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The WTO Banana Dispute Settlement and Its Implications for Trade Relations between the United States and the European Union

Hunter R. Clark†

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Introduction

There tends to be little that the United States and Europe agree upon these days. ¹ Even their cooperation in the war on terrorism has been tinged with jealousy, hurt feelings, and resentment over America’s growing political,


1. See, e.g., Editorial, Cross Talk Among Allies, WASH. POST, Feb. 20, 2002, at A14: Blunt and unpleasant rhetoric has been flying back and forth between the United States and Europe in the past few weeks, at remarkably senior levels of government. President Bush has been publicly chastised by the British, French and German foreign ministers for his description of Iran, Iraq and North Korea as an “axis of evil”; he has been demeaned as pandering to domestic opinion, informed that he was too simplistic and warned against treating European allies as American “satellites.” Mr. Bush and Secretary of State Colin Powell have replied in kind, dismissing the Euro-criticisms as the “vapors” of hyperventilating politicians. Coming as it does amid questions about Europe’s slackening military commitment to NATO and America’s drift toward unilateralism, the argument has an alarming tone.

See also Steven Erlanger, Europe Seethes as the U.S. Flies Solo in World Affairs, N.Y. TIMES, Feb. 23, 2002, at A8. For a discussion of the “axis of evil,” see infra note 17 and accompanying text.

economic, cultural, and military power. In Afghanistan, for example, America’s successful use of its high-tech arsenal proved the envy of the Europeans, showing how much the military imbalance between the United States and Europe has grown, and the extent to which America has advanced technologically beyond the European nations. Meanwhile, the war’s strategic realities have caused American policy makers to question the primacy of the European alliance; the role played by Russia seemed much more crucial to achieving America’s strategic objectives than did Western Europe. The Bush administration’s unilateralist inclinations may be the most visible indication that “America’s furrow in world affairs has long been diverging from the European Union’s.

Trade has certainly been an arena of discord between America and Europe. At the World Trade Organization (WTO), the two sides are at loggerheads over a growing list of issues including hormone treated beef restrictions, subsidies to Airbus, farm subsidies, data processing, steel imports, and the so-called Byrd amendment. On the horizon loom some $4 billion in trade sanctions that the European Union (EU) has threatened to impose on American products unless the United States changes its tax laws. The Europeans want the United States to conform its Internal Revenue Code (IRC) to a WTO ruling on foreign sales corporations (FSCs). According to the WTO, tax breaks that FSCs receive under the IRC violate global trading rules. So far, the two sides have been unable to reach a negotiated settlement in the matter despite U.S. trade negotiator Robert

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3. See, e.g., David Ignatius, Editorial, The Transatlantic Rift is Getting Serious, WASH. POST, Feb. 15, 2002, at A33 (quoting NATO Secretary General Lord Robertson’s concern that Europe risks becoming a “military pygmy”); see also Erlanger, supra note 1 (reporting that EU Commissioner for Foreign Policy, Christopher Patten, acknowledges that, for the Europeans, part of the problem with America is that “America's military weight dwarfs that of the rest of the world, and it is growing heavier . . . .”).
4. See Ignatius, supra note 3.
5. See id.
6. See id.
7. See Cross Talk Among Allies, supra note 1; see also Michael Naumann, Editorial, Why Europe Is Warby of War in Iraq, N.Y. TIMES, Feb. 18, 2002, at A15 (asserting that from the European perspective, “Washington’s unilateralism . . . looks like simply a form of America’s longstanding isolationism, which is to say that the distance is created by America, not by Europe.”); Erlanger, supra note 1.
10. See generally Clark et al., supra note 9 (discussing the WTO ruling on FSCs); see also, David L. Aaron, Editorial, Heading Off a Trade War, WASH. POST, Sept. 7, 2001, at A29.
11. See Clark et al., supra note 9, at 292.
Zoellick's dire warning that $4 billion in anti-American trade sanctions would go off like a "nuclear bomb" in the world trade system.\textsuperscript{12}

My own writing has characterized the United States and Europe as engaged in an "escalating trade war."\textsuperscript{13} Washington Post columnist David Ignatius has gone farther, likening the overall state of relations between the United States and Europe to "a marriage that has gotten out of sync—with one partner feeling left behind as the other becomes more successful."\textsuperscript{14} The Economist agrees, citing numerous ways in which the two partners simply do not understand each other anymore:

