may be co-responsible for the fact that, by July 2000, the court had still not adjudicated on the case. Meanwhile, however, the ECJ had ruled in favour of the federal government in its case against the Framework Agreement, on the grounds that the licence allocation system in the regulation violated the principle of non-discrimination, and the regulation had also been condemned by the WTO. For the fate of the banana regulation, the case before the FCC had thus become increasingly irrelevant.

The external offensive against the regulation

Even before regulation 404 had been adopted, the EU states' pre-existing banana policies had already been under attack from Latin American banana-growing states. In spring 1993, a GATT panel found in the Latin Americans' favour, but as, at this time, panel recommendations could be adopted only unanimously and the EU opposed the finding, the panel's verdict remained a dead letter. The launching of a case against the new regulation by five of the same states in July 1993, immediately after it had entered force, had, however, more serious implications, as this would be handled according to the more rigorous dispute-settlement procedures expected to be agreed by GATT member states in the Uruguay Round negotiations then in progress. The panel on the new regulation also decided against the EU in early 1994, shortly before the new GATT treaty was due to be signed and forcing it, short of the regulation's being revised or revoked, to try to find a way to protect the regulation against a challenge under the new, for the EU in this case more disadvantageous, dispute procedures.

With the Framework Agreement, concluded in March 1994, the Commission succeeded in buying off four of the five Latin American states that had brought the complaint against the regulation, essentially by guaranteeing them a fixed market share in the new system and, through a system of certificates of origin and export licences, transferring to their domestic producers some of the quota rents (interview of official of international organization).¹⁴ However, one of the original complainants, Guatemala, refused to sign the Framework Agreement and other Latin American states, including in particular Ecuador, which did not actually become a GATT/WTO member until 1995, remained free to contest regulation 404 through the new WTO dispute procedures.

So, too, most importantly of all, did the United States. Of the two big multinational American trading companies, Dole had decided not to oppose the anticipated regulation, but rather to adapt its strategy to take account of its anticipated provisions. In particular, it had taken over numerous EU and ACP banana traders and thus safeguarded its potential to continue to export dollar bananas to the EU. From 1991 to 1994, Dole increased its share of the EU

¹⁴ The German government initially tried to prevent the adoption of the Framework Agreement, but the European Commission attached it to the GATT Uruguay Round agreement so that (predominantly free-trade-oriented) states that voted against the former would have endangered the approval of the latter. The French government also allegedly threatened that if Germany opposed the Framework Agreement, it would oppose the proposed Uruguay Round treaty provisions liberalizing public purchasing and stop French investments in the new east German states. In the end, the German government relented – although it later contested the Framework Agreement at the ECJ (Wessels 1995: 115-132).

banana market from 11 to 15 per cent (Cadot and Webber 1996: Exhibit 2). Chiquita, in contrast, had not diversified its sources of supply, but had carried on dealing more or less exclusively in dollar bananas. Its share of the EU market plummeted (see above). Unsurprisingly therefore, when the US began to contemplate taking action against the EU banana regulation, Chiquita was the principal, if not indeed the sole, instigating force. On the application of Chiquita and the Hawaiian Banana Industry Association, the USTR (US Trade Representative's Office) decided in October 1994, within two weeks of the failure of the German government's complaint against the regulation at the ECJ, to launch an investigation of the regulation and the Framework Agreement under Section 301 of the US Trade Act, which empowers the US administration to take retaliatory action against any trade practices regarded as discriminating against American companies. Chiquita's application was supported by a cross-party alliance of Senators and representatives including the Speaker of the House and both the Senate Democratic and Republican leaders and led by John Glenn, Senator from Ohio, the location of Chiquita's headquarters. Chiquita's principal shareholder, Carl Lindner, and his affiliates were the second-biggest donors of 'soft money' to the Democratic and Republican parties in 1993-94, making donations worth \$955,000.¹⁵ According to the head of an American NGO, the contributions 'certainly didn't hurt Carl Lindner's efforts to influence government action' (Common Cause 1995: 3). Over a half of the sum was actually donated in November and December 1994, just after the launching of the Section 301 investigation (Common Cause 1995: 1).¹⁶

