

# DIALOGUE ON HANDLING CONCERNS RELATING TO TECHNICAL BARRIERS TO TRADE

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# Examples

- China-rare earth case. China lost and had to abolish its quota on rare earths. An example of a situation that China could have twice avoided (not excluding export taxes when becoming WTO member and avoiding uncertainty when announcing export quotas in 2010).
- Cigarettes (Thailand vs. Philippines). Estimates of the cross-price elasticity between imported and domestic cigarettes in Thailand established that Philippine cigarettes were “like” products to domestic brands. Citation by the AB to the estimates suggests that “numbers” helped win the case.
- Bananas (longest ongoing conflict first under GATT then under WTO) has gone through 3 complaints over 93-09 period. Case shows: (i) usefulness of arbitrator in reaching settlement (it put to rest 8 pending disputes and 5 claims at the WTO). (ii) MFN suppliers benefited by change from «consensus to accept» under GATT to «consensus to reject» under WTO helped small members (relative to the GATT) (iii) Slides show how 3 different approaches could be used to show that the proposed EU tariff (€230 per ton) would have resulted in a loss of market share for MFN suppliers (see details in the slides).

# Bananas

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- Contours of Internal and External Conflicts
  - Background
  - Conflict at GATT
  - Conflict at WTO
- The Political Economy of EU-US conflict
  - Patching up the COMB
  - EU Decision-making and US domestic Politics
- The TRQ Regime and Market Access
- What tariff equivalent (TE) to the TRQ ? (3 different approaches)
  - TE I: Price-gap calculations
  - TE II: Gravity Estimates
  - TE III (preserving market access for MFN suppliers): Simulation estimates
- Conclusions

# Political economy conflict

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« On a rarement vendu sous l'étiquette 'L'Europe Sociale' davantage de mensonges, de privilèges et d'injustices »

**'Mourir pour la Banane'**

Patrick Messerlin 19/9/97

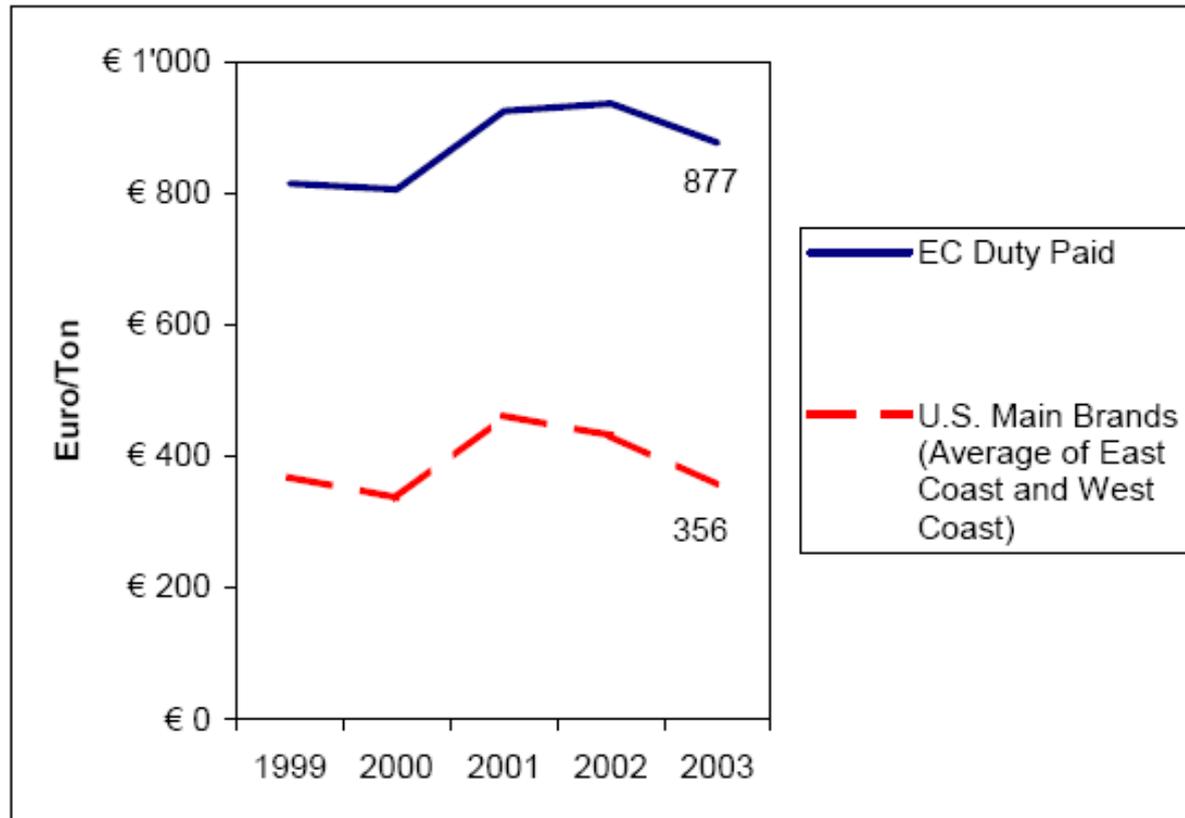
« Le cœur du conflit, exemplaire, reste que la production latino-américaine de la banane, outre des atouts physiques indéniables, trouve l'essentiel de sa compétitivité dans le niveau scandaleusement bas des salaires versés aux paysans, alors qu'aux Antilles les salaires versés sont au niveau du SMIC européen »