The United States is a very different place from Europe, and the differences will grow. Demographically, Americans are increasingly Asian and Latino, less inclined when looking "home" to turn to Europe. Their affection for guns, religion, the death penalty and genetically modified crops seems strange to Europeans. Just as baffling to Americans is Europeans' toleration of high taxes, fussy regulation and indulgent state help for idlers and unfortunates. While Americans remain individualistic citizens of a nation-state at the height of its power, Europeans are absorbed in an unprecedented enterprise of union-building. Good luck to them, Americans may say. Let them sort out their Balkan backyard.\textsuperscript{15}

Ignatius has cautioned that if the increasingly differential interests and capabilities between the United States and Europe remain unresolved, "both sides will soon find themselves on very unstable ground."\textsuperscript{16} This would be an unfortunate, if not fatal, result, not just for the United States and Europe, but for freedom around the world. For at a time when terrorists and their state sponsors seek to obtain or develop weapons of mass destruction,\textsuperscript{17} the United States and Europe need each other. The Economist, for example, observed the following:

\textsuperscript{12} Aaron, supra note 10.
\textsuperscript{13} Clark et al., supra note 9.
\textsuperscript{14} Ignatius, supra note 3.
\textsuperscript{15} See Mr. Bush Goes to Europe, supra note 8.
\textsuperscript{16} Ignatius, supra note 3.
\textsuperscript{17} In his January 29, 2002 State of the Union address, President George W. Bush decried the existence of an "axis of evil," consisting of states determined to undermine world peace. More specifically, the President named North Korea, Iran, and Iraq as constituent members of this axis, declaring:

States like these and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. They could provide these arms to terrorists, giving them the means to match their hatred. They could attack our allies or attempt to blackmail the United States. In any of these cases, the price of indifference would be catastrophic.

We will work closely with our coalition to deny terrorists and their state sponsors the materials, technology, and expertise to make and deliver weapons of mass destruction. We will develop and deploy effective missile defenses to protect America and our allies from sudden attack. And all nations should know: America will do what is necessary to ensure our nation's security.

[The United States and Europe] are, together, not only the main engine of the world’s economy but the main custodian of its liberal values. They have strong interests in common, and each has additional interests in persuading the other to be at least partly involved in less obvious areas of concern: America needs European help in Asia, Europe needs American help almost everywhere. Why? Because neither power, not even the United States, is usually strong enough, on its own, to carry the day. Moreover, experience—remember Bosnia—shows that one without the other makes little headway, whereas the two together can be effective.\(^{18}\)

Some commentators note, however, “[s]olutions exist, or can be found, for all the problems that beset the allies, so long as they are prepared to work to settle their differences.”\(^{19}\) This is why proponents of strengthened relations between the United States and European Union welcomed their joint press release of April 11, 2001, announcing the resolution of their so-called “banana dispute.”\(^{20}\) A trade disagreement like the one over bananas may be but symptomatic of the larger challenges faced by the alliance. Even within the limited context of trade, the banana dispute pales in comparison with what is at stake in other trade matters such as the “nuclear bomb” of FSC sanctions. Nevertheless, the two sides’ willingness to negotiate a deal over bananas shows that their disagreements over trade need not always end badly. To that extent, at least, the banana dispute settlement represents a small but good and significant exception to the overall decline in American-European relations.

The first part of this essay explores the background and history of the banana dispute, and the terms of its settlement. The second part addresses the implications of the settlement for the poorer exporting nations that it affects most directly. Lastly, I will analyze one aspect of trade policy about which the United States and European Union appear to be in agreement—namely, the desirability of tying aid and preferential trade arrangements to progress toward effective governance in beneficiary developing countries.

I. The Background and History of the Banana Dispute

The origins of the banana dispute can be traced to the late 1950s when the European Community (EC) first established preferential trading arrangements with former European colonies in Africa and the Caribbean and Pacific regions (ACPs).\(^{21}\) These preferential arrangements included

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\(^{18}\) Mr. Bush goes to Europe, supra note 8.