The USTR actually abandoned its Section 301 investigation in early 1996, after two of the signatories of the Framework Agreement, Colombia and Costa Rica, had altered their quota systems to Chiquita's and Dole's benefit. Before thus forswearing unilateral trade action, however, it had teamed up with several Latin American states, including Ecuador, which did not become a WTO member until early 1996, to contest the EU regulation in the WTO. According to 'certain sources' quoted by a European news service, the administration's decision to launch the WTO process was taken within twenty-four hours of Lindner having made - in a Congressional and Presidential election year - a \$500,000 donation to the Democratic Party (*Europolitique* 1998). The cross-

¹⁵ 'Soft-money' contributions are those in the US that are 'outside the limits and prohibitions of federal law, including large individual or PAC [political action committee] contributions and direct corporate or union contributions' (Common Cause 1995: 10).

¹⁶ According to Tenbrock (1999), Chiquita also made a donation of \$500,000 to the Democratic Party in April 1994, soon after the US trade representative Mickey Kantor had decided to contest the EU regulation at the WTO. This donation can not be verified in the statistics published by Common Cause (1995) and the Center for Responsive Politics (1999a, 1999b, 1999c, 1999d, 1999e). Moreover, the US decision to take the case to the WTO (which was not created until 1995) does not appear to have been taken until early 1996.

party nature of Chiquita's political support is evident, however, in the fact that Lindner and his affiliates also made substantial donations to Clinton's 1996 presidential election opponent, Dole, who made extensive use of Chiquita's aircraft during his campaign and whose avid defence of Chiquita's interests earned him the nickname 'the banana Republican' (*Financial Times* 1995 and 1996).

The US and its Latin American allies argued that regulation 404 and the Framework Agreement contravened numerous provisions of international trade law, including the most-favoured nation clause and WTO provisions on trade-related investment measures and trade in services. As no bananas are grown in the US, the latter provisions were critical for the legitimacy of the US's participation in the case. Alone the selection of the members of the bananas panel proved 'extremely controversial' (interview of official of international organization). The WTO chairman Ruggiero was forced to exercise his power to choose the panelists – a Swiss lawyer, an Australian economist and a diplomat from Hong Kong. The panel's verdict, which was announced in April 1997 and confirmed by the WTO Appellate Body in September 1997, was a severe defeat for the EU. The panel found in particular that the licence allocation system contravened several provisions of international trade law and was not covered by the so-called 'Lomé Waiver' that the GATT had granted in 1994 and was valid until February 2000. On the issue of how the regulation should be changed to conform to WTO requirements, the panel, was silent. It did make clear, however, that deficiency payments to overseas banana producers and preferential tariff provisions for ACP growers were compatible with WTO provisions.

6. A 'mini-reform': The revision of regulation 404

WTO rules required the EU to bring regulation 404 into line with international trade law by the beginning of 1999. In order to leave sufficient time for its implementation, a new regulation had therefore to be adopted by the middle of 1998. As before, the member states were deeply divided on the issue.¹⁷ In

¹⁷ As in 1992, the Commission, too, was deeply split on how to revise the bananas regulation. Shortly after the Commission of which he was a member was forced to resign in spring 1999, the German Martin Bangemann said: 'As a Commissioner, I have had to defend our position which was made collegially, but I can tell you it's bullshit' (*Bulletin Quotidien Europe* 1999a). The head of Atlanta, Chiquita's main bananas intermediary in Germany, was not impressed by Bangemann's capacity to represent German interests in the bananas conflict. After discovering in a conversation with the Commissioner the day the Agricultural Council was to decide on regulation 404 in 1993 that he did not know the issue was on the council's agenda, Atlanta's head observed that Bangemann 'did not know what he was talking about ... How should such a man, who was either badly informed or not informed at all, represent the