**'Pour que vive la Banane'**

Michel Rocard, 10/11/97

# Background **Figure 1 EU vs. US retail prices (per ton)**

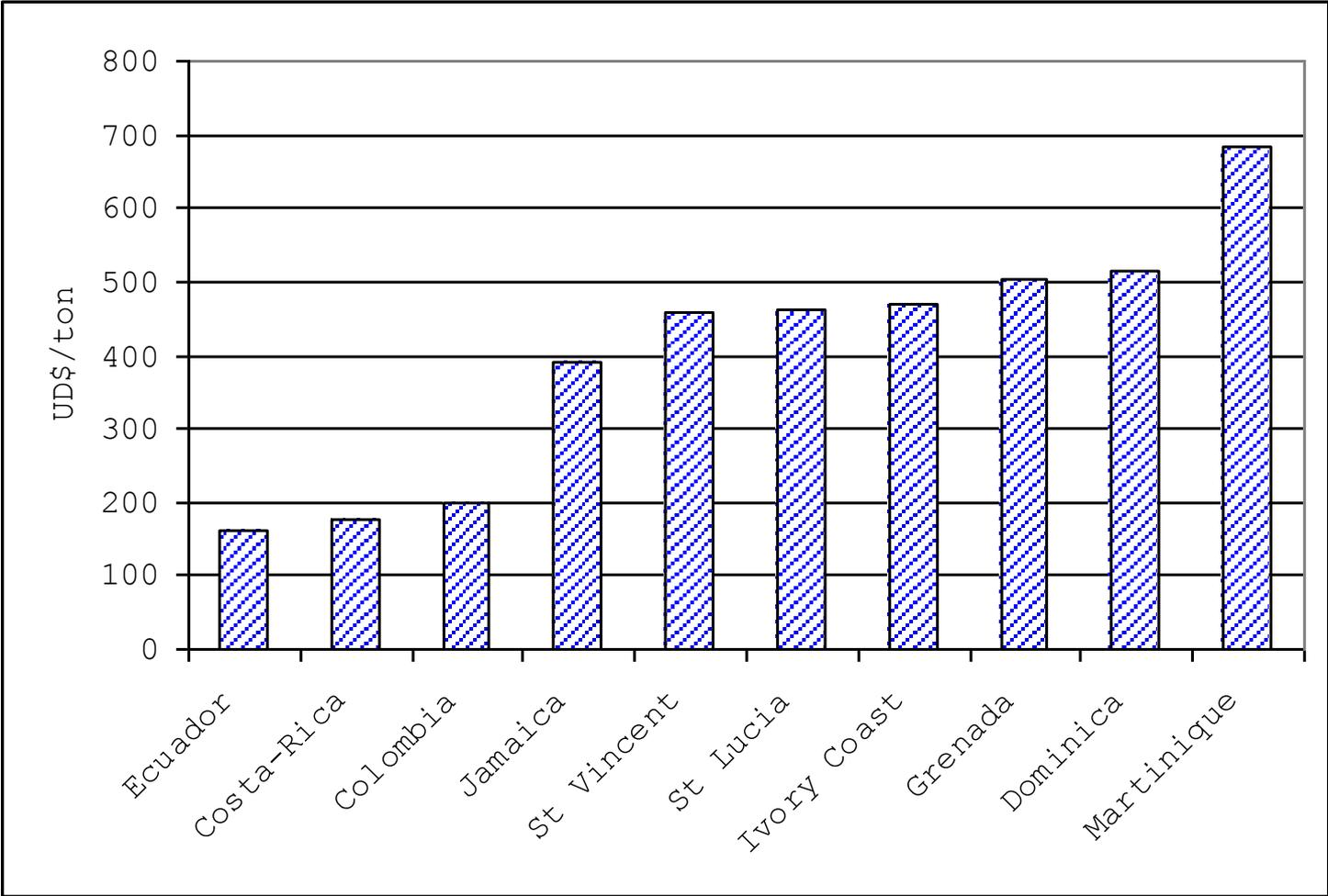
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*Source:* FAO data, EC Duty Paid = Bananas (C. America, f.o.b. Hamburg - EC duty paid); U.S. Main Brands = Average of U.S.A. (East Coast) - Main Brands Central America, f.ob. and U.S.A. (West Coast) - Main Brands Central America, f.o.b.