\(^{19}\) Id.; see also Ignatius, supra note 3 (concluding that both Europe and the United States need to understand the anxieties of the other in order to preserve their declining relationship).


the duty-free importation of ACP bananas into Europe.\textsuperscript{22} The duty-free treatment was designed to make ACP bananas competitive with imports from Latin America, where heavy capital investment by American multinational fruit conglomerates like Dole and Chiquita Brands had substantially reduced the fruit's production costs.\textsuperscript{23} As a result of successive trade agreements with the ACP, "most European national systems had quantitative restrictions or licensing requirements affecting the banana trade, especially that stemming from non-ACP exporters."\textsuperscript{24} Because American corporations held a high stake in Latin American fruit production, U.S. economic interests were affected by these European-ACP trade arrangements despite the fact that only a small amount of the world's total production of bananas actually occurs within U.S. borders.\textsuperscript{25}

A. Bananas I

The Latin American countries were first to use the General Agreement on Tariffs and Trade (GATT) dispute settlement process to challenge Europe's banana import regime. In 1993, Costa Rica, Colombia, Nicaragua, Guatemala, and Venezuela invoked GATT dispute settlement procedures to allege that European banana import quota and licensing schemes violated global trading rules.\textsuperscript{26} Later that year, a panel established by the GATT Council sided with the Latin Americans, finding that the European quota regimes violated Articles I and XI.1 of GATT.\textsuperscript{27} The former provision requires GATT members to extend to each other most-favored-nation (MFN) treatment; the latter bars the enactment of quantitative import restrictions at the national level.\textsuperscript{28} However, implementation of the panel's ruling—known as "Bananas I"—was blocked by the EEC and ACP countries and never formally effectuated.\textsuperscript{29} Under GATT dispute settlement rules in place at the time, panel reports took effect only if approved by consensus of the GATT Council.\textsuperscript{30} Hence any GATT member could "block" the implementation of a panel report.\textsuperscript{31}
B. Bananas II

Shortly thereafter, the Council of the European Union changed Europe's banana import regime by adopting Regulation 404/93, effective July 1, 1993.32 The regulation purported to complete the Europeans' internal market pursuant to the Single European Act of 1996 by harmonizing, or making uniform, the treatment of banana imports across the European Community, establishing a set of common rules to replace various national import schemes.33 The new regulation also came under attack by the Latin Americans.34 Like its predecessor regime, Regulation 404/93 maintained the distinctions between ACP and non-ACP exporters in a way that favored the ACP exporters. As one legal analyst explained the situation, "[T]he allocation of the tariff quotas, as well as a system of import licenses foreseen in Regulation 404/93 benefited ACP countries, to the detriment of non-ACP exporters, imposing new restrictions on the import of bananas into EU Members States, including Germany."35 The inclusion of Germany was significant because it had traditionally been the largest European consumer of bananas and, prior to the adoption of Regulation 404/93, Germany had always gone it alone in insisting upon the right to import duty-free, non-ACP bananas.36

For the second time, in what became known as "Bananas II," a panel appointed by the GATT Council to hear the Latin Americans' complaint ruled against the Europeans. Regulation 404/93 was found to violate GATT Article I, which embodies the most-favored-nation principle; Article II concerning tariff bindings; and Article III's national treatment obligation.37 However, the EU again blocked implementation of the Bananas II panel report.38

The EU and ACP states subsequently tried a different approach. In late 1994, they formally sought, and were in fact granted, a waiver of their GATT obligations pursuant to GATT Article XXV:5 and WTO Article IX:3.39 Under those provisions, the GATT General Council and the WTO Ministerial Conference may waive GATT members' obligations under the GATT and related multilateral trade agreements in exceptional circumstances.40 More specifically, the Europeans and ACP countries were granted the so-called "Lomé Waiver" in relation to the Lomé IV Convention that was the basis for their trade and development relationship.41

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32. Council Regulation 404/93, art. 12, 1993 O.J. (L 47); see Salas & Jackson, supra note 21, at 148.
33. See Council Regulation 404/93, art. 12, 1993 O.J. (L 47); Salas & Jackson, supra note 21, at 146-47.
35. Salas & Jackson, supra note 21, at 147.
36. See id. at 146-47.
37. See EEC-Import Regime for Bananas, supra note 34.
38. See Salas & Jackson, supra note 21, at 148.
40. Id.
41. Salas & Jackson, supra note 21, at 149; Marinberg, supra note 22, at 153-59.
Lomé IV Convention extended ACP exporters access to the European market on preferential terms, "given the extreme importance of the trade provisions of the Fourth Lomé Convention for the economy of the ACP countries."42