addition, the parameters of the decision-making process in the EU had meanwhile been complicated by the entry of three northern or central European states – Sweden, Finland and Austria – into the EU in 1995. All three new members were natural allies of the northern bloc of member states importing mainly dollar bananas from Latin America and favouring a liberal banana trade regulation. Alone the revision of regulation 404 to increase the dollar banana quota to take into account the fact that these states imported mainly Latin American bananas generated so much controversy in the Agricultural Council that the Commission was forced to use its market management powers under the CAP (Common Agricultural Policy) to put it into force. The new underlying balance of power in the Council increased the danger of its being immobilized on the bananas issues. Whilst the strengthening of the ‘northern’ bananas bloc in the EU made it much more difficult to enact new protectionist measures, the ‘southern’ bloc, consisting on the bananas issue of France, Spain, Portugal, Greece, Ireland, the UK and, with qualifications, Italy, was still large enough to constitute a blocking minority and prevent any significant weakening of the existing regulation. The latter fact would have obliged the Commission in any case to propose no greater changes than those considered necessary or indispensable to make the regulation ‘WTO-compatible’. In addition to this, the ‘northern’ member states, which, in principle, would have preferred a regulation based exclusively on tariffs, but many of which also belonged to the most ardent defenders of the WTO in the EU, were concerned that the regulation be revised within the time span foreseen by WTO rules. This led them to try to avoid a fresh and potentially protracted confrontation with the ‘southern’ states on the issue. The time factor hence came to play an important role in the EU negotiations on a revised regulation and it played into the hands of the regulation’s architects and defenders (interview of EU officials). The Commission’s proposals to modify the regulation were indeed modest and designed primarily to address the WTO panel’s objections to the licence allocation systems. Due to their main purpose, namely to make the regulation WTO-compatible, international legal issues played a prominent role in the Commission’s and Council’s deliberations (interview of EU officials). Whereas the Commission’s legal service okayed the proposals as WTO-compatible, not all member states – least of all the Netherlands - were so convinced. The Commission legal service’s argument that an exclusively tariff-based regulation would contravene the EU’s legal obligations under the Lomé Convention also served to diminish the pressure for more sweeping changes in the regulation.

interests of Germany in Brussels ... ? Clearly he just belonged to the group of those politicians who are delegated to Brussels because there is no appropriate job for them in Germany’ (Wessels 1995: 61).

A further factor that militated against radical changes in regulation 404 was the fact that, as in the second half of 1992, the British government occupied the presidency during the first half of 1998, when the Commission's proposals were submitted to the Agricultural Council. The new Labour government in London was just as attached as its Conservative predecessor to the defence of the interests of banana-growing former British colonies in the Caribbean – and by extension to those of the companies that marketed these bananas. In accordance with this council's established routines, the British presidency incorporated the banana proposals with numerous others, relating *inter alia* to olive oil, cereals and agricultural product prices, in a draft, multi-issue 'package deal'. Compared with 1992, the German government adopted a lower profile on bananas. The economics and agricultural ministries in Bonn would like to have adopted a more combative stance, but were held in check by Chancellor Kohl, who is reputed to have told the French president Chirac that the bananas issue was 'your baby – we'll let you take care of it' (interview of European Commission official; *Der Spiegel* 1998a; *Süddeutsche Zeitung* 1998).¹⁸ In lieu of Germany, the Netherlands assumed the role of chief protagonist of changes in the regulation. The Netherlands and Denmark were in fact the only member states that voted against the revised regulation in the council. At the insistence of the French minister in particular, EU banana growers were compensated by a more substantial increase in direct payments than originally foreseen by the Commission, while Spain in particular was rewarded for its acquiescence in the regulation by new olive oil measures also contained in the larger package. The potentially most divisive issue, however - the details of the new licence allocation system - was avoided and referred for resolution to the EU's market management committee on bananas.