# Background

## Figure 2 Cost Comparaisons (per ton)



# Background: No-arbitrage in bananas

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$$c_i + \theta_i + \phi_i + \lambda_i + \tau \leq P^{EU}$$

Unit Costs      Packing costs      Freight Cost      Rents?      Specific tariff  
(MFN only)

Table 1: Import and Retail Prices: US and France

	USA		FRANCE	
	Import	Retail	Import	Retail
2000	0.38	0.98	0.43	1.26
2001	0.50	0.98	0.51	1.40
2002	0.45	0.95	0.44	1.32

# Background: the market prior to SMP

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- Three segmented markets (under article 113)
  - Germany with zero tariffs
  - Hanseatic countries with MFN tariff (BENELUX, Denmark, Sweden)
  - Mediterranean and British were closed
  - Banana protocol of Lomé convention:

“in respect of its banana exports to the markets of the Community, no ACP state will be placed, as regards to its traditional markets and its advantages on those markets, in a less favorable situation than in the past or at present”

—————> This sets up the «market access» (ACP) vs. «market access» (MFN)

# Source of the Conflict I: The BTR (93)

- Banana suppliers were split under 3 quota categories
- A with MFN bound specific of what would later be 75€ a ton was applied,
- B with an unbound tariff of 300€
- C with an unbound tariff of 300€
- ACP suppliers were exempt from the tariff on their quota allocations.
- Licenses were given to suppliers to the EU market. Most importantly, traders of ACP bananas had to purchase the higher-prices ACP bananas to be able to sell their bananas in the EU market.

# Source of conflict II: The traders

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- MFN bananas marketed by Chiquita (90% of German market that was duty free before Single market) Dole, Del Monte
- Bananas from EU overseas sold by Geest (british) and Pfyffes (Irish)
- Chiquita sourced its bananas from Caribbean and Dole mostly in ACP (so they increased their market share at expense of Chiquita following BTR)

# Conflict at the GATT

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- MFN 5 Colombia, CR, Honduras, Mexico, Peru, Venezuela request consultations then panel after announcement of BTR in 1993. It violates
  - 20% bound tariff at Dillon
  - Tariff preferences for ACP violate art. 24
  - Quotas violate art. 13
- ➡ «Bananas II» upholds complainants on all counts
- New Banana framework agreement (BFA) that gives some quotas to MFN GATT suppliers. Withdrawal by all complainants except Guatemala

# Conflict at the GATT

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- Chiquita 'obtains' a 301 investigation from USTR (Chiquita had lost huge market share under the BTR)
- Dec 94 of UR negotiations. EU obtains waiver from art. 1 obligations for Banana protocol under Lomé (1975 Convention) until renewal of Lomé in 2000 as they had assuaged most MFN suppliers and Chiquita.

