Role of World Trade Organization in the Politics of International Banana Trade

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DECLARATION

I declare that the dissertation entitled **"Role of World Trade Organization in the Politics of International Banana Trade"** submitted by me in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other University.

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CERTIFICATE

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Dedicated to Maa Baba and my friend Rumpi

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List of abbreviations

AB	Appellate Body
ACP	African, Caribbean and Pacific Group of Countries
AMS	Aggregate Measurement of Support
AoA	Agreement on Agriculture
APL	Antilles Products Limited
BFA	Banana Framework Agreement
BGA	Banana Growers Association
BPA	Banana Producers Association
BTAC	Banana Trade Advisory Committee
BTR	Banana Trade Regime
CDC	Colonial Development Corporation
CET	Common External Tariff
COMB	Common Market Organisation for Bananas
DDA	Doha Development Agenda
DSB	Dispute Settlement Body
DSP	Dispute Settlement Procedure
DSU	Dispute Settlement Understanding
EC	European Communities

EEC	European Economic Communities
EPAs	Economic Partnership Agreements
EU	European Union
FAO	Food and Agriculture Organisation
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IP	Intellectual Property
LDC	Least Developed Countries
MFN	Most Favoured Nation
MNC	Multi-national Company
OECD	Organisation for Economic Cooperation and Development
SDT	Special and Differential Treatment Provisions
SPS	Sanitary and Phytosanitary Measures
SSM	Special Safeguard Mechanism
TBT	Technical Barriers to Trade
TNC	Trans-National Corporation
TRIM	Agreement on Trade Related Investment Measures
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
UFC	United Fruit Company
UNCTAD	United Nations Conference on Trade and Development

UNDP	United Nations Development Programme
UPEB	Union of Banana Exporting Countries
WINBAN	Windward Islands Banana Growers' Association
WTO	World Trade Organisation

Chapter I

Introduction

The history and politics of agricultural trade occupy a significant place in the study of international economic relations, in the sense, that dependence of developed countries on primary commodities of the developing world is widening in the contemporary scenario. On the other hand, scholars believe that, as producers and exporters of primary commodities, many developing countries export earnings and national income is heavily determined by primary commodity trade. In 2005 primary commodities, which includes agricultural products accounted for nearly 30 percent of global goods trade. This research study focuses on one such commodity- bananas - and examines the various dimensions of international trade discourse concerning this particular commodity at the World Trade Organization.

About sixty countries produce bananas for domestic necessities and monetized consumption but, those who produce for the world market are less than 15. Bananas have now become the most important fresh fruit in international trade. Bananas are also number four on the list of staple crops in the world and one of the biggest profit makers in supermarkets, making them critical for economic and global food security. Bananas were ranked only second to citrus fruits in terms of value in the international market. The world's two largest banana producers, India and China, play a minor role in international trade and thus the main exporters of bananas are Latin American countries and African Caribbean and Pacific group (ACP) of countries. Historically the US, European countries and Japan are the main importers of bananas which account for nearly two thirds of the total banana imports. At the WTO since its inception there have been 9 cases in all in relation to bananas. The whole debate on banana at this forum have centered and concentrated around the US and the EU, with the producing countries playing a more marginal role.

Banana production historically is associated not only with economic imperialism and exploitation but also with several environmental issues: use of pesticides, soil depletion, and flooding, deforestation, waste disposal and water pollution. Bananas are a key element of

economy of these countries in terms of GNP, export earnings and employment. Nine Latin American countries produce about 88 percent of the world's bananas. There are various actors involved international Banana trade are- states, multinational corporations and international organizations. The World trade in Bananas is controlled by the three major Multinational Corporations (MNCs) engaged in the industry such as Chiquita, Dole, Del Monte and Fyffes. It can also be said that these companies have shaped and structured the International Banana Trade and share a common history by having a common ancestor in the United Fruit Company (UFC). International Bananas Trade in the 20th century has witnessed 'Banana wars' initiated by EU which highlighted the differing and often conflicting interest of regional trading blocs, individual states and national and multinational corporations. Bananas have been the longest running dispute in the post Second World War multilateral trading system

The banana disputes at the WTO primarily revolve around the EU's regulatory regime for imported bananas commonly known as Common Market Organization for Bananas (CMOB), enacted in 1993. This was an attempt to combine the obligations made to former colonies within the parameters of a single European market. Prior to this enactment, each EU member states had its own banana import regime. The CMOB gave preferential entry to bananas from the overseas territories and former colonies of EU member countries, while restricting entry from other countries, including several in Latin America where US companies predominate. The banana trade brought together the issues of developing country preferences, quota allocation schemes, trade dispute rules, multilateral trading firms, and competition for market shares, political sensitivities.

Under the GATT, two panel reports in 1993 and 1994, had failed to improve the market position for Latin American bananas. The Banana Framework Agreement (BFA) played a significant role in the legal and diplomatic development of the banana cases. Though GATT and WTO complaints often cite more than one Article that the offending country is supposed to have violated, the banana case is unusual for the lengthy list of purported violations. Politics of banana trade has its significance on other issues such as US sanction against a variety of European imports because of banana trade dispute.

Review of the Literature

The review of literature focuses two major themes: the first looks at the scholarship that deals with the banana trade historically, focusing on the political implications of these on the organization of trade and price networks; the second, on WTO and the regulation of the international trade in bananas.

History of international banana trade and banana politics

After rice, wheat and maize, bananas are regarded as the world's fourth most vital food crop. It is a staple food and a key export commodity for many low-income especially the Least Developed (LDC) countries. Bananas have been and continue to be cardinal to the politics of national development along with international trade (Raynolds 2003). Importance of bananas to specific countries is crucial, gauged by certain fundamental economic indicators- income employment, export and vital source of foreign exchange earnings, despite the fact that banana trade is about 2.0 percent of international trade (Clairmonte 1975). Large social inequalities, mass poverty, high levels of illiteracy, endemic unemployment and other social and economic deprivation mark the living standards of banana producing countries. Bananas remain a major source of income and employment in the Windward Islands and the banana sector is by far the largest agricultural activity in three of the Windward Islands (Anderson, Taylor and Josling 2003).

Studies of world banana economy have focused on the complex web of economic relationships that underlie metro-Politian capitalist centers and the peripheral countries. The international banana trade has historically been extremely decentralized, covering a number of United States and European trading companies that produced from independent growers in the Latin America, Africa and the Pacific. These relations have been historically forged through local and global forces that simultaneously connected and divided major Latin American and Caribbean into sites of production and chief North American and European sites of consumption (Raynolds 2003). One of the important features of world banana economy is that there is an income disparity between the importing/producing countries and the major importing/consuming countries. (Clairmonte 1975).

Bananas have been historically produced, traded and consumed through two systems: -on the one hand, European colonial powers directly rule and on the other hand, indirect rule of United States and hegemony of its corporations have regulated the international banana trade (Raynolds 2003).

Bananas, since 1800s have integrated Latin America and Caribbean countries into participating in international division of labor (Raynolds 2003). In the year1866 the first bananas came to US from plantation in Panama (Clairmonte 1975). The role played by the United Fruit Company in all this is important. The United Fruit Company (UFC) was born of a fusion of the Boston Fruit Company, Tropical Trading and Transport Company Ltd, and the Columbia Land Company and Synder Banana Company, on 30 March 1899 in the state of New Jersey (Clairmonte 1975).

The UFC which was vertically integrated merged large banana operations in the countries of Latin America and Caribbean, port, major railroad, shipping facilities and a considerable US fruit distribution network (Raynolds 2003). The influence of United Fruit in the political arena gave rise to a 'black legend', which depicts United Fruit Company as interfering in national politics, exploiting workers, reaping high profits and not contributing to Guatemala's development. The dependence of some Latin American countries on banana production and exports in the first half of 20th century led to their characterization as 'Banana Republic (Brenes and Madrigal 2003). The United Fruit spread as a powerful political and economic force that shaped domestic politics within producer nations heavily dependent on banana revenues in the rising era of US hegemony of mid 1900s. Moreover, it also played a significant role in commanding United States diplomatic relations toward a region increasingly regarded as key to American interests (Raynolds 2003; Willy 2008).

The UFC owned approximately 3.5 acres in Cuba, Jamaica, Honduras, Guatemala, Nicaragua, Costa Rica, Panama and Columbia which is an area comparable in size similar to Switzerland in 1949 (Clairmonte 1975). A banana growers association (BGA) that had exclusive export rights regulated the banana industry on each island. In 1958, the BGAs were unified under a regional alliance called Windward Islands Banana Growers' Association (WINBAN). WINBAN functioned as the intermediary between the growers and the shippers. This structure was taken over by the WIBDECO (WINBAN's successor), which had contracts with the BGAs that entitled

it to exclusive export rights (Clegg 2002, 2005). Thereafter the name was changed to the Caribbean Banana Exporters' Association (CBEA) in 1975 after the Lomé Convention Agreement. After Del Monte came into picture in the mid-1950s, the former market dominance of UF was eroded (Clairmonte 1975).

Economic and political ties between US and Latin American and European countries and their previous colonies had construed two confronting banana systems in the 1960s. The first system centered on the US market known as the dollar banana system which was a reflection of the historical influence of the US government and US based corporations and on the other side, the ACP system, which linked European market and former colonies and territories in Africa, the Caribbean and pacific (Raynolds 2003). With the onset of disease-resistant Cavendish varieties and the revolution in box packaging, Central American's share in world exports increased from 33% in 167 to 41 percent in 1972, while South America slipped from 34 percent to 24 percent (Clairmonte 1975).

During 1970 to 1984 saw a period of declining import growth rates increased competition and production costs as technological changes were introduced by corporate plantations in Central America (Brenes and Madrigal 2003). However, the other side of the story tells us a different sort of story. During the 1970s due to the introduction of dollar-zone bananas to the UK market, the Caribbean banana trade was adversely affected (Anderson, Taylor and Josling 2003). In addition to this, there were several draughts and hurricanes in the 1970's contributed to the supply shortfalls. Forging influence of colonial structures and multinational banana companies, as well as the shifting of influences and interests and formation of new polarities can be seen in the decades preceding the '*banana war'* (Brenes and Madrigal 2003).

The incorporation of historical trade arrangements within those that the EC had set up for the former colonies of France and other members was achieved in the Lomé Convention in 1975. The agreement guaranteed free access for most products from the former colonies, though sensitive agricultural products were subject to quota limits (Anderson, Taylor and Josling 2003; Salas and John 2000). The establishment of Union of Banana Exporting Countries (UPEB) in 1974 led to new legislation in Central America has fundamentally changed the regulatory and institutional framework for bananas in Costa Rica, Honduras and Panama (Brenes and Madrigal

2003). The Union was promoted by UNCTAD on UNDP funding and was designed in order to coordinate marketing policies and to raise prices (Brown 1980).

The establishment of the European Union and the development of a single European market in 1993 were the first sign of change for banana-producing countries, in particular the Caribbean islands trading under preferential agreements with Europe (Crichlow 2003). Further, Crichlow highlights under a central protocol, the New Banana Regime, the common market sought to preserve all such agreements which according to a system of tariff quotas and licenses facilitated European importation from former colonial countries. ‘‘In the early 1990s the GATT was asked by a group of Latin American banana producing countries to investigate the acceptability of providing preferential access for ACP bananas entering the EC’’ (Clegg 2005; Karen J. Alter & Sophie Meunier 2006). On both occasions the GATT ruled against not only certain aspects of the regime but also questioned the legality of the preferential arrangements set out in the EU's Lome Convention (GATT 1993 and 1994).

World Trade Organization and International Banana trade

The last few decades have shown that banana trade offered a battleground for commercial as well as diplomatic (Josling 2003). Scholarship on WTO particularly on the Organization’s treatment of case related to bananas have highlighted the vulnerabilities faced by exporting countries. For example, while the dispute settlement process set out in the Understanding on Rules and Procedures Governing the Settlement of Disputes promotes a more adjudicative process and promises greater proficiency, in that it provides multiple stages, but bound them with shorter timelines culminating in final reports that do not depend on consensus for adoption (Gassama 2000 Willy 2008 Jawara&Kwa 2003).

The inclusion of agriculture in the WTO system according to some scholars such as Willy (2008) has produced both positive and negative consequences. The positive aspect is that it has created new opportunities for developing countries by dismantling protectionist politics of developed countries but its inclusion has also affected special trading relationships which were based on historic ties (Berman& Mavroidis 2007). On the negative side, governments of developing

countries and LDC countries have found themselves powerless (Sophia Murthy 2009). Jawara and Kwa (2003) in their book 'Behind the Scenes at the WTO' examine the agreements of WTO to demonstrate the tremendous political and economic pressure on developing countries from those more developed along with an analysis of how the WTO institutionalizes corporate access to the market of developing countries. In addition, there are others who those believe that developing country's crops have to encounter quality control, sanitary standards such as, protecting human, animal and plant health. Thus, SPS and TBT measures have negative impact on trade in agricultural products (Murphy 2009).

As Clark (2002) in the article 'The WTO Banana Dispute Settlement and Its Implications for Trade Relations between the United States and the European Union' pointed out that '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.' Private companies were able to manage the business of getting food from where it is grown to where it is needed, cutting significant costs out of government budgets in those countries where state used to play these roles (Murphy 2009). The WTO treatment of the banana dispute reflects procedural and substantive biases that exist for the marginalized - those most affected by the outcomes of the complaints. The scholarship focuses on how these developing country participants lacked the experience as well as the material and technical resources to participate fully in the lengthy, highly specialized and stylized processes of WTO (Jawara and Kwa 2003; Gassama 2002, 2010).

There is specific legal scholarship that addresses itself particularly to cases related with bananas. The Banana regime of European Union as already mentioned placed many countries at a disadvantage in the early 1990s (Gassama 2010). As underlined by Spriegel (2000), "immediately after the EU (established) its new banana regime, many Latin America banana producing countries claimed that the EU's trade preferences to ACP countries violated GATT "free trade agreement principles". The US became involved in the dispute after being pushed by Chiquita (Kasteele, 1998; Spriegel, 2000; Read, 2001; Gassama, 2002; Myers, 2004; Bucheli, 2005). The US was joined as a complainant by Guatemala, Honduras, Mexico, and Ecuador (the world's largest producer of bananas, which had become a member of the WTO in January 1996).

They argued that the EU banana regime violated the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Import Licensing Procedures (Karen J. Alter & Sophie Meunier 2006; Willy 2008; Clark 2002; Josling 2002).

Knowing that the new Uruguay Round agreement would make it impossible for the EU to block a WTO ruling, the EU offered a deal to the Latin American banana producers: if they were willing to forgo future action against the EU banana regime, they would get a higher quota for their banana exports to Europe, enjoy a lower tariff, and have a revised system of export licenses. In March 1994, four of these countries – Colombia, Costa Rica, Nicaragua and Venezuela – agreed to the compromise known as the 'Framework agreement.' The agreement was concluded despite the protests of Guatemala, the United States and Germany (Karen J. Alter & Sophie Meunier 2006 Clark 2002 Clegg 2002).

Complainants charged that the European regime violated the following provisions of the GATT: Article I (Most-Favoured Nation treatment), Article II (schedules of concessions), Article III (National Treatment Obligation), Article X (publication and administration of trade regulations), Article XI (general elimination of quantitative restrictions), and Article XIII (non-discriminatory administration of quantitative restrictions). Moreover, it charged that the European regime violated provisions of WTO Agreements on Import Licensing Procedures, Agriculture, and the General Agreement on Trade in Services (GATS) (Chrislow 2003; Lung 1997; MaQueen 1998; Hough 2010; Gassama 2002; Sutton 1997).