7. Slipping over Bill and Monica? The new US bananas offensive

If the ardour of the opponents of the original bananas regulation in the EU had diminished, this was not true of its critics in the US and Latin America. The US administration had been critical of the Commission's proposals to change the regulation from the outset. Before the decisive council meeting, the US trade representative had threatened the EU agricultural ministers with sanctions on EU exports to the US if the new regulation discriminated against dollar bananas (*Der Spiegel* 1998a). If anything, however, the threat was counter-productive, prompting member states to close ranks behind a minimal reform of the

¹⁸ The German Agricultural Minister had astonished observers already in September 1997, after the confirmation of the WTO panel's verdict, by stating that 'out of solidarity with the [presumably EU and/or ACP] banana producers' Germany would fight to keep the EU regulation. A spokeswoman of the ministry subsequently added that 'of course' the regulation had to be changed to conform to the WTO ruling (*Süddeutsche Zeitung* 1997).

regulation (interview of EU officials). Within a month of the new regulation's adoption, the US and five Latin American states (Ecuador, Mexico, Honduras, Panama and Guatemala) declared that they would ask for a new WTO panel to examine the revised regulation's compatibility with world trade rules.

The Clinton administration's tough stance on the regulation appears to have been motivated by opposition to the regulation in the Congress mobilized by Chiquita and made all the more potent by the pending Congressional elections of November 1998 and the president's implication in the 'Monica Lewinsky Affair', which obliged him to pay particular attention to sentiment in the Congress, where impeachment proceedings were about to be launched against him. Upon the EU's refusal to acquiesce in Washington's demand for the reconstitution of a panel to examine the new regulation's WTO compatibility *before* the regulation was to take effect in January 1999, a bill was initiated in Congress that would have mandated the administration to impose sanctions on EU exports to the EU by the end of the year. To avert the bill's imminent adoption, President Clinton pledged that the administration would 'basically do what the bill says' (interview of US government official), namely that it would prepare sanctions against EU exports that, failing further changes in the banana regulation and following procedures laid down in section 301 of the Trade Act, would enter into force in early 1999. The administration subsequently published a list of EU exports to the US worth some \$570 million on which punitive tariffs would be levied.¹⁹

The USTR, Charlene Barshefsky, justified the US's threat not to await the outcome of a prospective future WTO panel on whether the new EU regulation conformed to international trade law by its desire to avoid an 'endless cycle of litigations' (*Bulletin Quotidien Europe* 1998b). In fact, however, American trade officials were unhappy about wielding the sanctions threat, which they feared would isolate the US and put it on the defensive on the issue in the WTO. The threat was made rather to appease the Congressional supporters of Chiquita, which was opposed to submitting the issue of the EU's compliance with the 1997 verdict to a new WTO panel. 'Chiquita was pushing an extreme view concerning world trade rules on bananas', according to an American official familiar with the case (interview of US government official). 'For a small amount of money [*sic*], Chiquita has been making US trade policy on this issue'. In 1997 and 1998, Chiquita's holding company, the American Financial Group (AFG) or company shareholders and employees actually contributed over \$1.4

¹⁹ The products on the American sanctions list included, among others, pecorino cheese, handbags, cashmere pullovers, cosmetics and coffee machines. No Danish or Dutch products were included, as these two states had voted against the revised bananas regulation in the Council. In terms of value, 24% of the products were British, 21% Italian, 19% French and 14% German (*Europolitique* 1998b).

million to American political parties and candidates, giving four-fifths of the sum to the Republicans and one-fifth to the Democrats (Center for Responsive Politics 1999c). For the first time, the AFG figured among the top ten donors of 'soft-money' contributions, its donations of \$1.2 million making it the fifth biggest such contributor (Center for Responsive Politics 1999e). Among individual as opposed to corporate donors, Chiquita shareholders and employees or members of their families were the third biggest donors, contributing almost \$1.2 million (Center for Responsive Politics 1999d). In Ohio, where Chiquita's headquarters are located, the AFG was by far the biggest donor (Center for Responsive Politics 1999a). Over the six-year period from 1993 to 1998, 11 members of the Cincinnati Lindner family, Chiquita's principal shareholders, donated as individuals some \$1.6 million to US parties (Center for Responsive Politics 1999b). Alone in 1998, their contributions to national organizations of the Republican and Democratic parties amounted respectively to \$670,000 and \$150,000. The great bulk of these sums were donated in October, simultaneously with the Congressional election campaign, the initiative launched in Congress to impose unilateral trade sanctions on the EU and the administration's 'basic' acquiescence in this strategy (Center for Responsive Politics 1999b). EU saw the hand of Chiquita not only in the Congressional bananas initiative of October, but also in the failure of a bilateral attempt to settle the dispute at the EU-US summit in Washington in December. According to EU officials, a tentative agreement was scuttled by the White House because it had been rejected by Chiquita and President Clinton's advisers had subsequently judged that 'offending Mr Lindner [head of Chiquita] could cause him to swing impeachment votes against the president' (Peel and de Jonquières 1999).