# Conflict at the WTO: Threat of sanctions

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- Feb 96. Complaints under DS that EU TRQ unfairly restricted entry into EU
- Sept 97«Bananas III». EU quota:(i) violated non-discrimination rules of art. 14; (ii) Obligation to purchase EU/ACP bananas violated MFN and NT; (iii) licensing system violated MFN under GATS arts. 2 and 17). New banana import regime
- Jan 99. the new regime incompatible with EU's WTO obligations. Authorization to apply sanctions (per year)  
→ US= 191 \$ million; Ecuador= 201 \$million

# Conflict at the WTO: Doha ministerial

- ❑ Doha Nov. 2001 “[...] any rebinding of the EC tariff on bananas under the relevant GATT Article XXVIII procedures should result in at least maintaining total market access for MFN banana suppliers and its willingness to accept a multilateral control on the implementation of this commitment.”
- ❑ “[...] If the EC failed to rectify the matter, this waiver shall cease to apply to bananas upon entry into force of the new EC tariff regime.”

# Conflict at the WTO: Doha ministerial

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## □ In the words of the WTO

“The Doha Ministerial’s decision essentially transformed a bilateral agreement into a binding multilateral commitment. In accordance with the terms of the April agreement, the US and Ecuador supported the EU’s waiver request.”

➡ Now the conflict is «market access» of ACP versus «market access» of MFN.

EU inched towards TO regime over the next 8 years, first announcing in early 2005 a TO of 230€ ton (MFN wanted 75€ ton)

# Conflict at the WTO: The end

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- Hong-Kong ministerial. Exasperation with EU non-compliance. US joins MFNs to request new panels
- Several panels continue to find that EU does not fulfill its WTO obligations.
- Confidential consultations including a facilitator over 2007-end 2009
- Dec 15- 2009. Final comprehensive agreement with TO bound going down from 148€ per ton to 114€ per ton by 2017. Puts to rest 8 pending disputes and 5 claims at the WTO

## The Political Economy of EU-US conflict

- ❑ The SMP did not lead to a 'fortress Europe' because of the interplay of «2/3 majority» cum «1/3 blocking minority» in decisions-making.
- ❑ ...but why transatlantic fight over bananas?--- that were not grown on either continent.
  - ❑ Patching up of Common Organization of Market in Bananas (CMOB)
  - ❑ EU decision-making and US Politics

# Patching up the CMOB (I)

- The EU could have established an open trade regime with a tariff and deficiency payments (would have cost 300\$ million per year=17% tariff)
- ...but EU budgetary law prohibits tariff revenues to be ear-marked
- So finance ministers would have to dig in the CAP budget
- ...and Lomé panels had repeatedly confirmed that «Lomé waiver» could be GATT compatible

# Patching up the CMOB (II)

- But as we saw, the initial CMOB was a «winners takes all» in a situation where there were strong particularistic constituencies on both sides of the atlantic since...
- Quotas were issued to importers. ACP were exempt from the tariff. MFN had to purchase ACP imports to get licenses to sell in EU
- Some subsidies to banana producers in Canaries, Crete and Martinique/Guadeloupe
- Most support for European and ACP bananas paid by MFN traders.