Many of the elements of the four Lome Conventions that underpinned EU-ACP relations from 1975 to 2000 were lost within the context of the recently agreed successor Cotonou Agreement signed in June 2000. Nevertheless, the most vital commitment within Cotonou was that the 'ACP and the EU had agreed to conclude WTO-compatible trade agreements that would progressively remove barriers to trade between them and enhance cooperation in all areas relevant to trade. This commitment would take the form of Economic Partnership Agreements (EPAs) and once negotiated would gradually bring to an end preferential, non-reciprocal trade access for Caribbean goods entering the EU market. In its place, there would be something close to free trade between the two regions (Clegg 2000 2002, 2005). After lengthy negotiations, the

Europeans relented and reached an agreement with the United States on April 11, 2001 to implement the WTO conclusions and recommendations. In the compromise agreement, the Europeans agreed to abandon their quotas gradually and move toward a tariff-only regime for banana imports by January 1, 2006. In the interim, the Europeans agreed to implement a tariff-rate quota system that would gradually reduce the preferences given to banana imports from ACP countries without completely eliminating them.

By 2012, the banana conflict officially ended with the European Union's decision to reduce tariff on Latin American bananas by 35 percent and also maintained its policy of tariff- free access for Caribbean bananas (Gassama 2010).

Literature Gap

Scholarship exists on both the WTO and the international banana trade separately, but very little work on the two together, especially in the context of globalization. The study therefore sought to combine the two to tell a narrative which is pertinent from the viewpoint of the larger discourse on trade and development at the World Trade Organization.

Rationale and Scope of the Study

The present study is significant in the sense that international banana trade involved not only export earnings and foreign exchange of least developed banana producing countries of Caribbean countries, Windward Islands and Latin America but, also banana trade has an important role in other crucial areas like employment, environment and standard of living. Banana trade it may be argued can be regarded as a special case as it reflects upon power politics and includes actors such as states, non-state actors, international organizations like WTO and multinational corporations of developed countries. The study is limited to the involvement of WTO in the politics of international banana trade. The study focuses on the WTO to understand how various rules and regulations have been established to negotiate and settle trade disputes so as to improve the agricultural trade of developing countries and LDCs.

Research Questions

The study began by posing the following questions:

1. How has the institutional setting of World Trade Organization shaped agricultural trade?
2. How has International Banana Trade been historically regulated?
3. What are the World Trade Organization's rules, regulations and laws that govern banana trade?
4. How has WTO adjudicated on banana conflicts between developed and developing countries?

Hypotheses

The following hypotheses guided the research:

1. WTO as a system has failed to protect economic sovereignty of developing and Least Developed Countries especially in the area of agriculture.
2. Developed countries/consumers not Least Developed Country/producers dictate the terms of international banana trade.

Research Method

The present study adopted a qualitative research method. Both primary and secondary sources were used for the research work. Primary sources included various reports of WTO, case summaries and secondary sources consisted of books, academic journal articles.

To interpret and analysis draft this study has used mixed methods of both strategies such as deductive and inductive methods.

To understand and analyse the banana cases at the WTO, case related documents has been used in the study. In order to understand the WTO negotiations on agriculture the research heavily relied on WTO official documents, legal texts and reports.

Chapterization

The study has been divided into five chapters:

Chapter One: Introduction

As the introductory chapter, it highlighted the broad scope of the research, and the relevant research questions and hypotheses that were to guide the study.

Chapter Two: International Banana Trade: Historical Overview

This chapter sought to provide a historical overview of the international banana trade, examining various facets of the banana trade, its evolution, significance, interests of certain countries, and, tried to investigate the political dimensions of the trade. The chapter also attempted to introduce the different regulatory framework for bananas governed by organizations like- European Economic Community (EEC), General Agreement on Tariffs and Trade (GATT) and others.

Chapter Three: WTO and Agriculture

This chapter looked at the WTO's role in agricultural trade and highlights how WTO rules, agreements and laws are created and who has the decision-making powers within the WTO system. The purpose of the chapter was to identify the gaps and inequality created by the WTO system and the conflict between developed and developing countries over agricultural trade within the WTO.

Chapter Four: WTO and Banana Trade

This chapter attempted to explore the relationship between WTO and the banana trade. Thus, the chapter emphasized upon the power politics that influenced the resolution of banana related cases at the WTO. The chapter focused specifically on the dispute settlement body and the nine bananas related cases that were brought before it by member states for adjudication.

Chapter Five: Conclusion

The last chapter contains the main findings of the study.

Chapter II

International Trade in Bananas: A Historical Overview

This chapter primarily looks at the history of international banana trade. In order to explain the historical importance of international banana trade, this chapter is divided into three sections. The first section highlights the role of states both consuming and producing, and multinational companies (MNCs) in the 19th century in the establishment of banana trade in Latin America, Caribbean and, Windward Islands. The next section focuses on the changes in the banana trade after the end of World War II. The final section of the chapter throws lights upon the history of international cooperation in banana trade such as, European Economic Community (EEC) and the General Agreement on Tariffs and Trade (GATT).

International Banana Trade: 19th century

References to the banana plant may be found in the classical texts of China, India and Greeks. Bananas were brought from Far East to Arab lands in parts of East Africa in the 10th century. Further, bananas were transported to Spain and Canary Islands by the Arab traders (Payer el.al. 1975). The Spanish and the Portuguese introduced bananas to the Americas in the 16th century (Dodo 2014). However, there are also unsupported claims about the origin of the plant having developed in South America (Rich& Guillermo 1998).

There are various species of bananas like wild species of banana and cultivated bananas. The biological name of banana is '*musa*' and it is a Latin word. As a fruit, bananas are not native to the Western Hemisphere. There are different kinds of bananas can be found in the world and they are- apple bananas, cavendish bananas, lady finger bananas, pisang bananas, cooking bananas and red bananas. Figure 1.1 provides a glimpse at some of the varieties of bananas produced the world over. However, only cavendish bananas are internationally traded.

The cultivation and production of bananas has historically taken place in the tropical zones of the world and its consumption and markets limited to temperate regions. Historically there were four regions that were famous for Banana production- African Caribbean and Pacific Group of states

(ACP), Latin and Central America, EC overseas Departments and Territories, and Asia and Oceania (Jackson 1991: 60). Until the beginning of 20th century, bananas as a fruit was considered a luxury item (Jones 1913). A variety called *Gros Michel* developed in Jamaica which dominated the export trade in the mid-19th century. The 20th century banana trade was influenced by the Cavendish bananas (Lawrence 2008).

Figure 2.1: Different kinds of bananas

Source: Watson 2018

The basic characteristic of the evolution international banana trade is oligopolistic market structure and supremacy of multinationals. Most of the banana multinationals shared a common history (Taylor 2003). There were several firms engaged in the banana trade but most of them declined by the late 19th century.

Latin America

Bananas not only influenced Latin America's economy in the sense that bananas determined Latin American countries Gross National Product (GNP), exports earnings, national policies and employment; but also to a large extent bananas changed the course of politics in the region (Brenes and Kryssia 2003). Central America and Caribbean countries were governed by several right-wing dictators end of 19th and the first half of 20th century. Most of these dictators worked for the benefit of US foreign investors and local land owners by crushing agrarian workers in order to preserve unequal social system and thus created constant regional instability (Bulmer-Thomas 1987). In Central America, in order to control local politics, the US sent armed forces whenever US found its interests to be in danger. Invasion through direct military intervention was a very common tactic for the US in the early decades of 20th century especially in Honduras, Nicaragua and Panama.

Historically, the income of the banana producing countries was dependent on the export of one single agricultural commodity. Latin American countries economy relied on banana exports during the first half of the 20th century. These Latin American countries were termed as 'Banana Republics'. The term 'banana republic' refers to a group of politically unstable, economically corrupt and small countries under the domination of the US. The term banana republic is not a new one. The history of the genesis of this particular term can be seen in the novel 'Cabbages and Kings' written by O. Henry (Bucheli 2008). Three major factors that determined the development of international banana trade in the early twentieth century are: First, technological innovations like- emergence of steamship and decline of sailing vessels. Unlike sailing vessels, steamship had the capacity to ship bananas in large numbers in less time; second, land and construction of railways that improved inland trade and refrigerated rail transport structures, and

third, development of communication technology that upgraded coordination capacity of banana companies with Central American countries (Taylor 2003: 72).

On a regular basis, bananas were shipped from Jamaica in 1871 and in the next three years banana trade had witnessed substantial growth in terms of price and competition. In order to expand banana market, Lorenzo Baker who was a sailing captain from Boston, Andrew Preston who initially worked for the Seavern's & Co. and others created the Boston Fruit Company (BFC) in 1885. By the end 1880s, BFC acquired lands in Cuba and Dominican Republic. Due to increased demand of bananas, BFC acquired a number of marketing firms and built up the Fruit Dispatch Company to modify marketing infrastructure (Taylor 2003: 67-95).

Map 2.1: Banana Zone of Central America - Early 20th Century

Source: Willy (2008:16).

A businessman, named Minor Keith went to Costa Rica in 1871 to build railroad from San Jose to Purerto Limon. Lack of money failed Keith's railroad project and as a result, he purchased 800,000 acres land for banana production from the Costa Rican government and also acquired land in Columbia and Panama. Keith exported bananas to New Orleans and gained income as

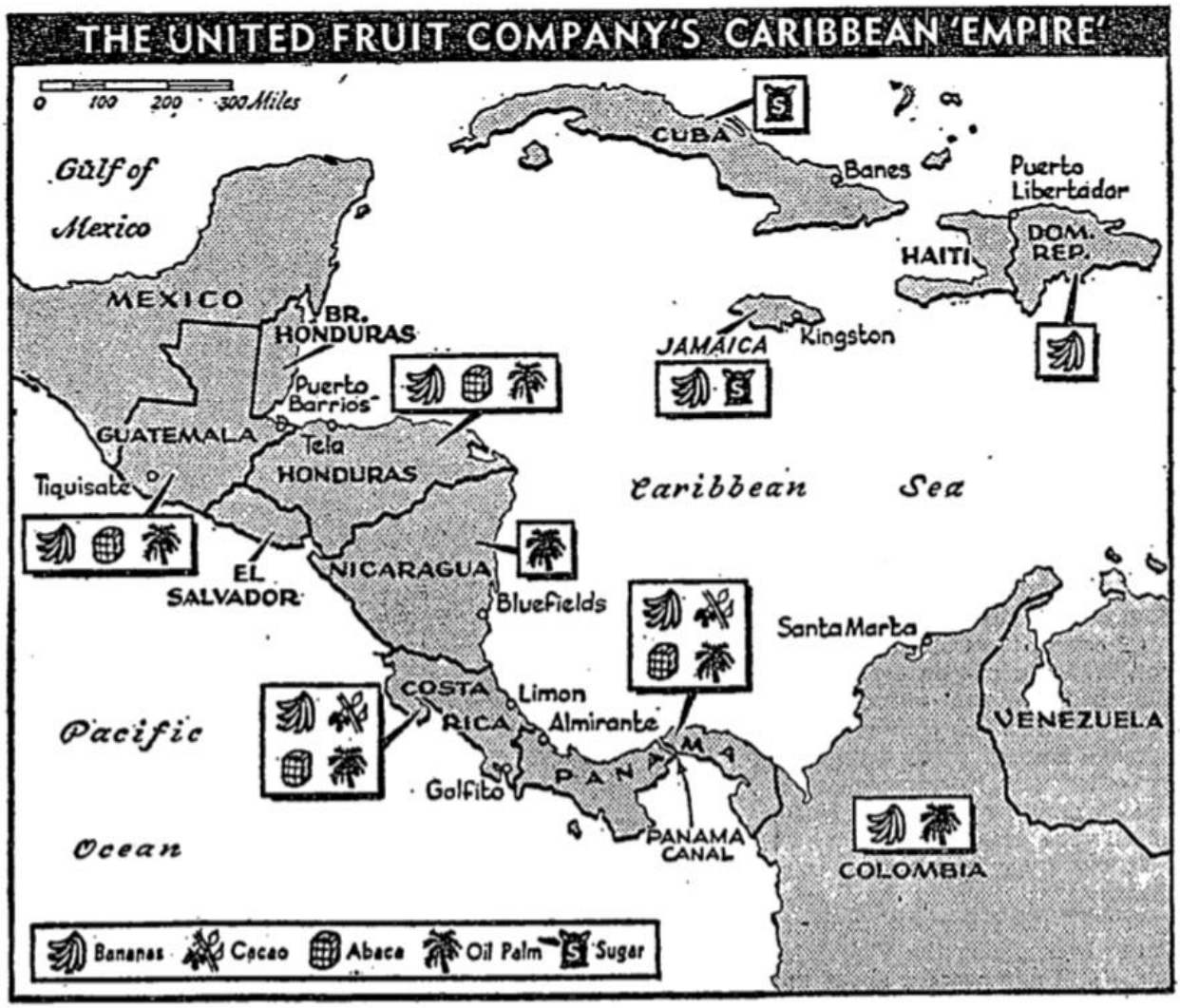
well as profits and consequently set up the Tropical Trading and Transport Co. However, bankruptcy of the Tropical Trading and Transport Co. in 1890 helped BFC take on this work (Taylor 2003).

Until the formation of UFC in 1899, commercialisation of the industry was completely impossible. Between 1870 and 1898, Central America's small farmers sold their produce of bananas to private corporate of the US (Brenes and Kryssia2003). According to the official historian of the UFC, "The organization of the United Fruit Company marked the end of the era of pioneering, of risks and hardships, easy profits as well as total failures, and the beginning of a new era that converted the highly perishable tropical banana into an important item of world trade" (Payer el.al. 1975:129).

Between 1870 and 1899, 114 banana companies were registered in the US. But once UFC came into being in 1899, it dominated banana trade for half a century. At that time of its creation, UFC acquired 250,000 acres of land in Columbia, Costa Rica, Cuba, Honduras, Dominican Republic, Jamaica and Nicaragua and had assets like-eleven steamships, twelve Chartered vessels and one hundred and twelve miles of railroads that connected banana production areas with ports (Read1983). Like all other empires, land was an important element for the banana empire and land acquisition became the main goal of UFC in the initial years of its establishment. There are factors that permitted UFC in this process. Factors like poverty and little migration within the region contributed to foreign control over lands of Central America (Willy 2008).

How did colonial authority and private enterprises get land in Latin America? This was unique in the sense that lands were acquired for railway concessions and not for the production of Bananas. In this process, as Kepner (1936) argued a kind of chaotic situation arose over the issue of land and its property rights as the company often got into conflict with those already settled on those lands. However, lands were granted to the UFC by the authoritarian governments because they wanted to modernise transport infrastructure and found solution in UFC for that purpose. For instance, government of Costa Rica granted UFC lands in order to build 3200 sq.kms railway in 1900 and allowed the UFC to monopolise banana production (Bucheli 2005, 2008; Taracena 1993). Map 2.2 provides a glimpse of the Caribbean empire of the United Fruit Company.

Map 2.2: The United Fruit Company's Caribbean Empire



Source: Washington State University: 2015

A contract was signed between the government of Costa Rica and US businessman named Minor Keith in 1884 to build a railroad. Contracts allowed US to penetrate foreign capital into the Central America. By the end of the 19th century Minor Keith received 7 percent of Costa Rican national lands. Unlike other countries, Panama which became independent in 1903 with the help of US military and political power, UFC even operated without any formal contracts in Panama (Willy 2008).

By 1930, UFC with advanced technology had created modern infrastructure in Latin America. However, this unprecedented infrastructure was not created for the development of these countries. In reality, its aim was to connect isolated banana zones and kept heartlands isolated (Willy 2008). The United Fruit Company also purchased Elders & Fyffes Company completely in 1910, though, Elders & Fyffes Company had enjoyed full autonomy in the areas of production, marketing of bananas and shipping and other decisions. It also introduced 'Blue Label' a refrigerated steamship for the first time in the history of banana trade in 1929. The UFC faced decline in its world market share in the late 1930s because of the emergence of Cuyamel Fruit Company and Standard Fruit and Steamship Company (SFSC) in this period. Cuyamel Fruit Company was set up in 1911 and became famous for producing quality bananas especially in Honduras. UFC also purchased Cuymael Fruit Company (Taylor 2003).