The Chiquita-inspired, hard-line US strategy on bananas propelled the administration into a byzantine procedural battle with the EU in the WTO. The EU refused at first to negotiate with the US under the threat of sanctions, took first steps to launch a WTO panel investigation into the legality of section 301 and argued of course that the WTO compatibility of its new bananas regulation could be determined only after the regulation came into force and by a WTO panel, not unilaterally by the US. By January 1999, the two big protagonists in the conflict had diametrically reversed the tactics they had been following only a few months earlier: the US, which in July 1998 had wanted to launch a new WTO panel on the bananas regulation, was opposed to convening such a panel, while the EU, initially hostile to the idea, now insisted upon doing so, arguing that the new regulation had to be regarded as WTO-compatible, 'unless the opposite was proven' (*Süddeutsche Zeitung* 1999). The panel, also requested by Ecuador, reconvened in January 1999 with the same composition as in 1996-97. Just as US trade diplomats had feared, Washington's determination to impose trade sanctions on the EU before the panel had ruled on the WTO-compatibility

of the new bananas regulation alienated it from a large number of WTO member states with no stakes in the bananas conflict, ranging from Japan and South Korea to India, Indonesia, and Canada. Its growing isolation did not, however, dissuade the administration from proceeding to impose sanctions on \$570 million worth of EU exports to the US in March 1999. The US tried to balance this step against its perceived WTO obligations by declaring that it would await the WTO panel verdict and then levy the higher import duties retrospectively, assuming presumably that the verdict was in the US's favour.

Once again, the verdict was. The panel ruled that, although the EU could give preferential duty-free treatment to ACP bananas, the regulation's quota and licensing provisions still discriminated illegally against Latin American suppliers and US banana traders. The US victory was not total, however, in as far as the panel reduced the value of the EU exports on which the US could legally impose sanctions by two-thirds to \$191 million. Moreover, a subsequent WTO panel, set up at the EU's request, found that the US had acted illegally in imposing sanctions on EU exports before the bananas panel had issued its verdict (*Financial Times* 2000).²⁰

Its renewed defeat at the WTO left the EU with three basic options in the bananas conflict. First, it could ignore the panel ruling. In this case the US – and Ecuador – could continue to impose trade sanctions on EU exports indefinitely, trans-Atlantic relations would continue to be aggravated by the banana 'split' and hostility towards the WTO in the US Congress could intensify. In late 1999, the US administration was reportedly coming under 'intense pressure' from the Congress to increase sanctions on EU exports because it had not yet changed the regulation (*European Voice* 1999). Second, it could retain the bananas regulation while offering compensation to the two states in other areas. The US administration made it clear, however, that it would reject any such offer. Third, it could of course try to change the regulation again to make it acceptable to other WTO member states, so that none would contest the new regulation at the WTO or, if they did, the EU could reckon on winning the dispute. This path of action ran or would run, however, into two interrelated obstacles, one external and the other internal. The external obstacle was that, as the Commission established in post-panel negotiations, it was impossible to forge a consensus between the involved states on a new, still quota- and licence-based regulation. In the case of the US, the apparently conflicting preferences of Chiquita and Dole dissuaded the administration from taking any clear position on how the regulation should be altered (interview of British government official). Only a tariff-based regulation, the Commission argued, stood a chance of being

²⁰ The panel instigated by the EU on the conformity of section 301 in the US Trade Act with WTO rules found essentially that the section itself was not illegal, but would be if it were used.