When EU and ACP representatives requested an extension of the waiver in 1996, they explained, "The circumstances justifying the waiver, in particular the trade, financial and development needs of the beneficiary States, continue to exist. While the Lomé IV Convention has promoted the economic growth of the ACP States, their development has not yet reached a level that would permit a termination of preferential treatment."43 The requested extension was granted with vague reference to "exceptional circumstances" that continued to justify it.44

In the meantime, the Europeans pursued a negotiated settlement of the dispute. On March 29, 1994, Colombia, Costa Rica, Venezuela, and Nicaragua accepted the so-called Framework Agreement on Bananas.45 By the terms of the Framework Agreement, the EU pledged to increase the tariff quota for non-ACP bananas on a country-by-country basis, and to revise the management of export licenses.46 In exchange, the Latin American countries agreed to forego further action against the Europeans under GATT. Ultimately, however, the framework was not accepted by all parties.47 Guatemala refused to accept it,48 and Germany and the United States protested.49 Ecuador, the world's leading banana producer, and Panama were not members of the GATT at the time the framework was concluded, and thus were not eligible to participate in it.50

C. Bananas III

In 1995, after the Uruguay Round agreements took effect, providing aggrieved GATT members access to the new WTO dispute settlement process, the United States joined Latin American states that had not agreed to the Framework Agreement on Bananas in a third challenge—known as "Bananas III"—to the EU's banana import regime.51 The WTO dispute settlement process had put "automaticity" in place, a reverse consensus system under which panel rulings would take effect automatically unless rejected by a consensus of WTO members.52 Hence "blocking" was effec-

42. Marinberg, supra note 22, at 156 (citing ACP Countries-European Communities Fourth Lomé Convention: Request for Waiver, GATT Doc. L/7539 (Oct. 10, 1994)).
43. Id. at 157 (citing The Fourth ACP-EC Convention of Lomé: Request for an Extension of a Waiver, WTO Doc. G/L/108 (Sept. 9, 1996)).
44. See id.
45. See Salas & Jackson, supra note 21, at 149-50.
46. See id. at 149.
47. Id.
48. See id. at 150.
49. Id.
50. Id. at 150-51.
52. Salas & Jackson, supra note 21, at 150-51.
tively prevented because no single state, or bloc of states, could keep a panel report from being implemented. If a WTO panel ruled against the EU’s banana import regime, as GATT panels had done twice before, non-ACP banana producers would be entitled to levy retaliatory sanctions on European imported goods.53

On May 22, 1997, the Bananas III panel circulated reports in each complainant’s case, and Europe was again found in violation of global trading rules.54 Among other things, the panel found that the EU banana import scheme was inconsistent with GATT Articles I:1, III:4, X:3, and XIII:1, as well as Article 1.3 of the Licensing Agreement, and Articles II and XVII of General Agreement on Trade in Services (GATS).55 The panel further limited the scope of the Lomé Waiver to violations of Article I of GATT, which embodies the most-favored-nation principle.56 The Lomé Waiver was declared void to the extent that it permitted violation of GATT Article XIII, which requires that GATT members administer permissible quota schemes in a non-discriminatory way.57 The panel report was upheld, with some modification, by the WTO Dispute Settlement Body (“DSB”),58 and adopted by reverse consensus on September 25, 1997.59

Over the course of the following year, the parties failed to reach agreement on a time frame for implementing the Bananas III panel ruling. Frustrated by the “tactics displayed by the EU,”60 the United States gave notice on October 22, 1998 that it would act unilaterally to impose retaliatory sanctions against an array of European imports under Section 301 of the Trade Act of 1974.61 At the WTO, the American action was followed by what one scholarly analysis has referred to as an “inventory” of at least

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54. Salas & Jackson, supra note 21, at 151.
55. Id. This particular violation was found in the case of the United States. Id.
56. See id.
57. See id.
59. See Salas & Jackson, supra note 21, at 152.
60. Id. at 155.
“seven ‘separate’ proceedings or ‘cases’ causing considerable confusion in the press and the public.”

On April 19, 1999 the Office of the United States Trade Representative announced that the WTO authorized the United States to suspend GATT concessions to the European Union based on its failure to conform its banana import regime to the Bananas III panel ruling. By that time, however, the United States had already acted. On April 9, 1999, the U.S. Trade Representative had published a list of retaliatory tariffs totaling some $191.4 million annually. The targeted European imports included a diverse array of items, from bath preparations, handbags, and uncoated felt paper to bed linens, lead-acid storage batteries, and electrothermic coffee or tea makers.