During 1930s, Great Depression and Panama disease disrupted banana export trade. The term panama disease described by Gregory S. Gilbert and Stephen P. Hubbell in 1996 in an article published in Bioscience "infected export banana farms in the American tropics during the early twentieth century" (Soluri 2002, 2000). The Panama disease affected the global banana trade in such a way that it not only forced Companies to abandon huge amount of bananas but had serious implications like bankruptcy for banana companies that had to shift their banana planting to new agricultural lands. Due to less demand from consumer countries, UFC earnings declined and loss of jobs in agricultural sector had serious impact on the economy of Latin American countries.

In the 1930s labour activism and unionisation were common in the world and banana producing countries also shown such labour activism and unionisation. With government support and use of military power, the UFC tried to curb labour activism. In the initial years, English speaking Afro-Caribbean origin labours worked for the industry and, they were culturally different from the labours of heartland of Latin America. In order to resist labour unity, UFC attempted to create ethnic divisions among workers. During WWII, production of export bananas from Central America declined sharply and was the lowest since 1910. Main reason behind the low production and trade was that during the war period commercial vessels were pushed for public service (Willy 2008). However, Post World War II witnessed recovery of the banana industry as well as their economy. It became evident from the fact that in the late 1940s, bananas accounted nearly

78 percent export earnings of Honduras, 72 percent of Panama, 46 percent of Costa Rica and 42 percent of Guatemala (Willy 2008: 40).

African, Caribbean and Pacific Region (ACP)

The main distinction between the banana trade of Windward Islands and Latin America was that the role of American banana multinationals in the evolution and development of Windward Islands banana industry was insignificant. In other words, its sole motive was to break the monopoly of UFC in the UK market. Unlike Latin America, banana industry of Windward Islands regulated through state intervention and protective regimes (Anderson and Tim &Tim 2003:123-149). History of Windward Islands banana trade is surrounded by colonialism and few private enterprises and, can be traced from early 20th century. Since the beginning, banana trade is depended on the colonial system of agriculture and developed large scale monoculture production and slavery.

Banana is the key export crop of Caribbean economy and it was said that the development of banana industry was based on the decline of sugar industry. In Jamaica and Windward Islands banana was introduced when profits from sugar industry declined in the late 19th century. Sugar was a staple agricultural crop of Windward Islands throughout the 19th century. With the advent of Sugar Equalisation Act of 1845, slave labour was abolished and as a result, sugar industry became unprofitable (Anderson and Tim &Tim 2003:123-149). In the early 1920s, Swift Banana Company which was a Manchester based company, got involved in the Windward Islands Banana trade in order export bananas from St Lucia to the UK market. However, the company lost its interest as most of its plants were attacked by panama disease in the late 1920s (Clegg 2000).

Significant attempts have been made to developed Windward Islands banana industry in the early 1930s. A trade agreement was established between Canada and the West Indies which allowed Canadian Banana Company and Canadian National Steamship Company began to ship bananas from the Islands. With the onset WWII it became difficult for the Canadian National Steamship Company to ship bananas and as a result, Company was forced to terminate its service. In 1942 large scale banana export from Windward Islands came to end in 1942. In

between 1945 and 1948, shipping companies like- A.C. Shillingford, the Grayson Shipping Line, and the Alcoa Shipping Line were involved in small scale shipment (Clegg 2000).

One of the significant contributions of Canadian Banana Company was the creation of Banana Growers Association (BGA). The BGA dealt with marketing companies and functioned as intermediaries between shippers and growers. It also introduced the tradition of contractual relationship between BGA and company (Anderson and Tim &Tim 2003).

Map 2.3: Windward Island's Banana Producing Countries

Windward Islands

Source: Willy (2008:79)

A semi-autonomous government agency called Colonial Development Corporation (CDC) was established under the Colonial Development and Welfare Act of 1940. The main task of the agency was to promote economic development of British colonies. For example, it assisted St Lucia banana industry through new importation of banana plants and creation of new nursery. Another instance of CDC exploitation can be found in Dominica where its involvement started in 1949, threatened the Council of Dominica that without CDC there would not be no new road programme in Dominica and forced to increase export duty of bananas by 150 percent. The main reason behind this was to end the involvement of Antilles Products in the Island. There were also tensions between colonial office and MNCs like Antilles Products over the role of CDC. It was

also seen as controversial in the sense that it had political agenda and insisted for greater concessions (Clegg 2000).

During the World War II, Windward Islands lost shipping vessels service and banana export ended in 1942. Interestingly in 1948, Antilles Products Limited (APL) was established by Paddy Foley and Geoffrey Bland restarted banana trade. This British registered firm signed marketing contract with all the four BGAs of the Islands in order to buy all bananas and shipped them for export for a period 15 years. In the early 1950s, due to lack of adequate assistance from UK as well as Producers of Jamaica and lack of shipping facilities, APL experienced financial difficulties. Hence in 1952, Geest Limited purchased ANL and after few years, the company grown up as the main competitor to UFC in Jamaica and in Windward Islands the company established its image as exclusive marketer of bananas. By mid 1960s, with the increase of share the company broke the monopoly of UFC in the UK market (Anderson and Tim &Tim 2003).Thus, it can be said that American political and economic supremacy helped UFC to create and maintain 'Banana Empire' in the Caribbean and Central America. It is also said that US also paid these countries' foreign debt to European powers in the early 20th century (Bucheli 2008).

International Trade in Bananas 1945-1975

Latin America

Significant changes took place in the export banana trade the 1950 and 1960s. Banana consumption decreased in the US with fragile political development in Central America (Bucheli2003). Banana exporting governments had taken initiatives to acquire international cooperation within various organisational frameworks. Organisations like Organisation of American States (OAS) in the in 1960s dealt with banana issues. OAS helped Latin American countries to get access Italian banana markets in 1962. FAO also created an International Banana group in the mid 1960s. Needless to say that, these organisations were failed challenge the dominance of multinational fruit companies (Willy 2008).

Confrontation between TNC and exporting countries reflected the economic nationalism in the late 1960s and 1970s. They believed that TNCs exploited their natural resource. This kind of sentiments let the creation an agency under the Ministry of Trade and Industry of Panama in

1974. Panama annexed thousands of acres of uncultivated United Brands lands and in 1975 and within the next four years, acquired all the holdings of company that had in Panama.

Three countries such as Costa Rica, Honduras, and Panama from Central America and Colombia and Ecuador from South America were considered as the main exporters during the 1970s and 1980s (Brenes and Kryssia 2003). Latin American governments had meetings and discussions to generate more income from banana trade and to increase export taxes despite TNCs threat to suspend banana exports. Thus, to institutionalise banana, ministers of Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, and Panama signed Panama Accord on March 8, 1974. Following Panama accord, most of them increased additional per box export tax and some of them increased to 15% (Willy 2008).

ACP States

The establishment of Caribbean banana industry in the post WWII period was important for the region in order to generate employment as other agricultural export industries, such as- sugar and Lime has been declined. Unlike Latin America, Caribbean banana industry was associated with British Company (Willy 2008). The development of Windward Islands banana industry was necessary in the post- WWII period because traditional industries of these Islands like sugar, limes, cotton, nutmeg and arrowroot were declined (Clegg 2000).

To purchase exportable bananas from Windward Islands, Geest negotiated with all the banana growers of Islands banana associations. Without producing bananas Geest controlled the production (Willy 2008). BGA's are created by colonial governments as statutory agencies. The need behind the creation of associations was that small farmer produced bananas and farmers alone cannot export bananas to the northern countries. After independence BGA's were reconstituted by Windward Islands parliaments (Willy 2008).UK government in the development of Windward Islands' banana trade played an important role since the genesis of the industry. It supported the establishment of Banana Producer's associations (BPAs) during interwar period. These Banana Producers' associations tried resist American corporate power in the British colony and UK government on the other hand for the benefit of small banana growers of the Islands provided financial assistance to Banana Producers Associations. As a consequence, UFC always attempted to undermine the interests of BPAs.

In the late 1950 both Antilles Products and government has lost its interests in the Windward Islands due to its less capacity to export bananas in large scale. As a result, a Dutch Businessman, John van Geest took share of Antilles Products and in 1952 became the director of the company in 1953. In the years 1954, the company was renamed as Geest Industries. Though, Geest Industries did not have adequate infrastructure for vast number of bananas in UK, it negotiated with the four Windward Islands Banana Producers Associations in order to achieve exclusive right to ship and market overall produced bananas of four Islands. For instance, Geest Industries signed a contract with the Banana Growers Association Limited for expansion of the export industry. In the late 1950s the company had shifted exportable quality bananas regularly. Subsequently, UK government also found interest in Windward Islands banana industry and soon realised Islands potentiality as valuable source of bananas. UK government provided financial assistance in the form of loans and grants to Windward Islands for the creation of new nurseries, fertilizers and disease control mechanism (Clegg 2000).

In the 1960s, excessive supply and price decline took place and therefore a kind of tension and conflict has developed between the companies and the governments of Jamaica and Windward Islands. Finally, conflict ended in 1966 with WINBAN agreement. The agreement provided protective markets for Jamaican produced bananas. The agreement allotted 52% of the UK market to Jamaica and Geest gained 48% of the market for bananas of Windward Islands (Anderson and Tim& Tim 2003). WINBAN was founded to coordinated cooperation among the BGAs. Apart from this, WINBAN had to negotiate with Geest in the areas, like shipping and marketing contracts. But many believed that BGAs lacked internal unity and different sizes of farm were the main reason for lack of unity (Willy 2008).

Regulation of International Trade in Bananas: 1975-1995

Until 1992, the Banana Trade Regime (BTR) of EU was segmented. There were three segments or banana regime: (1) under a special protocol to the treaty of Rome of 1957, Germany had a duty free market and imported bananas freely; (2) Benelux, Denmark, Sweden and Ireland had applied a 20% tariff, also known as Common External Tariff (CET); (3) banana producers either from ACP states were guaranteed a preferential market by France, Britain, Spain, Italy, Portugal and Greece (Sutton 1997) and they had protected and heavily administered banana markets

(Cadot& Douglas 2001). Within this regime, these states had different kinds of nationally determined measures. All of bananas eaten in Spain were from Canary Islands. Through a global quota along with import licenses, and reserve market share for bananas from Somalia, Italy regulated banana trade. UK too had a global import quota for ACP but, import licenses were given only to the dollar bananas. Licenses were issued when ACP states could not satisfy the overall quota (Read 2001).

A Cartel Organisation,, Union of Banana Exporting Countries (known by its Spanish acronym, UPEB) was created by the governments of Colombia, Costa Rica, Honduras, Guatemala, and Panama. Ecuador had not signed the UPEB convention. Its main goals were described by the Article 2 of the convention, includes-

a. Establishing and defending remunerative prices,
b. Promote common policies regarding banana production,
c. Transportation,
d. Marketing of bananas,
e. Search for new markets,
f. Establish equilibrium between production and demand,
g. Technical cooperation and modernise industry,
h. Defend each member's participation in the international banana market.

Organizational setting of the UPEB was very weak. Its main organ, Council of Ministers which dealt with policy making, used to meet once a year and the body composed of nine ministers from member countries. To avoid foreign influence in the organizational decision making, each member had to be from their own nationality. Finance of the organization was based on the export taxes on bananas. 25 percent of the budget of the organization has to share equally by the member state and rest of 75 percent would be dependent on the proportion to each country's total exports. Interestingly, relative size of the banana industry would determine the voting power of each member state.

UPEB felt that large share of profit was going in the hands of MNCs (37 percent) and on the other hand, banana producing countries of Central America received 11 percent of total profits. During the late 1980s, governments of Panama and Honduras and Costa Rica has nullified its

earlier contracts with MNCs and made laws. Main goals of these laws were to dismiss concessions and to increase taxes (Bucheli 2008).

Although, supply of export bananas of Caribbean market again decreased by droughts and hurricanes in the 1970s. As a result, Jamaica had to switch to dollar- zone bananas and 20% tariff was introduced by the UK. To monitor dollar banana imports, Banana Trade advisory Committee (BTAC) was formed in 1973. Representatives of the Ministry of agriculture, Fisheries and food, trade organisations, representatives of Geest and Fyffes were the members of the committee. Licenses, which were administered by the BTAC, controlled import restriction on dollar bananas (Anderson and Tim& Tim 2003).

A convention was set up by EC concerning trade, financial and technical assistance in order to maintain relationship with their former colonies. In 1963, the first convention, the Yaounde Convention was signed between six EEC members and seventeen African states. But, with the entrance of UK into the EC in 1973, more number of former colonies has joined the convention. Hence, Yaounde Convention was replaced by the Lome Convention in 1975. It was viewed as a development policy of EEC. Though, both the convention had same objective, Lome Convention concentrated more on the inclusion of new members (Myres 2004:163). With the expansion of members, the convention has been renewed in Lome II (1979), Lome III (1984), Lome IV (1989). Lome Convention provided ACP free access to EU markets for ACP produced products and, ACP states were permitted to impose import tariffs on European imports. ACP states and their produced bananas were the main beneficiaries of the Lome convention. Lome convention governed the trade between EC and ACP states (Jackson 1991).

Regulation under the General Agreement on Tariff and Trade (GATT)

Major trading countries adopted General Agreement of GATT in 1948 seeking an immediate reduction in tariffs.“The GATT’s ad hoc nature was reflected in its evolution, which consisted of a series of “rounds,” the term commonly applied to multiyear series of multilateral negotiations involving member states” (Willy 2008: 165). The Agreement was supposed to function as a temporary trade agreement. The General Agreement, as a provisional document, was applied by the contracting parties on the basis of the "Protocol of Provisional Application of the General

Agreement" and subsequent Protocols of Accession to the General Agreement (Chen 1995; Bessko 1996).

The function of GATT was to enforce the General Agreement. However, GATT also provided the forum to create additional trade agreements. Those agreements were intended to bind new countries that were not contracting parties to the GATT. The decision-making task was performed by the Contracting Parties. Another body called General Council was formed to facilitate the task of Contracting Parties. The General Council was composed of the representatives of all contracting parties. The General Council had mainly two tasks: (1) appoint panel members in the dispute resolution process, and, (2) determine the Panels' terms of reference (Chen 1995).Since the International Trade Organization (ITO) was never created as the major trading parties declined to join; GATT thus lacked an organizational structure and leaving it under-institutionalized (Willy 2008). Throughout the history of GATT system, it had largely ignored trade issues related to primary sector commodities, such as agricultural goods. On the other hand, within the secondary sector, there was no GATT agreement on textiles and clothing. These were the two principal manufactured goods especially traded by LDCs (Willy 2008; Jawara& Kwa 2003).

The inability of GATT as a trade regulatory organization in resolving trade disputes was evident from the banana cases. There were two cases occurred under GATT. To understand the facets of the relationship between GATT and banana trade, it is important to explain the two cases: Bananas 1 and 2 cases.

In the first case, a group of Latin American (dollar zone producers) countries alleged that different national regime of banana of European countries had violated GATT rules. After failed consultations with EEC concerning various national regimes on bananas, they requested GATT to establish Panel. The complaints had been filed by Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela. The request was based on the argument that there was a clash between various national regimes of EEC member states as well as tariff preferences to ACP states and GATT provisions, including Article I, XI, and XXIV (Salas and John 2000:145-166). To hear this dispute the GATT council established a panel on 10th February 1993. On June 1993, Panel report was circulated to the GATT contracting parties. Outcome of the Panel report said that

quota schemes of different European countries had violated Article 1 (Most Favored Nation) and XI.1 (General Elimination of Quantitative Restrictions).

The contention of the EEC was that tariff preferences guaranteed through Lome IV to ACP states were justified under Article XXIV of Part III and in conjunction with Part IV of the GATT. Article XXIV dealt with custom unions and free trade areas and hence, allowed the removal of all kinds of trade restrictions among members of the free trade areas and custom unions. The panel however found that banana protocols were inconsistent with the Article XXIV and preferences were non-reciprocal as the EEC only permitted to remove all restrictions on imports from ACP states. Part IV concerned with the obligations of developed parties towards less developed countries and therefore according to EEC, the preferences were justified. But, Part IV did not allow contracting parties to subtract from other obligations of GATT in the name of preferences, such as Article I. Thus, the panel recommended bringing tariff preferences into conformity with the provisions of GATT (Bessko 1996: 275).

