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WTO BANANA PANEL RELEASES DRAFT RULING

After nearly 10 months of deliberations, the World Trade Organization last week released to the concerned parties a confidential draft ruling on the European Union's banana import regime, finding that EU policies violate the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services and the Agreement on Import Licensing Procedures. The U.S. had brought the case on behalf of Chiquita Brands International Inc., a U.S.-based company which claims that 2,000 high-paying U.S. office jobs are threatened by the EU's banana regime. The EU regime calls for preferential quotas on banana imports from four Latin American countries -- Nicaragua, Venezuela, Costa Rica and Colombia -- and gives tariff preferences to banana producers in former colonies in Africa, the Caribbean and Pacific (ACP). The draft ruling was presented to U.S., EU, and Latin American trade officials who have time to comment on the panel's findings before a final ruling is issued at the end of April. While the EU is expected to make some changes to its banana regime, there is little expectation that it would allow free trade in Latin American bananas. Skeptics of the efficacy of the WTO preliminary ruling contend that France and Spain may invoke EU rule 404 to justify maintaining their banana import regimes. The EU may seek to negotiate an agreement with Latin American banana producing countries that would broker differences between EU countries in favor of abolishing the import regime-- mainly the UK, Germany and Belgium--versus those in favor of protecting it--principally Spain, Italy and France.

The draft is seen as a victory for the U.S. and the four Latin American countries who joined the dispute -- Ecuador, Guatemala, Honduras and Mexico. Critics charge that the real winner in the dispute is Chiquita Brands and another U.S. banana powerhouse Dole. It is widely speculated that politics, not trade principle, encouraged the U.S. to bring the complaint to the WTO. Chiquita Brands majority-owner Carl Lindner routinely makes significant contributions to both the Democratic and Republican parties, and did so again shortly before the banana complaint was brought to the WTO by the U.S.

The panel did uphold the EU's right to establish quotas for ACP bananas in accordance with a waiver received for the Lome Convention, which allows the EU to extend trade preferences to former colonies of EU states. The panel recommended that the EU bring its banana regime in line with its obligations under global trade agreements. For the EU to do so, however, may mean economic ruin for ACP banana exporting countries. The Windward Islands -- Dominica, Grenada, St. Lucia and St. Vincent, would be

devastated should they lose their guaranteed market for 294,000 tons annually. Bananas to the EU account for 50% of all exports and 15% of the gross domestic product.

"Confidential WTO Report Shows Win For U.S. on EU Banana Regime," INSIDE U.S. TRADE, March 20, 1997; "La OMC Olvido El Banano," EL TIEMPO (Colombia), March 24, 1997; "Banano: El Lio Aun No Esta Ganado," EL COMERCIO (Ecuador), March 20, 1997; "WTO Puts Skids Under Banana Regime," FINANCIAL TIMES, March 20, 1997; "Bananas Split U.S., Europe In WTO Spat," JOURNAL OF COMMERCE, March 18, 1997.

FINANCIAL SERVICES TALKS TO RESTART

Negotiations for freeing trade in financial services are due to restart April 10. Talks stalled two years ago when the U.S. walked out after smaller countries made what the U.S. deemed unacceptable offers. The U.S. walkout was intended to send a message that nations must submit meaningful market-opening commitments if they want negotiations to bear fruit. The U.S. walkout may have accomplished its goal -- pressuring developing countries to reconsider their position on opening their financial services markets and putting new offers on the table. The developing nations with a substantial financial services infrastructure already in place, notably Malaysia, India, Indonesia, Singapore and Thailand, would benefit the most from access to capital and modern computer systems that comes with a sophisticated financial industry. However, nations without such infrastructure would be even harder pressed to gain a foothold in the market. Interestingly, the developing nations that stand to gain the most have also been the most reluctant to open their markets. The U.S., probably the biggest player in the field, benefits tremendously from trade in the financial services sector. U.S. financial services companies currently generate a \$4 billion annual trade surplus, part of the \$73 billion service sector trade surplus for the U.S., which helps offset deficits in U.S. goods trade. Formal offers are due by November 1, 1997.

"Freeing Financial Services," JOURNAL OF COMMERCE, March 10, 1997; "America's Export Powerhouse," JOURNAL OF COMMERCE, March 7, 1997.

UNCTAD URGES HELP FOR TRIPS IN DEVELOPING NATIONS

The United Nations Conference on Trade and Development is calling on developed nations and international organizations to provide technical and monetary resources to developing nations who need assistance with implementing the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs). In its report "The TRIPs Agreement and Developing Countries," released March 4, UNCTAD said that many developing countries would have trouble securing even modest sums required to support the changes in legislation, equipment and training necessary to implement TRIPs. Strengthening protection and enforcement of intellectual property rights is considered key to attracting foreign direct investment, but may also lead to higher prices for protected technologies and products in developing nations. The report says a balance must be struck between developing nations and firms, understanding that nations are most likely to benefit from additional technology transfer when investors are comfortable with nation's intellectual property protection.