D. The Banana Dispute Settlement

Two years later, those sanctions were still in effect when, on April 11, 2001, the United States and European Union issued a joint press release announcing that they had reached a negotiated settlement of their banana dispute. Roughly two weeks later, on April 30, 2001, the EU announced that its understanding with the United States had served as the basis for ending the EU’s banana dispute with Ecuador as well. On May 2, 2001,

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62. Salas & Jackson, supra note 21, at 162.
65. See USTR Announces Final Product List in Bananas Dispute, supra note 64.
66. See Press Release, Office of the United States Trade Representative, U.S. Government and European Commission Reach Agreement to Resolve Long-Standing Banana Dispute (Apr. 11, 2001), available at http://www.ustr.gov/releases/2001/04/01-23.html. As reported in the joint press release, the gist of the agreement reached by the parties is as follows:

The new [EU banana import] system is scheduled to take effect on July 1, 2001. The European Union will institute a system of licensing, based on historic reference periods from July 1, 2001. The European Commission will also initiate the necessary procedures to propose to the Council of Ministers an adjustment of the quantities in the various quotas, in order to expand access for Latin American bananas and to secure a marketshare for a specific quantity of bananas of ACP origin. The United States has pledged to work actively to secure acceptance of the EU’s request for the necessary WTO authorization. Once these steps have been completed, the sanctions will be definitively lifted.

A tariff-only system is scheduled to take effect on January 1, 2006. The European Union will begin negotiations necessary under WTO rules in time to introduce the tariff-only system from January 1, 2006.

The European Commission will now table the necessary proposals to the Council of Ministers and the European Parliament in order to fully implement the agreement as soon as possible.

Id.
the European Commission adopted a regulation designed to implement the understanding reached by the EU with the United States and Ecuador, respectively.\textsuperscript{68} The regulation’s adoption prompted the United States to suspend, on July 2, 2001, the $191.4 million in increased customs duties that it had imposed on European imports back in April 1999.\textsuperscript{69} The formal end to the long-running banana dispute came on December 19, 2001 when the Council of the European Union, more commonly known as the Council of Ministers, adopted regulations that put the EU’s new banana import regime in place.\textsuperscript{70}

In accordance with the understandings reached with the United States and Ecuador, the Europeans will establish a tariff-only system for banana imports by January 1, 2006.\textsuperscript{71} In the meantime, pursuant to European Commission regulation 896/01,\textsuperscript{72} the EU will be allowed to maintain a modified system of tariff quotas, allotting import licenses on the basis of historical preferences based on trade between the years 1994 and 1996.\textsuperscript{73} This should soften the impact that increased competition will have on the economies of the ACP states. According to a Dow Jones & Company assessment,

> The new [EU banana import] rules will grant traditional suppliers of bananas to the E.U. access to 83% of the total import quota of 2.4 million tons, while nontraditional suppliers, like Ecuador, will have the remaining

\textsuperscript{Id.} The Understanding between the EU and Ecuador is fully compatible with the one reached between the EU and US earlier this month. \textsuperscript{Id.}


\textsuperscript{71} See U.S. Government and European Commission Reach Agreement to Resolve Long-Standing Banana Dispute, supra note 66; EU and Ecuador Reach Agreement to Resolve WTO Banana Dispute, supra note 67; Commission Adopts Regulation, supra note 68; WTO Dispute Settlement: Bananas, Commission Welcomes Decision on Final Step to Settle Banana Dispute, supra note 69; Knight, supra note 70.

\textsuperscript{72} See WTO Dispute Settlement: Bananas, Commission Welcomes Decision on Final Step to Settle Banana Dispute, supra note 69.

\textsuperscript{73} See Knight, supra note 70. The WTO Ministerial Conference waived the GATT obligations of the EC, which the EC needed to implement the new EU banana import regime’s tariff quotas during the transitional period to a tariff-only system, on November 14, 2001. See European Communities – Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas, WT/MIN(01)/16 (Nov. 14, 2001), available at http://www.wto.org/english/docs_e/docs_e.htm.
17%. Other technical provisions on areas such as compensatory aid and the financing of producer organizations have also been included so that the system fully complies with World Trade Organization rules.\(^{74}\)

By Dow Jones' estimate, the interim arrangement will increase European import volumes from Latin America from 100,000 to 353,000 tons annually.\(^{75}\)