The EEC, on the other hand argued that quota restrictions could be justified under Article XI (2)(c)(i) which states that "import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted" (WTO). But, panel came with the view that EEC had not met the criteria for this clause.

There are two reasons that led to the failure of this panel report. First, though the Panel favored the Complainants, EEC and the ACP states blocked the adoption of panel report. Second, within the one month of the submission of panel reports to the contracting parties, EEC abolished all the national import regimes and a common import regime was established and implemented (Bessko 1996; Chen 1995).

On 28 January 1993, parallel to the Banana I proceedings Latin American states had requested consultations with the EEC regarding the validity of draft text of the Regulation 404/93. European Council, after negotiations on bananas issue adopted Regulation 404/93 on 13 February. The regulation mainly created a tariff quota system that divided among four different kinds of banana suppliers: (1) traditional ACP imports, (2) non-traditional ACP imports and, (3)

import from third countries. The regulation intended to provide benefit to the ACP export countries and to impose new restrictions on the non-ACP states (Salas and John 2000; Bessko 1996: 273). The EEC declined their request on the ground that EEC had not adopted the regulation and that an officially non-adopted regulation does not come under the subject of GATT. The same group of countries from Latin America requested for consultations immediately after the Regulation 404/93 came in force on 1 July, 1993. European Council, after negotiations on bananas issue adopted Regulation 404/93 on 13 February. The regulation mainly created a tariff quota system divided among four different kinds of banana suppliers: (1) traditional ACP imports, (2) non-traditional ACP imports and, (3) import from third countries. The regulation intended to provide benefit to the ACP export countries and to impose new restrictions on the non-ACP states (Salas and John 2000; Bessko 1996: 273). The main objective for the Latin American countries was to challenge the validity of the regulation under GATT rules.

During the month of April, Consultations were held with EEC. Exactly 13 days after the submission of Panel report of Bananas I to the contracting parties, GATT panel was established for the Banana II on 16 June 1993. Panel report was circulated on 18 January 1994 and again report favoured the complainants. Like Bananas I, Bananas II also blocked and had not adopted by the EC. The outcomes of the Panel Report were (1) the Regulation 404/93 deemed to violate Article I (Most Favored Nation) (2) the specific tariffs set forth by the Regulation 404/93 were inconsistent with the Article II (tariff binding). The Panel pointed out that rather than focus on value of the bananas, tariffs focused on the weight of bananas and (3) the allocation of import licenses was also found to be inconsistent with Article III (National Treatment) of the GATT.

The EC regime was inconsistent with Article III (IV) which states "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product." Moreover, EC also made arguments on the basis of GATT Article XXIV (relating to customs

unions and free trade areas) but were rejected. Banana II was the first panel that questioned the validity of CMOB (Common Market Organisation for Bananas) and finding of Banana II formed the basis for Bananas III panel (Chen 1995).

Each time a problem arose, usually a complaint submitted by a member state, the GATT responded by creating a working party or, in later years, a dispute panel to consider the case. These temporary committees issued their decisions following a series of hearings, but the absence of a strong institution reduced the possibility of enforcing their decisions. It was easy for countries to ignore an unfavorable ruling, limiting the use of GATT's dispute settlement process by potential complainants. Weakness of the GATTs dispute settlement system was that each time a complaint submitted by a state, the GATT responded by creating a dispute panel to consider the case. Though, panel issued decisions following a series of hearings, the absence of a strong institution reduced the possibility of enforcing decisions made by the panel. Hence, it was quite easy for countries to ignore an unfavourable ruling, limiting the use of GATT's dispute settlement process by potential complainants (Willy 2008:165). The next chapter takes a look at the World Trade Organization that replaced GATT in 1995.

Chapter III

World Trade Organization and Agriculture

This chapter looks at the World Trade Organization (WTO) and the international trade in agriculture. The chapter focuses on WTO rules which govern trade in agriculture and the politics behind these rules. For that purpose, the chapter first looks at the organizational structure of before moving onto the history of agricultural trade, the discussionsin the Uruguay round negotiations which made formal the Agreement on Agriculture (AoA) within the WTO framework. The last segment looks at subsequent WTO negotiations like the Doha Round and the interconnections with issues of trade, food security and development.

Organizational character of the WTO

The conclusion of the Uruguay Round of Trade Negotiations on 1st January 1995 led to the formation of World Trade Organization (WTO). Trade rules or trade agreements among member countries are negotiated at WTO. The organization acts as a governing body responsible for supervising the Marrakesh Agreement. Headquartered in Geneva, the WTO consists of 164 members. Along with its influence on national legislature, the WTO policies also affect the country's economy. The main functions of WTO are (i) administering WTO trade agreements; (ii) forum for trade negotiations; (iii) handling trade disputes; (iv) monitoring national trade policies; (v) technical assistance and training for developing countries and (vi) engaging in cooperation with other international organisations. The rules of WTO are based on the principles to facilitate and guide the framework with the ambit of WTO. These include principles of reciprocity, national treatment, and most favoured nation (MFN). The reciprocal and mutually advantageous arrangements, elimination of discrimination on international commerce and reduction of tariffs and trade are the main commitment of reciprocity principle (Head, 2008:135). Equal treatment for goods produced domestically or outside (foreign) (Article III) is the main principle of the national treatment (Article I of GATT). Whereas, MFN principle says that any advantage accorded to one nation would be shared among its member countries *ipso facto*.

The highest decision-making body of WTO is the ministerial conference consisting of ministers of trade of the member countries. According to article IV of the Marrakesh Agreement, the Ministerial Conference decides any multilateral agreement which takes place once in two years. Mini-ministerial meetings held before or during ministerial meeting reflect more or less an unofficial meeting of the WTO, usually called by a few influential members. Entries to these meetings are strictly restricted to invitations. Civil society groups criticise these undemocratic mini-ministerial meetings which do not fall under the ambit of WTO (Jawara and Kwa, 2003: 15). The General council comprising of a representative of all members usually carries out the day to day activities of WTO. GATT 1947 serves as a model for decision making by consensus for WTO also. When a consensus cannot arrive at a decision, the matter is solved by voting. Each member of WTO has one vote at the meeting of the ministerial conference and General Council (WTO, 2016:8 (legal text)).

Concerning decision making, the General Council is the second most important body. The General Council is assigned with the task of reporting to the ministers on the development and status of negotiations. Every year a chair is selected from trade missions to hold a meeting of the council. Generally, the chairmanship is selected alternatively from developing and developed countries. Under different chairs and terms of reference, the General Council convenes the dispute settlement body (DSB) and the trade policy review body (WTO, 2016; Jawara and Kwa 2003: 16). DSB settles trade disputes. DSB is a body responsible for setting up of a panel expert. Acceptance and rejection of funding are also under its jurisdiction. DSB does shoulder the monitoring task of implementation of rulings and recommendation. To retaliate one side over the other is also within its ambit. Parties who are unsatisfied can appeal against ruling heard by three members of the seven permanent members. DSB constitutes this permanent body. Settling of disputes through DSB is expensive and hence settled outside DSB process (WTO, 2016; Jawara and Kwa 2003: 16). Chapter IV takes a more detailed look at the DSB.

Individual members and their practices of trade policies are looked over by trade policy review body. Critical assessment of country concerned over the country's trade policies and performance are provided by 'Peer' review. After every two years the four trading blocs the European Union (EU), the United States of America (US) Japan and Canada are reviewed. The

combination of these four trading blocs is referred to as Quad Group. However, the next sixteen biggest trading blocs are reviewed every four years and the remaining every six years and so on.

The Trade Negotiation Committees (TNCs), a product of the Doha Declaration Conference, 2011 negotiates individual subjects under the authority of the General Council and Chairmanship of Director General of WTO. Reports prepared by TNC are submitted to the General Council. These committees which are not permanent are supposed to complete their work by 1stJanuary2005. However, they could not complete their task because of the unfinished agenda of the Doha Declaration. The six identified areas identified under the Doha Declaration includes- intellectual property rights, agriculture, dispute settlement, the environment, trade in services, and trade and development are also organized to facilitate negotiations (WTO, 2001).

The day to day activities is taken care of by three more councils and six more committees. These vary from trade (trade in goods, trade in services and trade-related aspects of intellectual property rights) to development and environment (WTO, 2016). Working groups are also set up to look at investment, competition policy, transparency in government procurement and trade facilitation (set up by Singapore ministerial meeting, debt and finance, and transfer of technology (Doha mandate, 2001) (WTO, 2016). To arrive at the consensus both formal and informal means are pursued by all negotiating groups. "Green Room" is the term for referring to the informal meetings held by influential members and Director General of WTO. The ministerial meetings or other concerned committees or groups take care of the outcome of "Green Room".

Council for Trade in Goods

The General Agreement on Tariffs and Trade (GATT) covers international trade in goods. The workings of the GATT agreement are the responsibility of the Council for Trade in Goods. Council for Trade on goods is composed of representatives from entire WTO member countries. The Goods Council again has ten committees which deal with specific subjects for instance agriculture, market access, subsidies, and anti- dumping measures and so on. These committees are made up of all member countries of the WTO. This chapter specifically looks at agriculture and hence only Committee on Agriculture is discussed here.

Committee on Agriculture

The Uruguay Round Agreement on Agriculture (Article 17) created a Committee on Agriculture. The Committee on Agriculture looks at the implementation of the Agriculture Agreement. Its main task is to oversee how members of the WTO are abiding by their commitments. The committee consists of all WTO members and generally meets three or four times in a year. The Committee on Agriculture is a vital transparency mechanism that gives an opportunity to acquire information to get whether Member countries are meeting WTO commitments and obligations. However, Committee on Agriculture is an opportunity-(i) To demonstrate to other Members of WTO that measures of them are under close scrutiny; (ii) To follow matters suitable to the implementation of the Agreement on Agriculture; and (iii) keep eye on policy issues of concern in WTO individual Members. Moreover, the Committee on Agriculture monitors the implementation of decisions agreed by Ministers at WTO's Ministerial Conferences. Committee works on Agriculture related decisions such as-export subsidies and agricultural trade, net- food importing developing countries, market access in agricultural trade and public stockholding for food security purposes.

Groupings in the WTO

For years global negotiations on agricultural trade have been marked by coalitions of countries that negotiate to a greater or lesser extent as blocs. Preceding Cancún, real alliances incorporated the occasionally together and frequently split US and EU, the Cairns gathering, and the 'Gathering of 77 or more China,' or 'Similarly invested' countries, the inheritors of the mantle of the dead neutral development. In any case, at the 1993 WTO summit in Cancún real moves happened and new alliances together rose, while more seasoned ones blurred. The crumple of the Cancún Pastoral is generally ascribed to a blend of keen coalition and alliance working by the Third World and different countries, to the now evident lip service of the US and EU positions, and to the agriculturist/laborer developments dissenting in the boulevards. The places of both the administration coalitions and the common society protestors must be comprehended in the event that one gets to handle completely what is in question in these continuous transactions. Here we think about the new design of government coalitions, the greater part of which have been initiated with 'G names' (G10, G20, G90, etcetera).

EU and USA

The EU and the US are broadly referred to for what is seen as dishonest talk on horticultural exchange and sponsorships, for battling with each finished access to each other's agricultural trade sectors (utilizing intermediary issues like hereditary building or hamburger with hormones), and, when there is no other options, for setting aside their disparities and moving in against the Third World by conceding to normal Both exchange superpowers claim adherence to neoliberal facilitated commerce philosophy (particularly the US), yet both always look for approaches to push outrageous exchange advancement and free market rehearses on others while intensely mediating in the 'market' further bolstering their own good fortune by giving subsidies at home and levy and non-duty (i.e. phytosanitary) hindrances to secure their own business sectors. Both have progressively comparable sponsorship and emotionally supportive networks that lopsidedly go to bigger, wealthier agriculturists and agribusiness, and authorize (this is later for the EU) low value strategies that drive their own family ranchers into insolvency while energizing the fare dumping of items in Third World markets. The EU has made more explanatory reference to rationing country jobs and scenes at home, however by and by its Regular Agrarian Approach (Top) has been no less harming to family agriculturists than the US Homestead Bill. These superpowers have since quite a while ago guarded their own particular utilization of household underpins, however are progressively eager to exchange them away in return for more noteworthy and more prominent access by their companies (Cargill, ADM, Monsanto, Nestlé, Unilever, Parmalat and the others) to Third World markets.

Before Cancún the US breathtakingly utilized the Cairns gathering (see beneath) nations to divert feedback to toward the EU, while concealing its own particular sponsorships in allowed Green Box classes. Since the EU transformed the Top in 1993 to all the more intently look like the US framework, this has turned out to be more troublesome. Intermittently the US and the EU make what have all the earmarks of being significant concessions in return for promote advancement by whatever is left of the world. Illustrations may incorporate the EU 'surrendering' trade sponsorships in the 2003 Top change – yet supplanting them with Green Box bolsters – and the

US consenting to a further 20 percent cut in household backings' in 2004, while pushing for an extended Blue Box in which to conceal their substitutions.

ACP

The ACP is a gathering of 79 African, Caribbean and Pacific expresses that get special market access to the EU under the Lomé Conventions. They expect that WTO negotiations will end both to the tariff barriers, and to the slow end of the EU preferential treatment they appreciate.

Cairns Gathering

This great pre-Cancún arranging alliance was comprised of Australia, Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, Thailand, South Africa and Uruguay. While putatively drove by Australia, Cairns was frequently in the situation of 'doing the filthy work for the Assembled States,' assaulting other underdeveloped nations and the EU for protectionist positions and endowments. They took the position that all types of open mediation and appropriations are true security measures that contort showcase signals, while exchange advancement has the impact of rearranging costs, so empowering generation to be confined in those areas with near preferences. Market gets to was their reviving cry, and they guarded the most extraordinary advancement positions. This unrefined free market position may have suited the created nation individuals from the Cairns Gathering; however, by Cancún it had caused expanding pressures with the creating nation individuals, who had in all probability joined Cairns at the command of the US, as opposed to in view of the genuine premiums of their own rural segments. The Cairns Gathering for all intents and purposes stopped to exist in Cancún, as its creating nation individuals joined different coalitions. Indonesia and the Philippines joined the G33, while the enormous agro-exporters (Brazil, Chile, Thailand, Argentina, South Africa) went ahead to assume enter parts in the G20.

G10

A gathering of nations bolster the idea of multi-functionality. As indicated by this idea, horticulture is about more than delivering items, it is likewise about safeguarding scenes and ensuring ranch employments and provincial conventions, and it is about sustenance security, and hence merits unique thought in exchange understandings. Multi-functionality was initially championed by the EU, which has since made light of it as it brought excessively struggle and drove the US and the Cairns Gathering to blame the EU for fraudulently guarding its own ranchers while sponsoring sends out that undercut agriculturists somewhere else (one can convincingly contend that the criticizers were similarly as misleading, shedding crocodile tears for ranchers who were likewise being harmed by shabby fares from the US and Cairns Gathering nations.) The G10 nations are net food importing, basically created nations, including Bulgaria, Taiwan, South Korea, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway and Switzerland. They shield, in addition to other things, the financial and social honesty of their provincial districts, and esteem their fields and nourishment quality exceedingly. They are likewise worried about value changes. For Japan, Korea and Norway, whose nourishment is to a great extent imported, sustenance security is viewed as an open decent. To them it is inadmissible to influence their sustenance to supply absolutely subject to the fancies of the global market, or on political or monetary weights. The inundated rice nations, similar to Japan and Korea, moreover stretch the connection amongst farming and the earth through the paddy scene. As per the G10, these contemplations legitimize a functioning part for government in the direction of externalities and in the creation of open merchandise. The G10 has communicated worry about the NG5 (see underneath) cutting arrangements behinds the backs of different countries, since it infers the political responsibility for transactions by the expansive agro-trade nations.