acceptable or, at least, being defensible in the WTO in case its legality should be challenged. The internal obstacle was that there was still no qualified majority in the EU Council for a substantial, WTO-compatible revision of the regulation. The regulation's 'hard-core' defenders – France, Spain and Portugal - were too few to force the EU to appeal against the WTO panel's verdict, but they still appeared to have enough allies in the council – depending on the issue, Greece, Ireland and Italy – to prevent a sweeping or at least a rapid recasting of the regulation. Moreover, the position of the UK on the issue seemed still to be ambivalent, torn as it was between its loyalty to former British colonies (and trading companies) in the Caribbean and its support for the WTO and the multilateral trading system. Faced with Commission proposals to move to an exclusively tariff-based regulation by 2006, the 'southern bloc' insisted that the period of transition be extended from six to 10 years and that, rather than being automatic, the proposed introduction of a tariff-only regulation be re-assessed halfway through this period (*Europolitique* 1999; *Bulletin Quotidien Europe* 1999b). Combined French, Spanish, Portuguese, Greek and Irish opposition to the Commission's proposals prevented their adoption when they were put to the Council in July 2000 (*Financial Times* 2000b). The banana 'splits' were now roughly a decade old, but the tasks of achieving an intra-EU consensus on the issue and making any internally possible regulation internationally 'viable' were hardly any less intractable than at the beginning.

8. Conclusions and implications

The banana 'splits' represent – in intellectual as well as practical terms - a fascinating deviant case in the wider context of EU external trade policy and trans-Atlantic trade relations. They are, in a practical sense, a deviant case because the formulation and implementation of the great bulk of EU trade policy and trans-Atlantic trade relations are conducted in the absence of deep political conflicts and of the conflicts that have broken out in EU trade policy and trans-Atlantic trade relations hardly any has proved so tenacious and so intractable as that over bananas, which, after all, account for an infinitesimally small proportion of intra-EU and trans-Atlantic trade. They are a deviant case in an intellectual sense because important parts of the literature on EU policy making, EU trade policy and public policy analysis would not have predicted that the EU bananas regulation would be adopted, at least not with the provisions it contained, and because it has proved intractable for quite different reasons than those which have been identified as driving numerous other major recent trans-Atlantic trade conflicts. In this article, we have attributed the original adoption of the regulation to a combination of the decision-making rules and norms in the EU's Agricultural Council and the distribution of preferences and preference intensities among the member government ministers in the council. Concretely,

the Council presidency was able to destroy a potential ‘blocking minority’ of anti-protectionist member governments by playing on the fact that, for these governments, which had no producer interests at stake on this issue, other agricultural *dossiers* were politically important and incorporating attractive proposals for these governments on these *dossiers* into an astutely crafted, larger policy ‘package’ in which the bananas regulation – so important for the other governments – was also subsumed. Because the provisions of the regulation were so one-sided and so threatening for the growers and especially traders of dollar bananas, the latter interests had a powerful incentive to mobilize against the regulation. We have attributed the relatively high intractability of the banana ‘splits’ additionally to the extent to which, on both sides of the Atlantic, the bananas policy making process has effectively been ‘captured’ by two sets of antagonistic particularistic interests. This outcome has been favoured by changes in the wider context of trade policy making in the EU and the US, most of all by the organization of (agricultural) trade policy making processes in the EU and the US. The recent reassertion of the supremacy of the member states over the European Commission in EU trade policy and the growing trade policy activism of the American Congress have arguably increased the influence of particularistic interests over trade policy on both sides of the Atlantic.

This analysis has stressed the atypical, extraordinary or unique character of the banana ‘splits’. Some elements of the banana ‘story’ can, however, be identified in other trans-Atlantic trade conflicts. Of these, the shifting distribution of power in EU and US trade policy making facilitating the exercise of influence by particularistic interests is the most ominous. Other things being equal, this trend presages increasing antagonism in trans-Atlantic relations, whereby there is as much reason to fear a growth of protectionism in the US as in the EU (cf. Meunier 2000: 132). The increasingly contested nature of supranational integration in the EU and the increasing opposition to free trade and globalization in the US suggest that the trend itself is likely to strengthen rather than weaken.²¹ The collapse of the 1999 Seattle WTO summit intended to launch a new round of international trade liberalization negotiations is arguably an early manifestation of the growing incapacity of the US and the EU to act either jointly or singly as ‘motors’ of international trade liberalization.