# EU decision-making and US domestic Politics:

## (I) EU decision-making

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- DG agriculture was given the lead in setting up the CMOB= looking more closely at interests of agriculture than if the lead had been taken by DG trade
- Issue-linkage or «package-making» made it possible for DG agriculture to satisfy the constituencies (Pfyffes and Geest) with Hanseatic states compensated with victories on other agricultural issues.
- As ECJ rejected an attempt by Germany (supported by Belgium and Netherlands), Chiquita decided it would have «to go to Washington» to get regulation changed

# EU decision-making and US domestic Politics:

## (I) US domestic politics

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- Congress was reasserting its constitutional prerogatives as executive was finding it more difficult to get «fast-track»
- 1988 Trade Act with revised 301 gives decision on unfair trade practices to USTR
- Private-sector donations up and «buying of electoral outcomes»: Chiquita= \$2 billion over the 1990, Dole= 660\$ million donations over the 1990s

Ingredients for a cocktail molotov detonated by SMP, by extreme concentration of banana growing producers and by rather large productivity differentials

# The Resolution of the Banana «splits»

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- In view of panel rulings against EU allocation of quotas, it would have to find a division of quotas that would be agreeable to all. But no formula satisfied all parties. So EU threatened to use a «First-come-first-serve» basis.
- Chiquita was going bankrupt it wanted a quick resolution and for first-time accepted quota allocation based on post-93 shares.
- Bush came in and new USTR wanted to resolve transatlantic dispute.

Table A.1  
The EU CMOB in transition

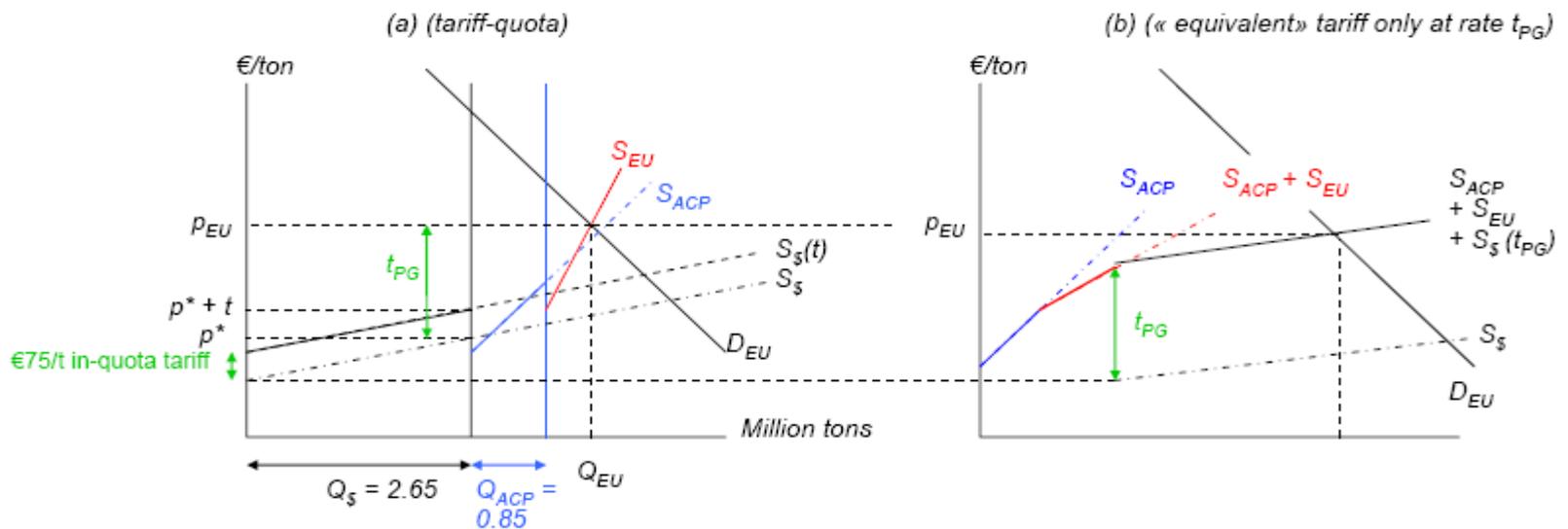
	Quota type	Quantity (tons)	Tariff rate (€/ton)	Tariff type	ACP tariff preference
Phase 1	A	2.2 MT	75	Bound	75
	B	353 KT	75	Aut.	75
	C	850 KT	300	Aut.	300
	Out-of-quota		680	Aut.	300
Phase 2	A	2.2 MT	75	Bound	75
	B	453 KT	75	Aut.	75
	C	750 KT	n.a.		n.a.
	Out-of-quota		680	Aut.	300

Source: Vanzetti et al. 2004, table 1.