G20

This gathering was broadly seen by the media as having 'faced' the US and EU in Cancún (however actually for all intents and purposes the greater part of the gatherings recorded here faced the US and EU, causing the fall of the discussions), and in Hong Kong also. The present individuals incorporate major agro-exporters Brazil, Argentina, South Africa, Thailand, Chile,

and China, and possibly significant agro exporters like India. India, Brazil and China have led the pack, and guard net exchange progression went for opening up showcase access in the US and EU for their fares. The G20 has likewise pulled in a gathering of nations whose claim interests are less unmistakably adjusted exclusively to agro-sends out (however a considerable lot of them do have politically ground-breaking agro-trade elites), yet who all things considered were attracted to the apparent solid resistance toward the North. These incorporate Bolivia, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, Tanzania, Venezuela and Zimbabwe. The G20 gladly claims to speak to half of the total populace and 66% of its agriculturists; however, its positions obviously support the modest agro-send out world class among those ranchers. The G20's arranging position is straightforward: expanded access toward the Northern markets for G20 farming items, a conclusion to horticultural fare appropriations, and the end of household underpins that are successfully send out sponsorships. By putting a significantly higher need on opening fare markets than on ensuring household showcases, the G20 position is in reality considerably closer to the US/EU position than to the positions upheld by family rancher and worker associations inside the G20 nations: this is the reason the G20 has been revoked by means of Campesina, the worldwide organization together of family homestead and labourer gatherings. Paul Nicholson, of the by means of Campesina Global Planning Board of trustees, stated: 'Nobody should think for a minute that if Argentina can trade more huge amounts of soy to the EU that even one less Argentine tyke will pass on of craving, when it is exactly the extension of soy and different products for send out by vast landowners that is dislodging family agriculturists into wretchedness and yearning.'

G33

The G33 is otherwise called the Partnership on Extraordinary Items and aSpecial Defend Component (SP/SSM Union). This Gathering is comprised of 42 creating nation individuals from the WTO, and incorporates Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Congo, Cuba, Dominican Republic, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Ivory Drift, Jamaica, Kenya, Korea, Mauritius, Mongolia, Montserrat, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, The Philippines, Peru, Holy person Kitts, Holy person Lucia, Holy person Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda.

History of International Trade in Agriculture

The history of international trade in agriculture has had a chequered past. Trade in agriculture has been a source of conflict between different countries. While agriculture represents a small share of the economy of developed countries with a small portion of its population engaged in agriculture; for the economies of the developing countries, it nonetheless represents an important sector. The terms of trade related to agriculture have been an important bone of contention between countries. First, developed countries protect their farmers through government support in the form of domestic support and export subsidies and other various protectionist trade measures. Second, in return developing countries are required to open their agricultural market in the name of trade liberalization. It is apparent that like other sectors of the economy agriculture has seen high government intervention. But, the main difference is that in case of industry the nature of intervention has been positive in that it has facilitated the growth of investments; while in case of agriculture, government interventionist times has had its shades of grey. Within the agricultural sector, history of State intervention has not always been uniform. While some parts of agricultural sector were able to garner government support, others were kept aside.

Scholars have pointed out certain characteristics of developing countries agricultural trade. First, exportable agricultural commodities from developing countries were discriminated and second, protection and subsidies are provided only to the import-competing commodities. For the past sixty years of multilateral trade negotiations, agriculture was the most or one of the contentious issues. The agriculture sector is important for developing countries in many ways as agriculture is viewed as one of the key issues of concern to them. It plays not only a significant role in their economy but also can be seen as an instrument to the reduction of poverty, rural development, employment, export-oriented growth and other food security concerns. Because of these developed countries hoped that that will be hugely benefited from the liberalization of agricultural trade (Hunter 2003).

Developing countries have a comparative advantage in producing agricultural products but the agricultural protection of developed countries which have a negative impact on the developing countries benefit (Thies& Porche 2007: 116). Excess production of agricultural goods of developed countries is generally dispersed in the form of food aid or export subsidies and that

contributed to the distortion of international agricultural trade. The OECD countries practiced agricultural protectionism for a very long time and it had a very destructive effect on the developing countries because it drove down commodity prices for basic agricultural commodities like rice, wheat, and maize. Thus, it threatened the local production in developing countries and livelihood of local farmers and which forced developing countries, especially African countries to become net food importers by the end of 1980 (Clapp 2006: 4).

GATT and Agriculture

Within the GATT framework, it was almost impossible to undertake negotiations on agricultural trade. Whenever GATT panel found in breach of an obligation in the agriculture trade by developed countries, they generally blocked the adoption of the panel's report (Hunter 2003). This was evident in the first two cases of banana where EU blocked the panel's decision. Similarly, in the year 1952 GATT panel found the US that it had misused quantitative restrictions in the importations of dairy products. The aftermath of this, US threatened to withdraw from the GATT. Finally, the problem came to an end with the grant of a non- time limited waiver (Hunter 2003). Strong agricultural lobbies of developed countries like- US, Japan and EU always resisted for the inclusion of agriculture under the GATT regime.

Before the advent of Uruguay round, 18% of the agricultural tariff in developing countries and 55 percent in developed countries were bound. However, there were also various kinds of non-tariff barriers such as- quotas, variable import levies, voluntary export restraints and minimum import prices. Developed countries reinforced tariff barriers through the widespread use of this kind of non- tariff barriers (Mathews 2001). Historically developed countries had subsidized their agricultural production while in the case of developing countries needed to tax their agricultural sector. If we look at the pre- Uruguay round history of trade in agriculture we could found that EU and US had adopted various protectionist instruments in order to suppress the interest of developing countries. Developed countries used instruments like- tariffs, quantitative restrictions on agricultural imports, agricultural export subsidies and domestic agricultural subsidies.

Table 3.1: Tariffs and Quantitative Restrictions on Agricultural Imports: GATT and WTO

Tariffs	Quantitative Restrictions on Agricultural Imports
For agricultural products tariff rates have higher than manufactured goods and under GATT system there was no agreement to limit tariff or tariff binding in agriculture. This is very significant in the sense that developed countries did not provide market access through high tariff despite the fact that agriculture was the primary source for export revenue for developing countries.	Under GATT system quantitative restrictions were prohibited but in the case of agricultural products, it was exempted. For instance, Article XI: 2 permitted import restrictions (McMahon 1995: 412-413). Import restrictions were designed (1) to control on domestic production, (2) to assist the disposal of surpluses of agricultural goods (Gonzalez 2002: 442).

GATT and special and differential treatment

In the study of international economic relations, Special and differential treatment is not a recent idea. SDT as an idea came into light after the end of World War II. The basis of SDT was based on the argument of developing countries which challenged the very trade liberalization process of GATT. According to developing countries, growth and development of poor countries would be impossible if trade liberation process is based on the principle of the mostfavored nation (Jawara& Kwa 2003).

The history of SDT emerged with the inception of GATT. GATT proposed import substitution development model to secure economic prosperity and development. Thus according to this model, through the promotion of major domestic industries especially at the time of their infancy rapid industrialization could be achieved. But, this model could not address the basic problem of developing countries and there are two reasons for that. First, these countries comprised only a minor proportion of the export trade of north and thus, had a minimal impact on export markets of developed countries. Second, there was little pressure on the developed countries of the north to liberalize agriculture sector which has been seen as key interest to developing countries (Hunter 2003).SDT is essential for the developing countries in order to not only improve and

increase terms of trade but also to reduce their reliance on primary commodities as well as protect their infant industry. Since the inception of SDT US relentlessly criticised SDT as an inappropriate two-track approach and further insisted to bring an approach which could integrate all members (Jawara& Kwa 2003).

WTO and Agriculture

WTO stands for the liberalization of agricultural trade by introducing various rule and regulation to govern trade in agriculture. But, According to John Kenneth Galbraith, free trade is like the religion of modern- day which is embraced by developed countries and governments of developing countries. For thefree trade is the main driving force for economic growth and development. But the very idea of free trade has been criticised by non- governmental organizations (NGOs) of developing countries. They see free trade as institutionalizing economic dominance of wealthy nations (Gonzalez 2002:437).

Agreement on Agriculture

The achievement of Uruguay Round was that it brought agriculture within the WTO framework and through a process of liberalization, it has brought agricultural policies of different countries with appropriate measures. It also brings transparency and public awareness about the government intervention in agriculture. Thus, because of the UR Agreement on Agriculture, it is no longer possible to undermine or ignore agricultural through trade-distorting policies (Anderson 1998). Uruguay round agreement on agriculture introduced and strengthened the rules in order to regulate international agricultural trade. The agreement viewed that it is very important to reduce export subsidies and domestic support in order to reduce distortions in agricultural trade (Mathews 2001).

Agreement on Agriculture of 1994 was the outcome of intense negotiations (Balaam 2004). AoA had been seen as a radical step by the WTO to liberalize the agricultural trade but in the end, agreement give us an opposite picture as many scholars viewed the agreement has gone backward (Ritchie 1996). AoA has been negotiated during the time of Uruguay Round and in 1994 the agreement was signed at Marrakesh by 120 countries. AoA required the conversion of

all kind of nontariff barriers on agricultural goods to tariffs and their reduction as well. Moreover, the agreement also called for cuts to domestic support and export subsidies. It is important to note that, a relaxed schedule of reductions given to developing countries and on the other hand, LDCs were almost exempt from these cuts. The agreement entirely related to agriculture and Article 14 of the agreement binds on the members of the WTO on the application of SPS measures, TRIPS and TRIMS have provisions affecting agriculture (Thamarajakshi 2002: 23).

The AoA highlighted the relationship between North and South within the WTO. The AoA has institutionalized inequality between developed and developing countries rather than contributed to the liberalization of agricultural trade (Hunter 2003). AOA is regarded one of the contentious and also most significant agreements negotiated at the 1994 Uruguay round. Agreement on Agriculture that governs rules on trade in agriculture allowed EU and US to continue the production of agricultural goods in a subsidized way and dumped their agricultural surpluses on developing countries markets and thus depressed world prices. On the other side, they pressurized developing countries to open their market and forced them to enter into an unfair competition with industrialized countries.

AoA had two different kinds of the objectives. First, it aims to improve the transparency of protection measures exercise by the developed countries and their reduction. Second, open domestic markets in order to increase imports (Li& Wei 2008: 19). The reduction commitment of the Uruguay agreement changed the structure of the world trade in agriculture. In other words, it has to improve the relative share of agricultural products which are interest to developing countries. The intent of the agreement was to shift the food production and food market from subsidized regions to non- subsidizing regions (Mathews 2001).

There were three key pillars of Agreement on Agriculture- market access, export subsidy and domestic support.

Market access

The specific amount of tariff reduction was stated in each country's individual tariff schedule. Developed countries must reduce tariff by an average of 36% over six years (1995- 2000). For

each product, there was also a minimum reduction rate of 15%. Least developed countries were subject to tariff binding but, they were not required to reduce the tariff. Through the use of tariff quotas market access should be maintained. It also provides for the importation of the required volume of the specific agricultural product at a non prohibitive tariff rate (Hunter 2003).

There was also special safeguard provision which allows the imposition of an additional duty on a particular product subject to tariffication in the case of low prices or in the case of import surges, in comparison to the 1986-88 levels (Gonzalez 2002:454). EU insisted to include this provision into the AoA. It was also mentioned that, if the volume of import exceeds 25% of the average of imports in the last three- year time framework additional duty could be imposed (WTO 1994a). The criticism of this provision is that through this provision, developed countries restricted market access to developing countries. For instance, in order to convert non- tariff barriers to tariffs EU misused this special provision by increasing prices which was above the average world prices as set by the 1986-88 periods. Furthermore, developing countries were excluded from the right to access to the Special Safeguard provision and the argument was that it was available to only those countries who were previously engaged in certification (Gonzalez 2002: 463).

Developed countries from instance OECD countries implemented the provisions of market access in a way that it restricted developing countries producers to access in their market. OECD countries reduce the tariff on products which were not produced by developing countries. They reduce the tariff on temperate- zone products and increased on tropical products. For example, fruits and vegetables, food staples remained high in terms of tariff (Gonzalez 2002:461-462).

Export subsidies

Export subsidies have always been used by a small group of countries. As a consequence of this international market price has been depressed and destabilized. There is also a relation between export subsidies and prices. Low prices always backed by the high export subsidies while level of export subsidies decreases at the time of high prices (Matthews 2001: 85). Rules governing export subsidies were based on mainly export quantity and budgetary outlay. Developed countries required to reduce expenditure on export subsidies by 35% and quantities of subsidized

exports by 21% over six years. 24% and 14% over ten years in developing countries (WTO, 1994a).

The reduction was set to 1986-90 baselines. At that time, historically both subsidy outlays and volume were very high, with OECD countries accounted for the vast bulk and the EU constituting for more than 90% of world spending. Cuts to export subsidies were seen as animportant success of the AoA. But, this was done in many cases by only shifting to the indirect export subsidies permitted under the Green Box and Blue Box. The USA successfully lobbied to exclude government export credit from reforms. A 'Peace Clause', pushed by the EU and the US that prevented members of WTO from applying countervailing duties until 2004. Agriculture as a sector was the only area exempt from the WTO's export-subsidy ban, providing time for the USA and the EU to shift from direct to implicit subsidies (WTO, 1994b).

Between 1995 and 2002, US export dumping in staple crops has increased with dumping peaks in wheat (26% in 1994 and 44% in 2001, rice (2 percent in 1994 and 34 percent in 2002), and maize (4 percent in 1994 and 33 percent in 2000). Small farmers of the EU and US argued that government subsidies were extensively directed toward multinational companies and large agribusiness. In North America and European countries, the export subsidy is very common and in these countries, the domestic price of agricultural products rule higher than the international price. These countries pushed disposal of surpluses in developing countries or outside their domestic markets in the form of export subsidies in order to maintain price level (Chand& Phillip 200: 3015).

According to AoA commitments, developed countries must reduce their expenditure on export subsidy by 36 percent and volume by 21 percent during 1995-2000. Export subsidy commitments of countries like US and Canada on dairy products are high. Export subsidies given by EEC countries formed over 50 percent of the export price earned by them for butter and butter oil and over 20 percent for skim milk powder. The US is also provided high export subsidies on butter and butter oil and skim milk powder which constituted over 50 % of the export price. It is apparent that levels of export subsidies maintained by developed countries are so high and which led to the creation of distortive trade market in agriculture (Chand& Phillip 2001: 3015).

The interesting thing about export subsidy provision was that the cut of subsidies was commodity basis. In case of the market of the market access provision reduction requirement was based on industry-wide basis (Gonzalez 2002:455).The implementation requirement of the export subsidy provision only asked to reduce the level of subsidy but, it did not require abolishing the use of export subsidies. Thus, the provision not only distorted the agricultural trade but served against the interest of developing country. The provision of export subsidy also established unfair competitive advantages. In fact, the provision is manipulated by a handful of developed countries and their producers. It is evident from the fact that out of 135-member countries only 25-member countries of WTO were given the right to subsidized exports under the agreement (Gonzalez 2002: 464).

Although to an extent AoA was successful in reducing the level of export subsidies used by developed countries, the OECD countries have developed other devices to promote the export of agricultural products. For example, US provide governmental credit in order to promote export subsidy. One of the major loopholes of the export subsidy provided under the agreement was that there was no binding obligation to export credits. Export subsidy negatively affects the local production in agricultural import countries. That is why developing countries supported the idea of Cairns Group which stood for the complete elimination of export subsidies (Matthews 2001: 85). The Cairns Group also suggested that a longer timeframe should be included under SDT for the developing countries that use export subsidies. It also proposed for the extension of the existing special exemptions which falls under the Article 9.4 of the Agreement. Article 9.4 exempts developing countries from undertaking commitments to reduce the expense of marketing exports of products relating to agriculture. The article also stated that favorable internal transport, as well as freight charges on export, should be provided to the developing countries compared with domestic shipments. In addition to this, Article 8 of the agreement also pointed out that other than in conformity with the agreement along with commitments that are specified in the country's Schedule, there will not be any export subsidies provided to countries. There is also other interpretation of this article. According to this interpretation, no country will be allowed to introduce export a subsidy in the future which has not been using them in the base period and has declared in their Schedule of notification. However, developing countries have been flexibility in this regard and required not make any commitments for the above mentioned two types of subsidies (Mathews 2001: 86).