II. Good for American Corporations, Latin American Producers, and European Consumers, but bad for the ACP?

A. Ending the ACP's Preferential Trade Status

Europe has long insisted that without preferential treatment in the form of tariff quotas and other financial assistance, the relatively inefficient "small-scale banana growers in [the] 'Lomé Convention' countries" would never be able to compete effectively with the behemoth American corporate banana producers based in Latin America.\(^{76}\) The ACP is comprised of 78 nations,\(^{77}\) fifty-six of which are members of the WTO.\(^{78}\) The "twelve traditional banana producing ACP countries" are Cameroon, Cape Verde, Ivory Coast, Madagascar, Somalia, Jamaica, Belize, St. Lucia, St. Vincent, Grenada, Dominica, and Suriname.\(^{79}\) Of these twelve, Madagascar and Somalia are considered ACP least-developed states.\(^{80}\) Several years ago, when Jamaican Prime Minister Percival Patterson observed, "Bananas are to us what cars are to Detroit," he stated the obvious about the extent to which ACP banana producers depend on access to the European market for their subsistence.\(^{81}\) That is why the European Union, through the "supply restricting provisions" of its banana import regime, has limited Latin American, or "dollar" bananas, access to the European market, in effect subsidizing ACP growers by making EU consumers pay roughly twice as much for bananas as their American and Eastern European counterparts.\(^{82}\)

\(^{74}\) See Knight, supra note 70. As used in the quoted passage, the term "compensatory aid" refers to annual financial assistance provided by the EU to banana producers. This compensation "is designed to offset the loss of income resulting from the common trade regime and the removal of the protection these producers enjoyed under their former national regimes." Thagesen & Matthews, supra note 21, at 616.

\(^{75}\) See Knight, supra note 70.


\(^{77}\) See EU Official Outlines New Export Conditions for ACP Countries, EFE NEWS SERV., Feb. 15, 2002, available at WESTLAW, ALLNEWSPLUS.

\(^{78}\) See Greta Hopkins, Trade: ACP Ministers to Present United Front at Doha, INTER PRESS SERV., Nov. 8, 2001, available at 2001 WL 4805908.


\(^{81}\) Warren J. Keegan & Mark C. Green, Global Marketing 125 (2d ed. 2000).

\(^{82}\) See Biennial Report from the Commission 2000, supra note 79, at 3. The Biennial Report provides a good discussion of the world banana market.
As the twentieth century drew to a close, ACP leaders came to the realization that the preferential treatment accorded them would eventually give way. Thus, regarding bananas, they focused their diplomacy not so much on resisting the inevitable as on buying time and obtaining the financial and technical assistance required to make their banana producers more competitive, or to diversify their fruit production. When it became clear that the Europeans intended to provide them with a transitional period before implementing a new tariff-only banana import regime, some ACP leaders expressed guarded relief. As the Prime Minister of Grenada stated in 1998,

We thought we would have been cut off from our market right away, so this is a hopeful sign for us. But the message is clear—we cannot sit and wait because the preferences we have now will not be there for long. We now have some time, but we must recognize the reality of the situation and deal with it.83

The ACP states have pursued essentially the same strategy in regard to the other trade preferences traditionally accorded them under the terms of the Lomé Convention, which expired in 2000 and has now been replaced by the Cotonou Agreement as the basis for trade relations between the European Union and the ACP. For example, going into November 2001 trade negotiations with their European counterparts, ACP representatives sought an extension of the Cotonou trade preferences through the year 2008.85 As discussed, the interim period during which quota tariffs will be permitted under the banana dispute settlement will end when a tariff-only system begins on January 1, 2006.

Some analysts questioned the extent to which the ACP states benefited from trade preferences like those accorded under the old banana import regime. The preferential trade provisions of the erstwhile Lomé Convention have been criticized as "not [being] sufficiently large to promote export growth and export diversification among the ACPs."86 For example,

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83. See Keegan & Green, supra note 81, at 125.
85. See Hopkins, supra note 78.
86. See Lars Nilsson, Trading Relations: Is the Roadmap from Lomé to Cotonou Correct?, APPLIED ECON., Mar. 10, 2002, available at 2002 WL 13808704. In fact, under the Lomé regime, ACPs failed to maintain or increase their EU market shares, but countries not receiving preferences increased theirs. See id. Nilsson concluded, however, that during the study period 1973 to 1992, ACP exporters at least fared better under the Lomé
in their 1997 assessment of the European banana import regime, Rikke Thagesen and Alan Matthews observed:

The unified trade regime aimed at preserving the pre-SEM [Single European Market] situation with its protection of imports from preferred suppliers despite their lack of competitiveness. However, the ACPs have not been able to fulfill their import quotas and have experienced an overall welfare loss. Nor have the EU producers supplied their full quota eligible for compensation but, because they are entitled to a high target price and compensation payment, it is unlikely that they have experienced critical welfare changes. Moreover, “[T]he EU consumers pay banana prices much higher [than] the world price and thereby bear the cost of the preferential trade system.”