²¹ The growing powers and authority of the European Parliament (EP) in the EU may be seen as an exception or counter to this trend. It has been argued that the Parliament’s growing powers will make the EU more responsive to ‘broader social’ (for example, consumer), as opposed to particularistic economic, interests (Peterson 1997: 17). The banana ‘splits’ do not, however, lend any support to this interpretation. The EP, whose trade policy role is only advisory, has always ardently supported the bananas regulation. Indeed, in November 2000, it was threatening to prevent a revision of the existing regulation by refusing to adopt an opinion on it (*European Voice* 2000b). It is possible that the growing role of the EP will lead rather to the formation of ‘iron quadrangles’ comprising the relevant EP committee and Commission directorate-general, national ministries and sectorally organized EU interest groups.

There is, however, at least one glimmer of hope in the sombre story of the banana ‘splits’. This is that the trans-Atlantic conflict has so far been fought out within the WTO and according to its dispute settlement rules. Whilst the banana ‘splits’ have seriously tested the WTO’s authority and may have made it more difficult for the organization to resolve other important issues, such as the choice of a new secretary-general in 1999, and both the US and EU have, at different times and to different extents, toyed with the idea of openly flouting its dispute rules, neither has ultimately gone as far as to do so. *If* a durable settlement to the intra-EU and trans-Atlantic banana splits should be found, then this will have been primarily attributable to the moderating effect of the WTO on the combatants. Meunier (2000: 115-119) has portrayed how, in trans-Atlantic negotiations, the EU’s decision-making rules make it unlikely that the US would be able to force it to acquiesce in a substantial change in the policy status quo. Meunier’s analysis assumes, however, that trans-Atlantic trade negotiations take place in an anarchic international political environment. But with the transition from the GATT to the WTO with its greatly strengthened dispute settlement instruments, trans-Atlantic trade takes place less in an anarchic political world than within an international legal regime that may impose considerable constraints on the range of measures that states may deploy in international trade conflicts. Both the US and EU supported the strengthening of the GATT/WTO’s dispute settlement mechanisms. To the extent that they have exercised restraint in the banana ‘splits’, their principal motive has been not to undermine the new procedures and heighten the risk that their behaviour would thus inflict lasting damage on the multilateral trading system. Certainly, as far as the EU is concerned, US threats and menaces *as such* have not made it more ready to make concessions on the bananas regulation. Rather they have had the opposite effect of increasing European solidarity in support of the regulation. The prospect, on the other hand, that an explicit EU refusal to comply with the WTO banana dispute verdicts might undermine the WTO has encouraged the member governments to try to develop a WTO-compatible regulation (interview of EU officials). The fear that the banana ‘splits’ might damage the WTO as well as poison trans-Atlantic trade relations more generally has also motivated another development that may facilitate a resolution of the conflict: the increased participation in the *dossier* of the leadership of the European Commission and the Commission’s DG for external trade relations at the expense of the agricultural ministers since the second WTO verdict declaring the revised regulation illegal in April 1999.²² These two developments together

²² The initial Commission proposals to bring the bananas regulation in line with WTO requirements were drawn up in 1999 – unusually – under the supervision of the Commission’s deputy secretary general, Bernhard Zepfer (*European Voice* 1999 and *Bulletin Quotidien Europe* 1999b). The current external trade commissioner, Pascal Lamy, has pushed hard for a revision of the bananas regulation that would conform with WTO rules (see, for example, *Bulletin Quotidien Europe* 2000).

made it more probable that the banana ‘splits’ would not prove irreparable and that neither the European integration process, nor the trans-Atlantic relationship, nor the WTO and multilateral international trading system would finally ‘slip over’ bananas. More probable ... but not certain – for, as a banana-split-weary European Commission official remarked at one stage during the long conflict: ‘You can never taken anything for granted on bananas’.²³

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²³ Quotation from *European Voice* 1996.

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