Domestic support

According to the potential to distort agricultural trade domestic support was classified into different 'Boxes' or 'support'- (1) Aggregate Measure of Support (AMS) which includes product specific and non-product specific support, (2) Green Box support, (3) Blue Box support, (4) *de minimus* support. The Agreement on Agriculture allowed for support within some limits, known as *de minimus* level, but the agreement required to reduce domestic support exceeding the exempt level. Provision of Green Box, Blue Box, and Amber Box is also fixed with on relative basis and thus completely left to development countries whether to increase or not to increase their domestic support to agricultural sector (Thamarajakshi 2002: 23).

WTO agreement of AoA required a reduction only in AMS and export subsidies, though support under all other heads is exempted. The non-exempt support can be further grouped into two types- (a) the commitment of a member country to the WTO and (b) showing actual levels of AMS and export subsidy as provided by member countries, which includes (1) the sum total of subsidies on inputs. For example- fertilizer, credit, water and (2) market price support measured AMS calculating the difference between domestic market price and external reference price multiplied by the quantity of production eligible to get applied administered price (Chand& Phillip 2001).

The agreement required member countries of WTO to reduce domestic subsidies based on AMS and the base total AMS for WTO members was a quantification of all kinds of agricultural subsidies in the time period of 1986-1988. In accordance to AoA, in six years (1995- 2000) developed countries must reduce a 20% of total AMS and for developing countries, the period was extended to ten years (1995- 2004) with 13.3 percent reduction commitment. There are other subsidies that should be counted towards a countries' AMS under *de minimis* provisions. It basically allowed support for a specific product to be exempted if that support is not more than 5percent of its value of production or non- product specific support if it is less than 5 percent of the total value of agricultural production. However, the remaining support constituted in a country's base AMS was to be reduced by 20 percent over a six-year period. For developing countries, this reduction commitment was 13.3 percent over a period of ten years and for least developed countries there was no reduction commitment.

Green Box: It was another category of domestic support that deemed to have minimal or zero distortion to agricultural trade. Hence, exempted from the proposed cuts entirely and no limits put on them. This category was not included in AMS as this was considered as less distortive to trade. under this category item such as decoupled income support, pest-control measures, training and extension expenses, research expenditures, inspection, marketing service and promotion expenses, and infrastructure expenses. Some of the direct payments were also included under this category. The US provided highest green-box support to agriculture. US used more than a third of its GDP and Japan spend one-fourth of its GDP on Green Box support.

There are certain subsidies which considered as minimally or non trade distorting and therefore exempted from reduction. Examples of this kind of support are- early retirement schemes for farmers financed R&D and provide payments to farmers for long-term land retirement. Moreover, a small of developed countries has frequently used the Green Box (Mathews 2001).

Amber box: It has been seen as high potential to distort trade because it provided production support in the form of support supports and the agreement required for its reduction.

Blue Box: It included those kinds of subsidies that generally would be under 'Amber Box', but it required farmers to limit their production in order to make less trade- distorting. This category of subsidy is particularly created for developed countries and to serve their interest. It comprises direct payments under 'production-limiting' programme.

Other boxes: In addition to this, there were other qualifications to the AoA. It has been argued that in actual practice, reductions were different for each product although, they were averaged and called for the minimum cuts to the levels of tariffs that needed to be reduced. This implies that in practice tariffs on many key agricultural products where high tariffs begin with actually didn't reduce (Clapp 2006: 5). Moreover food aids were exempted from the reduction under export subsidy. Another important this is that the base period for reduction of both export subsidies and domestic support was as 1986-1990 and 1986- 1998 respectively so that subsidy levels could be minimally down. But the very fact is that these levels were higher in comparison to the levels established in the 1960s and 1970s. These were the main failures of AoA and thus allowed US and EU to continue their protectionist practices (Clapp 2006: 5).

Implementation Issues*:* The agreement achieved less in reducing domestic subsidies used by developed countries because many of those domestic subsidies were exempted under the AoA (Ackerman et. al 1998). However, the agreement also created a sharp division between developed and developing countries. The provision of domestic support on one hand allowed developed countries to utilize domestic subsidies and, on the other hand, developing countries were prohibited to from using domestic subsidies beyond *de minimis* level.

Special and differential treatment and AoA

SDT in the AoA, focus on the reciprocal commitments of both developed and developing countries to liberalise agricultural trade. SDT provisions highlighted due to limited institutional, financial and technical capacity developing countries are disadvantaged in the multilateral trade organisation. Thus, SDT aims to compensate for their slow growth development by extending implementation period, flexible reduction commitments. However, these provisions failed to properly address larger obstacles faced by developing countries within WTO which finally served the interest of developed countries (Hunter 2003). According to Jawara& Kwa there were mainly three measures of SDT. First, to implement WTO agreements, developing countries were allowed longer timeframes in comparison to developed countries. Second, limited obligations for developing countries and, third, 'best endeavour' provisions which must highlight the concerns of developing countries before any action taken by developed countries (Jawara& Kwa 2003).

Developing countries are provided special and differential treatment under AoA. They can implement the agreement over a period of up to ten years. In each area of agreement, the reduction commitments are two-thirds for developing countries in comparison to developed countries. There are mainly three issues covered by the SDT and they are specifically connected to agriculture.

Market access: Developing countries are to cut bound tariff by 24 percent over ten years, and developed countries on the other hand has to make 36 percent over six years. These were the average cuts for all types of agricultural products. However, for each product, a minimum reduction of 10 percent developing countries and 15 percent for developed countries is required (Li& Wei 2008: 19).

Domestic support: Developed countries have to reduce by 20 percent over six years and 13.3 percent by developing countries over ten years. There is also certain special consideration given to developing countries. They are exempted from reducing support in the areas like- agricultural investment, input subsidies for poor farmers and support related to diversification of crops. It is apparent that under SDT these forms of support are granted (Li& Wei 2008: 20).

Export subsidies: One of the aims of AoA was also to cut export subsidies. In order to do so, developed countries must cut the value of their export subsidies by 36 percent as well as, over the six years they are required to reduce the volume of their subsidized exports by 21 percent. On the other hand, the agreement requires developing countries to cut the value of subsidies by 14 percent and volume by 14% over ten years (Li& Wei 2008: 20).

Provisions of SDT

Article 15(2) gives developing countries with the 'flexibility to implement reduction commitments' over a ten-year period. They are required to reduce tariff by 24% with a minimum 10% reduction for each agricultural product. Article 6(4)(b) increases *de minimis* level of support to 10% by developing countries. Article 9(4) further ensure flexibility by permitting excessive use of export subsidies by developing countries that reduce the cost of marketing of export of agricultural goods and also the cost of internal transport as well as freight for agricultural goods bound for export relative to goods for the purpose of domestic consumption.

There also provisions for domestic support. For instance, Article 6(2) provides that measures to facilitate agriculture and rural development are viewed as 'integral' to the development by member countries. This Article exempts investment subsidies available beyond the sector and agricultural input subsidies available to very low income from inclusion in a developing countries' calculation of their current total AMS. This can exempt a wide range of support measures (WTO 1994a).

Annex 2 furthermore exempts domestic support measures to developing countries from reduction commitments, especially to improve infrastructure, public stockholding for the purpose of food security, training and advisory services, domestic food aid and developing countries programme which guarantee the provision of food at subsidised prices to meet the food requirements of the

weaker and poor section of the society. Thus, in a nutshell it can be argued that the above mention formal and informal SDT provisions fail to address the problem of institutional and financial capacity essential to set up regulatory framework to implement and monitor commitments

Groupings and politics of agricultural trade in Uruguay Round

Though, since 1960s agriculture was an important issue in the GATT negotiations but it was only in UR negotiations where agriculture became as the top negotiating agenda. From the starting of the negotiations, negotiation process was dominated by the EU and US (Gonzalez 2002: 449). During the negotiation process EU was trying to protect it Common Agricultural Policy from other food- exporting countries and to maintain its status quo it proposed a modest subsidy reduction proposal.

The US and EU were the main players in the UR negotiations on agriculture. But there were also other groups of agricultural exporter countries. For instance, group called "Cairns Group" which was consists of Argentina, Australia, Brazil, Chile, Canada, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, Thailand, the Philippines and Uruguay. This group was formed in 1986 to reduce agricultural subsidies in world trade and they are the major exporter of agricultural products. They resisted the idea of elimination of export subsidies and import restrictions as proposed by the advanced countries like US (Gonzalez 2002: 451).

On the other hand, Countries like Japan and South Korea also countries that supported domestic production as that they can promote food security. It is also important to note that both the country was the net food- importing states. However, developing countries led by India, Jamaica and Egypt a common position and insisted the elimination of protectionist policies by developed countries and also emphasised the role of agricultural support mechanism for their economic development. Along with South Korea, they advocated SDT for developing countries (Gonzalez 2002: 452).

The rivalry between the US and EU produced a deadlock in the negotiations and also threatened to derail a final agreement on agriculture. Finally, the EU- US negotiations took place in the beginning of 1992 where 106-member countries were left out the negotiation process. Among

the other issues the reduction of export subsidies was the import vital issue and the final agreement on agriculture came into being as a result of comprises between the EU and the US (Gonzalez 2002: 453).

Criticism of AoA

Agricultural negotiation process of WTO has been largely top- down when the main battle were fought between the US and EU. The negotiation process has also been criticised as being non-transparent as well as exclusive by developing countries (Clapp 2006).

Tariff reduction commitment required by developing and developed countries in the agreement has certain loopholes. First, AoA mandated reduction in relative terms, rather than in absolute terms. Second, industrialised countries substantially protected their agriculture and reached peak levels of tariff prior to Uruguay Round and 36% of reduction, which is regarded both relatively and absolutely high (Thamarajakshi 2002: 23). The different categories of domestic support as well as export subsidies favoured developed countries like- US, EU countries, Japan and Canada because they had the potential to carry out high level of support in agricultural sector in the exempt category. Thus, the agreement also allows protecting domestic produce goods (Chand& Phillip 2001: 3016).

One of most important criticism of the agreement was that it reinforced existing rules of agricultural trade. It was assumed that subsidies were reduced but in real sense it has been increased to 60% since the 1980s in the OECD countries. In OECD countries, the agricultural support has gone from US $271.2 billion in 1986- 1998 to US $330.6 billion in the period between 1998 and 2000 (Clapp 2006). The reason behind this increase was the shift of their subsidies into the 'Green Box' and 'Blue Box' in order to save them from being cut. For example, agricultural exports of US sold between 10 and 50% bellow of their production cost in the year 2003 (Murphy 2005). In the same way, EU also exports some the key agricultural commodities for lesser cost of production.

With the implantation of AoA, it is argued that through market provisions of the agreement share of agricultural export from developing countries to developed countries will increased. But both their share decreased and remained steady. It is evident from the fact that, since the

implementation of the agreement it was remain 36% and furthermore between 1990-1991 and 2000- 2001 developing countries' share was only 22.4% (Aksoy 2005: 22&23). Moreover, these countries also witnessed import surges.

Another loophole of the agreement was that tariff reductions were averaged. Thus, it allowed developed countries to discriminate to agricultural products which are export interest to developing countries. Developed countries always imposed high tariffs on the agricultural commodities produced by developing countries. For instance, tariffs on commodities like groundnuts and sugar were up to 500% and interestingly, level of tariff increases with the level of processing of the product increased export by developing countries (Aksoy 2005: 2&3).

In the late 1980s under the structural adjustment programme of World Bank most of the developing countries substantially liberalise their agricultural markets before the advent of AoA (Clapp 2006). Under AoA also they opened up their agricultural markets and under A0A, it is said that cuts made in developing countries were greater on average than cuts that were in developed countries. Thus, economies of developing countries become more vulnerable than before (Anderson and Will 2007). The very idea of market access provision in the AoA was included to increase the share of agricultural trade for the developing countries. But, in reality their market share has been remained steady and it became evident from the fact that between 1990- 1991 and 2000- 2001, developing countries share was 22.4%.

In the agricultural trade, share of developing countries has not only been increase but, they witnessed import surges. Cheap and subsidized imported agricultural products from developed countries flooded their domestic markets. The provisions of AoA can be seen as unfair because it has undermined the interests of developing countries and failed to provide the level playing field. As a result of unequal provisions of the agreement, the livelihood of small farmers has been threatened by the cheap subsidized products of developed countries (Li& Wei 2008: 20).

Doha round and agriculture

In the Doha round, agricultural negotiations occupied a very important profile. Due to its history in the GATT, agriculture has been taken as a special case in the DDA. Within the first seven rounds of DDA talks on liberalization of agriculture was minimal. Subsidy regimes of US and

EU continue without contravening DDA rules. Issues of agriculture have been seen as a central feature at the Doha ministerial talks. At the Doha Round negotiation, the problem and inequities of AoA were revisited and revised. It also attempted to liberalize in each of the main three pillars: market access, export subsidies, and domestic support.

The task of DDA was to deliver the liberalisation process which Uruguay Round has failed to bring. Thus, in the DDA, members of the WTO committed to "comprehensive negotiations aimed at substantial improvements in the market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support (Scott& Wilkinson 2011:620)." Negotiators of AOA of Uruguay Round acknowledged its weaknesses and hence provided a provision for the agreement which is to be renegotiated in 2000. Like AoA of 1994, it also identified three major areas for the liberalisation of agricultural trade, they are- domestic support, export subsidies and market access.

It was assumed that broad parameters for each type of commitments were to made and completed by March 2003 and were to be adopted at the Fifth Ministerial meeting which was to be held in September 2003. However, these deadlines were never met and a kind of disagreements and discontent had built in the developing countries over the content and process of the talk (Clapp 2006: 7).

There was a frustration has been developed from the developing countries in the first phase of the negotiations before the establishment of Cancun meeting of 2003. On the other hand, powerful actors like US and EU believed that any outcome of the agreement has to be done among them. The negotiation process has been carried out within the group like 'Quad' where Japan and Canada also included. Thus Chair of agricultural talks worked as a top-down approach and this practice has frustrated developing countries. Developing countries made presentations on the various issues which are interests to them and most of the time their concerns were not reflected in the texts. This kind of exclusionary practices finally let them construct negotiating groups on agricultural issues so that they could express their views in a proper way. It was the result of their unwillingness which becomes a reason for the failure of talks at Cancun and thus refused to accept the 'business as usual' approach (Clapp 2006:8).

Doha round was highly ambitious and developing countries were too anxious about the process and content of the negotiations and by which negotiation was conducted. The main concern of the developing countries in the negotiation was the need for the incorporation of special measures which will protect rural livelihoods and food security (Clapp2006:8). 'Development Box' or 'Food Security Box' as a different type of 'Box' has been articulated (Murphy 2003) for Special products which supposed to exempted from tariff cuts and in order to protect developing countries' product from import surges a Special Safeguard Mechanism has designed.

Doha Round of WTO is viewed as 'development' round as it was supposed to give special attention to the agricultural trade and interest of developing countries. However, it was assumed that developed countries will gain the highest benefit from the round and which will further enhance the process of agricultural trade liberalisation. AoA could not reduce the distortion of agricultural trade and on the other hand, agriculture still remains on the top agenda for developing countries. In order to counter Green Box and Blue Box, a proposal for the inclusion of 'Development Box' or 'Security Box' was put forward. This was because only industrialised developed countries had access to the Green Box and Blue Box. But in the later years, this was replaced by the idea of 'special products'. This was designed for developing countries and recognized the importance of food security and rural livelihood and thus can be exempted from tariff cuts and Special Safeguard Mechanism (SSM) was designed to protect the economy of developing countries from import surges (Clapp 2006: 566).