- ACP and MFN had quotas
- ACP did not pay the tariff
- «A» quotas paid MFN-bound tariff (75€ per ton ≈ 20% ad-valorem)
- «B» quotas paid autonomous tariff
- «C» quotas paid 300€ per ton
- Out-of- quota tariff was prohibitive

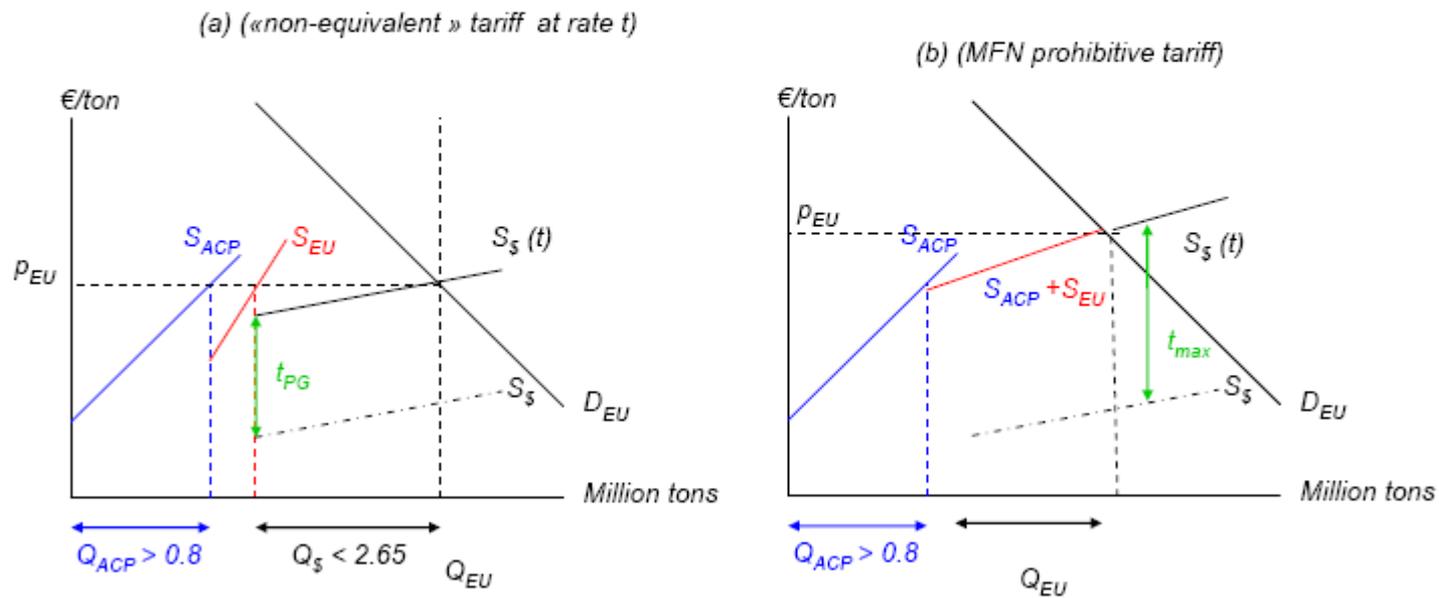
# The TRQ regime in early 2000 and the the TO regime

Figure 3.1 Tariff-quota and tariff equivalent ( $t_{PG}$ )



If marginal costs of high cost MFN supplier exceeds the gap between new equilibrium price in EU and sum of rent,  $\lambda$ , and tariff,  $\tau$ , on MFN suppliers