For these reasons, Thagesen and Matthews predicted that the EU would stop favoring ACPs in the future, but needed to gradually phase out preferential treatment to avoid adversely impacting ACPs' economies. The authors suggested that the Europeans develop a new banana import regime that would include—at least during a transitional period—direct payments to preferred suppliers for social support and crop diversification, instead of, in effect, requiring EU banana consumers to subsidize the ACP banana growers. What the European Union has done under its Special Framework for Assistance for Traditional ACP Suppliers of Bananas, or “SFA” program, is to provide ACP beneficiary countries access to financial and technical assistance in order “to improve competitiveness in the banana sector or to support diversification where improvement in the competitiveness of the banana sector is not sustainable.”

In reality, diversification may be the most advisable course for ACP growers to follow, given the recent decrease in banana prices and the bleak outlook as to banana prices in the future. Diversification may, at any rate, be the only practical solution since, by one estimation, the only ACP countries with a realistic chance of competing effectively against Costa Rica or Ecuador in the production of bananas are Cameroon and Ivory Coast. However, recognizing global realities may be easier than responding to them. As one official in St. Lucia warned several years ago, “Generations of farmers and entire families in these islands have been weaned on bananas and they know nothing else. They do not and could not understand how to produce anything else. And we would not know where to start with marketing anything else.”

regime than they did under the General System of Preferences (GSP) for developing countries that was implemented by GATT waiver adopted by the GATT member states in 1971. See id. For a discussion of the GSP, see JACKSON ET AL., supra note 53, at 1186-94.

87. Thagesen & Matthews, supra note 21, at 625.
88. Id. at 625-26.
89. See id. at 626.
90. See id.
92. See id.
93. See id.
94. KEEGAN & GREEN, supra note 81, at 125.
B. One Thing About Which the United States and European Union Agree: Linking Aid to Reform

The dilemma that the banana dispute settlement poses for Europeans in regard to their traditional ACP banana suppliers is but a microcosm of the overall challenge faced by the wealthy nations in regard to the developing world—namely, how best to promote poor countries' economic development. The United States and European Union have their differences, but one thing about which they agree is that the economic development policies and practices of the past have generally failed. In the United States, declining domestic political support for foreign aid has prompted a growing "trade, not aid" sentiment, which attempts to link increased American trade and overseas investment to political and social reform in beneficiary developing nations.

For example, the U.S. Trade and Development Act of 2000 asks Sub-Saharan African nations to "commit to the rule of law, economic reform, and the eradication of poverty"; strengthen and expand the private sector, "especially enterprises owned by women and small businesses"; and facilitate the "development of civil societies and political freedom." What the legislation reflects is the growing American attitude that while historical factors like colonialism and white racism play an ongoing role in the developing world's poverty, so do other elements of poorer nations' own making, including despotism, lack of political accountability, and corruption.

The European Union's policy toward the developing world reflects similar, if not identical, sentiments. European officials have expressed their desire for a "more adult relationship" with the ACP in the post-Lomé world, meaning "more mutual trade and less economic dependency." Toward that end, the European Union has declared its goal of making "aid and preferential trade arrangements with the ACP states dependent on their democratization, including equality for women and improved financial management within the ACP countries." As former EU Development Commissioner Joao de Deus Pinheiro once said, "where countries produce good [democratic] results, they will be better supported" by the European Union.