Developing countries wanted to reduce export subsidies and domestic support in the developed countries. But, countries like the US wanted to improve to market access and to reduce export subsidies. On the other, EU was more focused on the reduction of domestic support because it constitutes the bulk of US subsidies. EU also demanded the widening of 'export subsidies' to 'export competition'. This idea was proposed by EU to hide their export subsidies in the form of food aid or credits (Clapp 2006: 566). The next chapter focusses on the particular cases of banana related disputes at the WTO.

Chapter IV

The World Trade Organization and the International Trade in Bananas

This chapter primarily looks at issues and disputes brought up by States before the World Trade Organisation *WTO) in connection with the international trade in bananas. In order to analyse the various facets of the problem, the chapter provide a brief background of the banana trade and the disputes arising thereof. Till date, there have been nine cases related to bananas that have come up before the Dispute Settlement Body of the WTO. The chapter has three segments to it: the first deals with the trade in bananas, the second, introduces us to the dispute settlement mechanisms followed at the WTO, while the last deals specifically with different cases that have come up with regard to the international trade in bananas.

Banana producing/ exporting countries

Bananas as mentioned in the Introductory chapter, are the most commonly eaten fruit the world over. It is the fourth most significant staple commodity in the world. Since the 1990s, world banana production has increased by 70 percent and only 20 percent of total produced bananas are traded internationally and in recent years this share has been remained stable (Anania 2009: 8).

Exporting countries

Banana trade mainly includes fifteen exporting countries that primarily belong to the developing and the Least developed (LDC) countries. Among the major fifteen exporters six are from the African, Caribbean and Pacific (ACP) states/region. Six ACP export states are- Ivory Coast, Cameroon, Dominican Republic, Belize, Suriname and Windward Island countries. The nine other countries are: Ecuador, Colombia, Costa Rica, Panama, Honduras, Brazil, Guatemala and others (Anania 2009: 8). In the last decade Ecuador, Philippines, Costa Rica, Colombia and Guatemala account for 83 percent of total banana exports (Anania 2009).

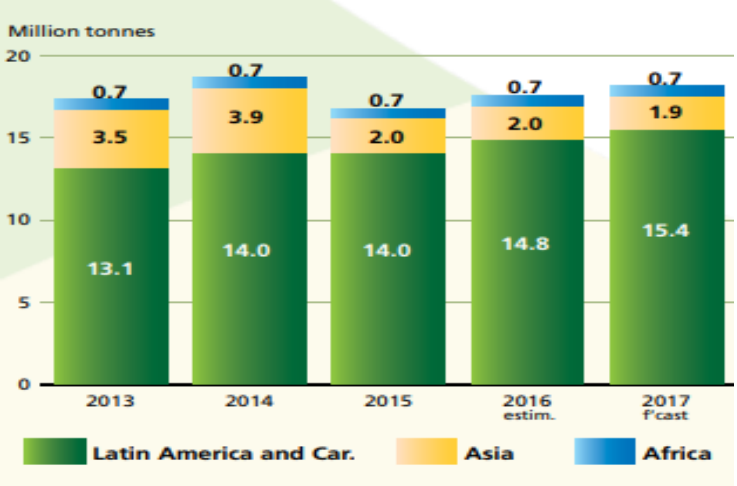
Production of Bananas therefore is heavily concentrated in the developing or LDC states of Asia, the Caribbean and Latin America. The reason behind this is the climatic condition of these countries that makes it suitable to grow bananas (Smith 2010: 17).

Table 4.1: Top 15 banana exporting countries (2017)

S No	Country	Share i total export (percentage)
1	Ecuador	24.6
2	Belgium	8.5
3	Costa Rica	8.4
4	Colombia	7.4
5	Guatemala	7.1
6	Philippines	5.6
7	Netherlands	4.7
8	United States	3.6
9	Dominican Republic	3.2
10	Cote d'Ivoire	2.8
11	Germany	2.6
12	Cameroon	2.6
13	Honduras	2.5
14	Panama	2.4
15	Mexico	2
Note: The listed 15 countries make up for 88 percent of total exports in 2017		

Source: Workman : 2017

Figure 4.1: Banana exports by region (2013- 2017)



Source: Banana Market Review, FAO 2017: 2

The major portion of exported bananas originate from the "dollar zone" countries (Ecuador, Colombia, Costa Rica, the Philippines, Guatemala, Honduras and Panama) while, the ACP zone countries (Windward Island counties, the Dominican Republic, Jamaica, Ivory Coast, Cameroon, Ghana, etc) export a relatively small percentage of bananas (Smith 2010).

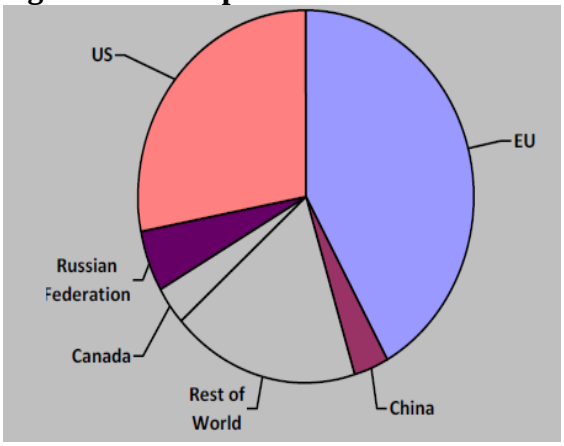
Apart from this, there are six main producers of bananas who accounted for two thirds of global banana production. These countries are as follows- India, China, Philippines, Brazil, Ecuador and Indonesia. However, it is important to note that though India and China are the largest producers of bananas but their trade in bananas is marginal when compared to other states (Smith 2010: 18). Thus, when we talk of the Banana trade, the reference is mainly to countries that export bananas elsewhere. Of the 15 top exporters listed in Table 4.1, Panama (861.6 percent), Cameroon (280.8 percent), Dominican Republic (134.2 percent), Cote D Ivoire (131.5 percent) and Netherlands (108.4 percent)are the fastest growing banana exporters since 2013 (Workman : 2017).

Importing countries

Banana trade is also region centric. Historically the ACP banana trade was concentrated in the European region, while on the other hand, the Latin American countries would exports their bananas mainly to North America, Europe and Russia. The Asian market is very different from

the rest of the world as both importers and exporters of bananas in Asia are from within the region. For instance-Japan is the largest importer of bananas in the Asian region and it imports nearly 90 percent of bananas from Philippines, while China despite producing its own bananas also imports them from Philippines and Thailand (Anania 2009: 8).

Figure 4.2: Composition of Banana Trade by Imports



Source: Smith 2010: 20

The main importers of bananas as seen in the figure above are the EU and the US. Both of them account for nearly 60 percent of the total banana imports. Apart from the EU and the US there are also other countries which are net importers of bananas like Japan, Russia, Canada and China (Anania 2009)

The WTO Dispute Settlement Mechanism

Dispute settlement mechanism: GATT

The GATT Agreement of 1947included some provisions for settling any trade disputes among its contracting parties and the dispute settlement system under GATT evolved on the basis of Articles XXII and XXIII of GATT 1947. However, the process was not legalized. The beginning stage of disputes settlement process of the GATT was the diplomatic phase and the process called as conciliation. The parties to the dispute in the GATT dispute settlement could appoint three or five panellists. The decision of the panel had to be related to the contracting parties. Under the dispute settlement system of GATT, if the panel's decision was accepted by the

contracting parties, then the decision would be binding on them. Hence, any decision required a positive consensus before the decision of the panel could be adopted (Porgas and John 1994).

So as to refer a dispute to a panel, a positive consensus in the GATT Council was needed. Thus, the positive Consensus was viewed as the weakest point in the GATT dispute settlement system. The positive consensus implied that there had to be no disagreement from any contracting party of the dispute to the decision. As a result, the parties to the dispute fully controlled the process dispute settlement. Furthermore, a positive consensus was needed for the adoption of the panel report, as well as the authorization of countermeasures against a non-implementing respondent. Nonetheless, the respondent party could block the creation of a panel and the adoption of the panel report through two ways- by a positive consensus rule or by denying accepting the report. Thus, the losing parties to the dispute benefited by exercising the consensus rule not to establish a panel and to protect against disadvantageous panel reports. Another aspect of the GATT dispute settlement process was that it did not have fix timetables to settle disputes.

Dispute settlement of GATT was an inappropriate system as disputes could only be settled through negotiations. Hence, the contracting parties of GATT, both developed as well as developing countries, felt that system needed to improve. Consequently, one of the main aspects discussed in the negotiations of Uruguay Round was the eagerness of the contracting parties to enforce some preliminary improvements to the dispute settlement rules and procedures of the GATT. Finally, the WTO dispute settlement system was created.

Dispute Settlement Mechanism: World Trade Organisation (WTO)

The Dispute Settlement (DS) system of the WTO has been in place since 1 January 1995 with the creation of WTO. The multilateral trading system has now become more legalized, with the adoption of the Dispute Settlement Procedure (DSP) as a significant part of agreements establishing the World Trade Organization. When a member country of the World Trade Organization encounters a trade measure which apparently violates the Agreement of the WTO, the first action would generally be to raise the trade matter directly with the trading partner in question. Normally, in most of the cases, informal bilateral consultations can settle the problem. Nevertheless, if the trade issue cannot be resolved informally, the Complainant has the right to

bring the dispute in front of WTO for adjudication. There are three key features Dispute Settlement System of the WTO- (1) the right to a panel; which means that no more vetoes, (2) strengthened multilateralism as the new system have no more unilateral sanctions, and (3) the establishment of the Appellate Body.

The new Understanding on Rules and Procedures on the Settlement of Disputes (DSU) views dispute settlement as an important element in giving security to the multilateral trading system. It gives an integrated and comprehensive means in order to settle disputes within a definite time frame. The dispute-settlement process is administered by the Dispute Settlement Body (DSB), whose task is carried out by the WTO General Council. It makes its all decisions by consensus, which is newly codified in the Dispute Settlement Understanding. The DSU has the enforcement mechanism for all trade agreements which bind all members of the WTO. Generally, the rules and procedures of dispute settlement are governed by the Dispute Settlement Understanding.

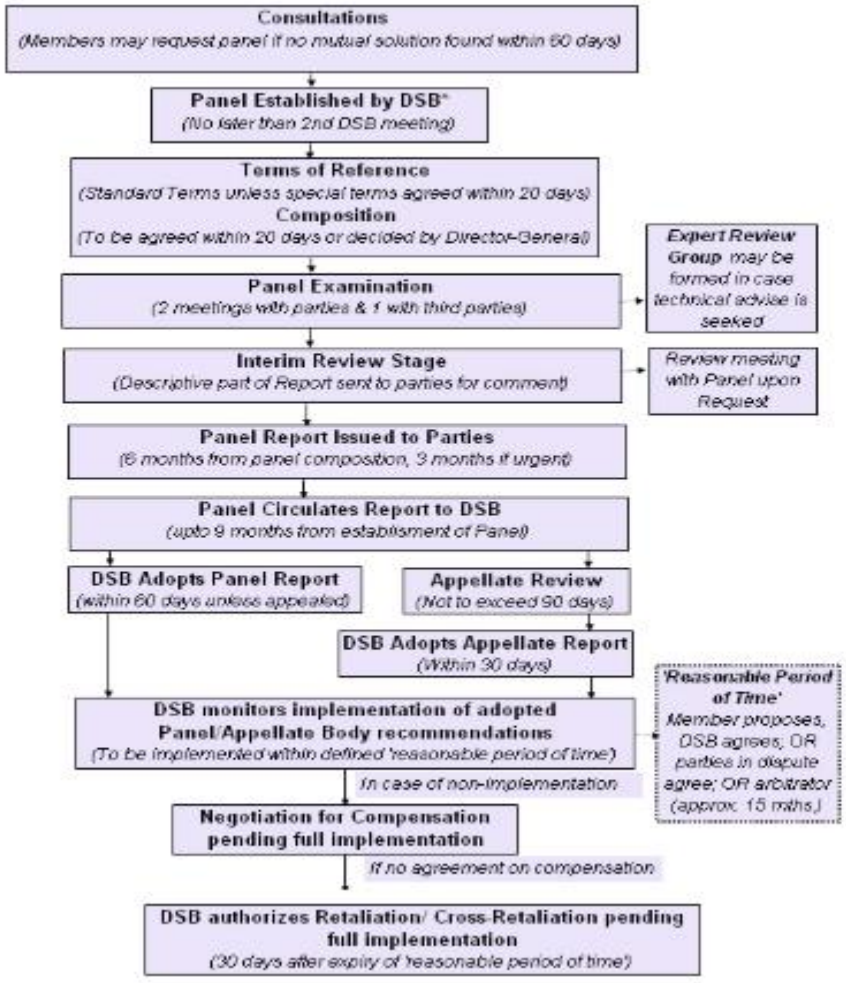
The process of DSB

The formal process of dispute-settlement of Dispute Settlement Mechanism starts with a request for the consultation at the WTO. The request mainly covers a brief description of the measure(s) and the legal basis for the complaint. Within ten days the Respondent to the dispute is bound to reply to the proposed request, and to provide opportunity to consult, to settle the dispute happily within thirty days. If the Respondent denies consulting on the matter, the Complainant may request the establishment of a WTO panel after thirty days. In another way, the consultation period is fixed to sixty days to permit the parties adequate time to resolve their dissimilarities bilaterally. If the dispute is not resolved within sixty days of the request by the complainant, the complaining party then can request for the establishment of the panel. The Dispute Settlement Body will establish a panel in a short period of time. Once the request has been made, the dispute can only be derailed by consensus. The arrangement of the panels is agreed by the parties to the dispute or, in case parties unable to agree within twenty days, then the panel will be decided by the Director-General of the WTO (Art. 8.7 DSU). The panel has terms of reference, except the parties to the dispute agree otherwise within twenty days. These terms of reference will allow the panel to interpret any agreement call upon by any of the parties, including the respondent. The parties to the dispute will then come to the terms of panelists. The WTO maintains a roster of

panelists. If the parties to the dispute will not agree on the panel, the Director General of the WTO may complete the panel in consultation with the parties. For that parties have to place forward a request.

WTO dispute process

Figure 4.3: Process of Dispute Settlement Body of WTO



Source: WTO 2018

After the formation, the panel proceedings made up of written submissions as well as oral hearings with the parties in which the parties are given two or more opportunities to present their case before the panellists, and to argue against the legal and factual arguments of the opposite side. The panellists, with the help of the staff of the Legal Division of the WTO, will then have to issue a report, containing legal findings and the ruling. The panel also gives an opportunity to

the parties to make comment, and also respond to the comments in the panel's final report. The final report must be circulated to the parties within six months after the establishment of the panel body (Art. 12.8 DSU). The Dispute Settlement Body will then consider the panel report for adoption and should be adopt within sixty days after the report is circulated to all members (Arts. 16.1 and 16.4 DSU) except any party to the dispute decide to appeal against the panel rulings to the Appellate Body of the WTO. The report will not be adopted if there is a consensus to reject the panel's report or if a party decided to appeal. The DSU then establish a new Appellate Body which is composed of seven members, with proficiency in law in international trade and each of them is appointed for a term of four years. The appellate panel is provided sixty days to publish its report. The Dispute Settlement Understanding limits appeals only to issues of law as covered in the panel report as well as legal interpretations provided by the panel.

The DSB has to adopt the report of the appellate body, and the parties must accept the report within thirty days after the circulation of the report, unless a consensus is made to reject the report. At that point, the compliance process starts. If appellate report finds that a WTO member's measures are inconsistent with the rules of WTO, it recommends that the WTO member must bring itself into compliance. The deadline for compliance can be determined unilaterally by the winning party, or by binding arbitration or by the agreement, though in principle, it cannot go beyond fifteen months (Art. 21.3c DSU) after the adoption of the panel or Appellate Body report. If it has not complied by the given deadline, the losing party has to negotiate with any party that has called upon the dispute-settlement procedures regarding compensation. Any party that requested for the dispute-settlement procedures can propose suspension of concessions if compensation is not agreed in twenty days after the deadline expires. The retaliation must not surpass the trade distortion concerned and retaliation is temporary, not permanent. The motive is not to rebalance obligations, but to attain compliance with the rules.