Figure 3.2 Non-equivalent TO regimes



# Table 4 : Gravity Estimates 1988-2003, FE

Dep. var.: trade value	OLS	OLS robust	OLS robust	Iterative	Iterative
Column					
log (1+t), applied	-1.136 (-2.33)*	-1.136 (-2.28)*		-1.261 (-2.69)	
log (1+t), unconstrained			-1.192 (-2.05)*		-1.136 (-2.12)*
log (1+t), constrained			-1.028 (-1.52)		-1.485 (-2.15)*
MFN quota dummy	-0.674 (-4.12)**	-0.674 (-4.08)**	-0.7 (-3.42)**	-0.515 (-3.28)**	-0.459 (-2.3)*
Framework Agr. dummy	0.469 (1.62)	0.469 (1.45)	0.472 (1.45)	0.395 (1.42)	0.387 (1.39)
ACP dummy	1.048 (4.8)**	1.048 (4.37)**	1.046 (4.35)**	0.993 (4.73)**	0.998 (4.74)**
Ivory Coast*time trend	0.087 (1.34)	0.087 (1.16)	0.088 (1.17)	0.157 (2.51)*	0.156 (2.49)*
Cameroon*time trend	0.212 (2.85)**	0.212 (2.69)**	0.213 (2.7)**	0.26 (3.64)**	0.258 (3.6)**
log distance	-1.121 (-17.73)**	-1.121 (-14.9)**	-1.12 (-14.89)**	-1.269 (-20.89)**	-1.271 (-20.92)**
log importer's GDP	0.843 (3.01)**	0.843 (2.76)**	0.845 (2.76)**	0.729 (2.71)*	0.723 (2.69)**
log exporter's GDP	0.18 (0.82)	0.18 (0.81)	0.179 (0.81)	0.251 (1.19)	0.252 (1.2)
log importer's exch. rate	-0.049 (-0.55)	-0.049 (0.62)	-0.049 (0.61)	-0.034 (-0.39)	-0.035 (0.41)
log exporter's exch. rate	0.071 (2.2)*	0.071 (2.57)*	0.071 (2.58)*	0.086 (2.79)**	0.085 (2.77)**
Constant	-14.312 (-1.77)			-321.06 (-2.55)*	-11.742 (-1.51)
Observations	6'984	6'984	6'984	6'970	6'983
R-squared	0.58	0.81	0.81	0.62	0.62
Cook-Weisberg chi-sq.	3.51				
Implied tariff equiv. (€/ton)	354	354	350	221	158

# Simulation Estimates

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$$P \geq PP_z + \lambda^m + \theta_z + \phi_z + \tau_z \quad P \geq PP_y + \lambda^a + \theta_y + \phi_y$$

Table 5 : Alternative tariff only scenarios

5a: Rents not equalized

tariff	Tariff rate € per ton	EU price € per box	MFN share	CR	ECUA (percent change)
Base (quotas)	75	10.4	0.77	0.0	0.0
EU prop.	230	10.5	0.72	-13.5	4.5
	150	9.6	0.77	-2.0	23.0
	75	8.9	0.81	11.0	43.0

5b: Rents equalized

tariff	Tariff rate € per ton	EU price € per box	MFN share	CR	ECUA (percent change)
Base (quotas)	75	10.4	0.77	0.0	0.0
EU proposal	230	10.7	0.70	-9.0	-14.0
	150	9.8	0.76	5.0	8.3
	75	8.9	0.81	18.6	31.0

Notes: In all simulations,  $\varepsilon_p = 1.0$ ;  $\varepsilon_s = 1.0$

# Conclusions

- EU-US conflict was an old-fashioned trade politics
- The EU-US conflict would have been solved bilaterally (as it was because it was between two big players)
- The LA countries benefitted by change from «consensus to accept» to «consensus to reject» so WTO did help the small members relative to the GATT.
- Lack of transparency from quota system was cause of lingering negotiations on removal of quotas (were quotas transferable? Not evident as no market for licences)

## Reference

Melo, J. de (2012) « Bananas, the GATT, the WTO and US and EU domestic Politics », WP#54, FERDI

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