96. See id.
98. Id. at §103(5)-(7) (codified as amended at 19 U.S.C. § 3702(5)-(7) (2002)).
99. For a discussion of the factors that contribute to wealth disparity, see Nancy Birdsall, Life is Unfair: Inequality in the World, 111 FOREIGN POL'Y 76, 80 (1998). See also Clark, supra note 95, at 299-301 (discussing the "toad king" generation of dictatorial African leaders who left their countries even worse off than they found them).
100. Clark, supra note 95, at 275 (quoting former EU Development Commissioner Joao de Deus Pinheiro).
101. See id.
102. Id.
At the United Nations Financing for Development Conference, held in March 2002 in Monterrey, Mexico, President George W. Bush called for a "new compact for development defined by greater accountability for rich and poor nations, alike." Alluding to the policy failures of the past, he declared:

For decades, the success of development aid was measured only in the resources spent, not the results achieved. Yet, pouring money into a failed status quo does little to help the poor, and can actually delay the progress of reform. We must accept a higher, more difficult, more promising call. Developed nations have a duty not only to share our wealth, but also to encourage sources that produce wealth: economic freedom, political liberty, the rule of law and human rights.

The lesson of our time is clear: When nations close their markets and opportunity is hoarded by a privileged few, no amount—no amount—of development aid is ever enough. When nations respect their people, open markets, invest in better health and education, every dollar of aid, every dollar of trade revenue and domestic capital is used more effectively. We must tie greater aid to political and legal and economic reforms.

The President went on to promise that the United States will increase its "core development assistance" to the developing world by fifty percent over the next three years, a "$5 billion annual increase over current levels." Countries that qualify for access to this assistance will be selected on the basis of criteria to be developed by U.S. Secretary of State Colin Powell and U.S. Secretary of the Treasury Paul O'Neill.

The European Union, for its part, has pledged to increase funding for trade related technical assistance (TRTA) thereby sending what EU Trade Commissioner Pascal Lamy has called "a clear signal of [the EU's] strong commitment to help developing countries integrate in and benefit from multilateral trade. . ." Lamy declared, "We are making huge progress towards trade and globalisation in support of development and poverty eradication." Whether the developing nations have the will and capacity to rise to the challenges posed by their American and European benefactors remains to be seen.

Conclusion

The United States and European Union seem to agree about little these days. This is a dangerous state of affairs, coming as it does at a time when the free world needs the United States and Europe to stand together against terrorists and their state sponsors who seek to acquire weapons of mass

104. Id.
105. Id.
106. See id. at 483-84.
107. EU Welcomes Increased Trade Related Technical Assistance, REUTERS ENG. NEWS SERV., Mar. 13, 2002, available at WESTLAW, ALLNEWSPLUS.
108. Id.
destruction. That is why proponents of strengthened ties between the United State and Europe are heartened by the fact that the two sides have reached a settlement of their long-standing WTO banana dispute. A trade disagreement like the one over bananas may be but symptomatic of the larger internal challenges faced by the Atlantic alliance. Even within the limited context of trade, the banana dispute pales in comparison with what is at stake in other trade matters. For example, U.S. trade representative Robert Zoellick has warned that the $4 billion in sanctions that loom in the controversy over FSCs would go off like a “nuclear bomb” in world trade relations. Nevertheless, the two sides’ willingness to negotiate a deal over bananas shows that their disagreements over trade need not always end badly. To that extent, at least, the banana dispute settlement represents a small but good and significant exception to the overall decline in American-European relations.

By the terms of the banana settlement, bananas produced by non-ACP growers will enjoy, during a transitional period, substantially increased access to the European market. Then, on January 1, 2006, the European Union will implement a “tariff-only” banana import regime, completely eliminating the tariff quotas that have traditionally been used to favor banana growers from the ACP states that are former European colonies. The result should benefit banana producers in Latin America, where U.S. multinational fruit conglomerates like Dole and Chiquita have made heavy investments of capital. Importing more fruit from Latin America should also result in lower prices for European consumers. However, increased competition from Latin America may cause hardship in the developing ACP countries where banana exports to Europe are economically vital. ACP countries now face the daunting challenge of making their banana producers more competitive, or diversifying their fruit production.

The banana dispute settlement poses a dilemma for Europeans in regard to their traditional ACP banana suppliers, a dilemma that is but a microcosm of the overall challenge faced by the wealthy nations in regard to the developing world—how best to promote economic development in poor countries. For the time being, at least, the United States and the European Union remain committed to providing—in fact, to increasing—development assistance to the developing countries of the ACP and elsewhere. One thing about which the United States and the European Union agree is that future aid should be tied to democratization and reform in the developing nations. Neither the U.S. nor Europe is willing to repeat the unsuccessful policies and practices of the past by providing aid that fails to produce the desired beneficial results. Whether the developing countries have the will and capacity to rise to the challenge of reform is an open question.