"UNCTAD Says Developing Nations Need Help in Implementing TRIPs," WORLD INTELLECTUAL PROPERTY REPORT, April 1997.

U.S. FIRMS FILE COMPLAINTS UNDER NAFTA

The first-ever complaints were filed under NAFTA's Chapter 11 investor-state arbitration clause. In two separate complaints filed under the International Centre for Settlement of Investment Disputes (ICSID) Additional Facility arbitration, two U.S. firms allege that Mexican officials at state and local levels have blocked them from launching operations of environmental-waste facilities even though the companies have received approval from Mexican federal officials. Both companies, in separate complaints, charge that Mexico violated a number of NAFTA obligations under Chapter 11, including expropriation and national treatment provisions. Further, the companies have been refused operating licenses and in one case was required to transfer "technology processes and other proprietary knowledge...as a precondition" to operating their facility, causing the company to lose at least \$30 million in revenues. The ICSID was created under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, to which the U.S. is a party. Because Mexico did not sign the convention, the complaint was filed under the ICSID Additional Facility arbitration procedure, which hears cases in such situations.

"U.S. Firms File First-Ever Investor-State Claims Under NAFTA," INSIDE U.S. TRADE, March 21, 1997.

MASSACHUSETTS' SANCTIONS RAISING BIGGER QUESTIONS

The battle over Massachusetts' "Burma Law" is heating up, this time with U.S. officials fueling the flames with four-year-old correspondence from the state's governor-- promising compliance with U.S. trade intentions. As part of the World Trade Organization Agreement on Government Procurement (GPA) negotiations in the Uruguay Round, the U.S. had agreed to cover Massachusetts along with most other states as part of its offer on sub-federal agencies. The Massachusetts' bill's co-sponsor stated two weeks ago that there was never any written commitment from Massachusetts to abide by the agreement. This prompted the U.S. Trade Representative (USTR) to dig up a 1993 letter from Governor William Weld, in which Weld wrote that "My administration has no present intention of modifying the aforementioned processes in a manner inconsistent with the Code's principles." However, there are enough loopholes in Governor Weld's letter—for instance it does not and cannot speak for the state's legislative or judicial branches, that the letter is no smoking gun for the USTR. Sources believe that the governor's phrasing could lead to a dispute over whether the state is actually covered by the GPA. The U.S. included states in its GPA negotiations in an effort to make its offer more attractive to the EU. In fact, though, the U.S. Trade Representative only received agreements from 39 out of the 50 states and seven of the 24 largest U.S. cities. The EU has warned that it is considering taking the issue to the WTO dispute settlement body.

In other news on sanctions, U.S. Representative Patrick Kennedy backed off his initial plans to include economic sanctions in his Indonesia Military Assistance Accountability Act. The congressman initially planned to include a clause prohibiting U.S. companies from dealing with Indonesia, but faced slim chances of having the bill passed with the clause. Instead he is proposing the withholding of \$26 million in U.S. military aid to Indonesia unless the country seriously addresses its human rights violations.

"Daley Says Industry To Pressure Massachusetts On Burma Law," INSIDE U.S. TRADE, March 21, 1997;
"Weld Letter A New Wrinkle in EU-Massachusetts Spat," JOURNAL OF COMMERCE, March 13, 1997;
"Kennedy Backs Off Use Of Economic Sanctions In Indonesia Bill," INSIDE U.S. TRADE, March 21, 1997.

REPORT SAYS EARTH SUMMIT PROMISES NOT KEPT

At the Rio+5 conference last week in Brazil, the Earth Council presented a report charging that governments spend \$700-800 billion a year on economic development projects that are not sustainable

and which are undermining the environment. The Earth Council study says that wealthy countries belonging to the Organization for Economic Co-operation and Development are responsible for two thirds of the subsidies for unsustainable water, agriculture, energy and road transport projects. Reducing these kind of unsustainable subsidies was a "litmus test" for the commitment of governments to live up to promises made at the Earth Summit in 1992, said the report's co-author, economist Andre de Moor from the Institute for Research on Public Expenditure.

"Aid Impact Criticized," FINANCIAL TIMES, March 20, 1997

EVENTS/RESOURCES

Agriculture, the FTAA & the WTO: May 12-13, 1997, Belo Horizonte, Brazil. A seminar on trade arrangements in the Americas and the World Trade Organization sponsored by the International Policy Council on Agriculture, Food and Trade. For more information contact International Policy Council, 1616 P Street, Suite 100, Washington, D.C. 20036, USA. Ph: +01/202/328/5117; Fax: +01/202/328/5133.

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The UNCTAD report "The TRIPs Agreement and Developing Countries," released March 4, 1997, is available for US\$22 from the United Nations Sales & Marketing Section, Palais des Nations, 1211 Geneva 10, Switzerland. The Internet address is <http://www.un.org/Pub/sales.htm>

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