GATT dispute settlement system and WTO dispute settlement system: differences

The main differences between the WTO dispute settlement and GATT dispute settlement can be summarized as follows:

(1) WTO provides a unified dispute settlement system or process for any trade disputes under all WTO agreements, while GATT was composed of at least eight different structures so as to deal with trade disputes, based on the nature of the trade restriction. This characteristic of GATT encouraged parties to exercise forum shopping to find the favourable environment for them.

(2) WTO DSB has a more legalistic framework to solve dispute than GATT. It also adopted more adjudicative process with greater efficiency. However, the process involved with multiple stages and provided shorter timelines. The final report of the new DSB never relied on consensus for adoption (Gassama 2002: 717).

(3) The complainant under WTO has the right to have the panel process initiated. But under GATT's factual unanimity rule, there was no instrument for the defendant to block formal litigation at this stage. As a matter of fact, within some limits, the complainant under GATT is granted the power of agenda-setting during the time of the whole litigation process.

(4) During the time of GATT it was easy for any of the member country to block the implementation of the report published by panel. The reason was that the dispute settlement process of GATT was very unclear in the sense that only after the approved consensus of the GATT council any panel report took effect.

(5) Both parties to the dispute have the luxury to appeal against the WTO panel decision.

(6) Within the WTO dispute settlement system, the adoption of the final decision whether it is the panel or the appellate body report can no longer be vetoed by the losing defendant, as under the dispute settlement system of the GATT.

(7) Implementation phase under the WTO has been given more structure. If the losing party to the dispute does not comply with the panel's recommendations or appellate body recommendations, the complainant have the right to demand for compensation or in other words, to take countervailing measures.

Thus, all WTO Members have the right to look for adjudication for their trade grievances. But, there are other barriers that repress certain member countries from exercising this right. Firstly, the legal proceedings of the dispute process are generally lengthy and involve huge costs. Secondly, small member countries can be discouraged from carrying their complaints at the

WTO if their prospects of implementing rulings in their favour are bleak as a result of limited retaliatory power. In another way, small developing member countries can exercise self-constraint in choosing their fights with regard not to threaten privileges they rely on, for instance- development aid as well as unilateral trade preferences.

Background to the Banana-related disputes

The story of Banana related disputes at the WTO reveals interesting aspects about how countries build alliances based on products that they trade, the various issues that come up in course of negotiations and more fundamentally the nature of the dispute settlement process at the World Trade Organization. Given the constituencies that export and import bananas, the disputes related to banana reveal important facets of the power imbalances that exists within the WTO system (Gasssama 2002: 712). There have been nine disputes related to bananas before the WTO to date. The Banana disputes have been called by scholars as the 'Trade Case of the Decade' (Salas and John 2000: 145).

The disputes began with the Latin American countries challenging the banana regulation passed by the EU. The Case is known as European Union (formerly EC) - Regime for the Importation, Sale and Distribution of Bananas is DS16. The Banana regime of the EU was stated to have violated the rule of WTO by providing preferential access to a group of banana producers and not others. There are various form of preferential treatment such as tariff quotas and financial assistance that have traditionally been provided by countries trading in bananas. These preferential treatments have been granted to small-scale banana growing countries of ACP by the Europe through Lome Convention. So, European countries argued that without such kind of treatment, ACP states would never be able to compete with the Latin American bananas as they are produce by American corporate banana producers.

"Bananas are to us what cars to Detroit" and thus the importance of bananas for the ACP states and their dependency on the European market for subsistence can be seen (Clark 2002: 301). Hence, through various restricting provisions the EU and its import banana regime limited the supply of "dollar bananas" or Latin American Bananas to their markets. However, as a result of this, bananas became more expansive for the European consumers. By the end of 1990s, it became evident that the banana regime of Europe presented enormous problems and challenges

to the WTO rules. To preserve Caribbean countries preferential access, these states initiated a global campaign against the procedures, doctrines and structures of the WTO. On 28 September 1995, Guatemala, Honduras, Mexico and the US filed a case against the European Community at the WTO.

Table 4.2 below provides a glimpse of the issues that were raised as part of this case

Table 4.2: European Union- Regime for the Importation, Sale and Distribution of Bananas (DS16)

Case	**Issues**	**Current Status of the case**
European Union - Regime for the Importation, Sale and Distribution of Bananas (DS16) 28.09.95 **Complainant** Guatemala, Honduras, Mexico, US **Respondent** European Communities (EC)	Most Favoured Nation, Market Access, National Treatment on Internal Taxation and Regulation, General elimination of quantitative restrictions, Administration of import license	**Closed** Mutually agreed Geneva Agreement on Trade inBananas -08.11.12 EC agreed to maintain a MFN tariff only regime for the importation of Bananas EU shall not apply duties exceeding those have outlined

The European Community had come up with Regulation 404/93 that prescribed certain norms for the importation, sale and distribution of bananas within its territory. Tariff quotas were increased from 2.1 million tonnes in 1994 to 2.2 million tonnes by January 1995 (WTO: 2018) Plus licensing requirements were also put in place. The issues raised by the complainants broadly included commitments made under the Most Favoured Nation related to market access, national treatment on internal taxation and regulation, elimination of quantitative restrictions and administration of import licenses. The four Non-ACP countries were joined by other states. For example, Colombia had stated that it had a substantial commercial interest in this matter, being a banana-producing country whose exports to the European Union accounted for 21 per cent of total imports into that market under non-preferential arrangements (WTO 1995).

In 1996 US banana companies forced their government to initiate a fresh dispute under WTO with Latin American countries like- Guatemala, Honduras and Mexico and Ecuador which got its entry into WTO in 1996 (Read 2001:269; Salas& John 2000: 151). These Latin American countries refused to agree to Banana Framework Agreement and challenged the EU regime before WTO (Clark 2002: 297). Intense lobbying from US owned Banana Company namely 'Chiquita' resulted in American involvement. India participated as a third party. It also believed that banana market of Europe should be liberalised (Alter& Sophie 2006:369). It was the first complaint that brought under the discipline of WTO with more efficient dispute settlement procedures (DSP) (Read 2001: 269). The effect of this new dispute was significant in the way that unlike dispute settlement procedure of GATT, WTO dispute settlement procedure allowed for reverse consensus for adoption of the report of panel and also retaliation authorisation. It was argued that EU banana regime violated numerous WTO agreements such as- GATT, GATS and the Agreement on Import Licensing Procedures. However, rather than focusing on preferential access provided by the EU to the ACP states, US' complaint specifically emphasised on licensing agreements as well as preferential tariff given to Latin American countries that signed agreements over banana trade with the EU (Alter& Sophie 2006:369).

Twenty-six other countries including India also filed as interested parties in this case. Apart from the earlier issues, they additionally highlighted the issue of increasing participation of developing countries in EU trade in bananas. The WTO established a panel on 7 June 1996. The Panel submitted its report that held that the EC regulation was inconsistent with the provisions of GATT 1994. It however held that the Lome Waiver given did away with the inconsistencies regarding non-discriminatory administration of quantitative restrictions. The EC contested the Panel report and an appellate Body was set up. The Appellate Body upheld the major part of the Panel report but on the question of Lome Waiver, it reversed the finding that had been reached earlier. The Appellate Body Report was adopted by the WTO on 25 September 1997. Table 4.3 provides a summary of the case.

The report provided a time period of 15 months (Until January 1999) and asked the EU to made changes in the import banana regime. The US rejected EU's steps in response to the rulings of WTO by calling it as unsatisfactory. US also threatened to impose wide- ranging sanctions. In returned EU also complained to the WTO against the response and threats of US. EU argued that

rejection of their offer was a violation of the WTO process. On the other side, banana producing countries that were affected most by the outcome got nothing. On 24 October 1997, Panama filed a case against the European Communities banana regime. The basis of the case was once gaining the inconsistencies between the European banana regime (regulation 404/93 and Framework Agreement on Bananas and the existing rules of trade).

Table 4.3: European Union- Regime for the Importation, Sale and Distribution of Bananas (DS27)

Complainant: Ecuador, Guatemala, Honduras, Mexico, US filed on 05.02.96 **Respondent:** European Communities **Third Party:** Belize, Cameroon, Canada, Colombia, Costa Rica, Dominican Republic, Ghana, Grenada, India, Jamaica, Japan, Mauritius, Nicaragua,Panama, Philippines, St. Lucia, Suriname, Venezuela,Bolivian Republic, Cote d'Ivoire, Brazil, Madagascar	Most Favoured Nation Increasing participation of developing countries, Domestic regulation, Market access, Schedule of Concessions, National treatment on internal taxation and regulation, Publication and administration of trade regulations, General elimination of quantitative restrictions, Transparency

On 25 November 1998, the European Community filed a case against the United States in relation to Sections 301–310 of the Trade Act of USA, 1974. 17 other countries also expressed their willingness to join in the deliberations. The panel body was established on 17 February 1999 and the report was circulated on 22 December 1999. The EC complaint was that sections 305 and 306 of the Trade Act of the US did not permit the US to comply with the DSU rules, making it inconsistent with various articles of the WTO. The Act moreover, also violated provisions dealing with Most- favoured Nation Treatment, Schedule of Concessions, National Treatment, Fees and Formalities Connected with Importation and Exportation and General elimination of Quantitative Restrictions. The panel found that US Trade Act of 1974 violated the WTO provisions as cited by the EC at the time of complaint. The DSB has adopted the panel report on 27 January 2000.

Guatemala, Honduras, Mexico, Panama and the US filed a case against EC on 20 January 1999. The main basis of the case was implementation of the DSB recommendations by the EC. They alleged that the EC has modified its banana regime in a way that would not allow this trade dispute to conclude in a form acceptable to their governments. The objective of the complaints was to clarify and discuss the various facets of the EC's revised banana regime, concerning its effect on the market and EU's concerns about its inconsistency with WTO provisions.

On 4 March 1999, the EC filed a case against the US. In this case there were six countries which participated as third party. These countries were- Dominica, Ecuador, India, Jamaica, Japan and Saint Lucia. EC went to the DSB because US denied importing certain products (value of products was nearly $ 500 million on a yearly basis) and further US imposed a 100 percent duty on each product. These measures of US came up after EC banana regime failed to change its regime as recommendation given by the DSB. However, at the DSB, EC argued that US had deprived EC imports into their markets. EC thus complained that US measures were inconsistent with GATT provisions such as- MFN, Schedule of Concessions, Fees and Formalities Connected with Importation and Exportation and Restrictions to Safeguard the Balance of Payments; and rules of DSU. Thus, EC requested for the establishment of panel body but DSB delayed the formation of the panel. However, after the second request by the EC, DSB established the panel on 16 June 1999 and circulated the report on 17 July 2000.

The Panel Report submitted held that the US measures violated WTO DSB rules. US had unilaterally imposed trade sanctions on EC and placed those sanctions against time framework provided by the DSB and hence violated DSB provision of 'Strengthening of the Multilateral System" and that it violated MFN principle. The Appellate body circulated its report on 11 December 2000 in which it did not make any kind of further recommendation regarding the case to the DSB.

Ecuador on 31st August 2001 filed a complaint against Turkey. Colombia, European Communities and the US joined in the case as the third party. The case was connected to import procedures of Turkey relating to fresh fruits, more specifically bananas. The document called 'Kontrol Belgesi' of Turkish government talked about the import procedure (WTO:2002). Ecuador believed that this procedure was a barrier to trade as well as it violated WTO rules- GATT provisions, Sanitary and Phytosanitary (SPS) measures, Agreement on Agriculture (AoA)

and General Agreement on Trade in Services (GATS). Ecuador requested to establish the panel body on 14 June 2002 but, DSB differed and only after the second request DSB established the panel body **(**WTO:2002). However, parties to the dispute mutually resolved the trade conflict and hence Ecuador requested DSB to suspend the formation of panel body.

On 21 March 2007, Colombia filed a case against the European Union concerning its banana regime that was in force from January 2006 (Council Regulation (EC) No 1964/2005) (WTO: 2009). According to the regime, the tariff levied on MFN origin bananas was set at €176 per tonne while on the other hand, ACP bananas were imported at zero duty up to an annual quantity of nearly 775,000 tonnes (WTO:2009, 2). Colombia argued the EU import regime for bananas was inconsistent with the WTO provisions. It held that the application of the ACP Tariff Rate Quota led to discrimination between bananas from ACP and MFN countries.

Table 4.4: Details of Banana Related Cases filed at WTO (1997- 2007)

Case	Complainant	Respondent	Third Party
European Union -Regime for the Importation, Sale and Distribution of Bananas (DS105)-24.10.97	Panama	European Community	-----
United States — Sections 301–310 of the Trade Act 1974 (DS152)- 25.11.98	European Community	US	Brazil, Canada, Colombia, Costa Rica, Dominica, Ecuador, Hong Kong, China, India, Japan, Israel, Jamaica, Korea, St. Lucia, Thailand
European Union — Regime for the Importation, Sale and Distribution of Bananas (DS 158)- 20.01.99	Guatemala, Honduras, Mexico, Panama US	European Community	_____
United States — Import Measures on Certain Products from the European Communities (DS165) -04.03.99	European Union	US	Dominica, Ecuador, India, Jamaica, Japan and St. Lucia
Turkey-Certain Import Procedures for Fresh Fruit	Ecuador	Turkey	Colombia, European Union, US

(DS237)- 31.08.01			
European Union — Regime for the Importation of Bananas (DS361) -21.03.07	Colombia	European Union	_____
European Union - Regime for the Importation of Bananas (DS 364) - 22.06.07	Panama	European Union	_____

Source: WTO Dispute Settlement Body

On 22 June 2007 Panama filed a complainant against the EU. The case was related to the new banana regime of EC for the importation of bananas. The case was filed by Panama because at that time banana represented 58 percent of total agricultural exports (WTO 2009: 4). Panama challenged the "Council Regulation 1964 (No 1964 2005)." This new regulation approved a new banana regime based on "tariff only" regime. However, under the new regulation also ACP were getting preferential access to EU markets and MFN suppliers were discriminated. This discrimination was evident from the fact that "autonomous" tariff for bananas from Panama was in place which was of 176 €/mt while duty free within the 775,000 mt quota was granted to ACP bananas. Thus, this "autonomous" tariff was double the previous tariff rate (75€/mt)(WTO, 2009: 4). According to Panama, the EU regime was inconsistent with GATT principal like- MFN and Non- discriminatory Administration of Quantitative Restrictions.

The Geneva Agreement on Trade in bananas (GTAB)

The genesis of the Geneva Agreement is based on the long running conflict between major trading powers, and a clause declaring that parties agree accord on any current or future WTO disputes regarding the banana matter. On 15 December 2009 the accord was agreed in Geneva at WTO headquarters by the Latin American Countries (Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela), the EU and the US. The agreement questioned the operation and structure of the EU banana regime and hence, announced that banana exporters will have the power to claim compensation concerning duties paid at the higher level. The agreement required several legal steps which include- each country to ratify the accord and on the other hand, EU to implement the legislation (WTO). In other

words, GATB stood for the settlement of all kinds of banana dispute by signing the agreement through mutually agreed solution.

Under the agreement, EU had to accept certain provisions. (a) EU must maintain tariff- only regime for the importation of bananas and its banana regime should not adopt measures like quotas, import license the importation of bananas. (2) The EU banana regime should not discriminate between suppliers of banana distribution services. There was also other aspect of GTAB- the EU and the US agreed to communicate with any party relation to the agreement and any bilateral agreement on trade in bananas must take into consider WTO rules.

The Agreement cut multilateral banana tariff of EU in successive steps from €176 per tonne to nearly €114 per tonne by the year2017. Although, bilateral accords offered preferential treatment to Colombia, Costa Rica, Guatemala, Honduras, El Salvador, Nicaragua and Peru. Exports from these developing countries will have a duty of seventy-five Euros per tonne bananas by the year 2020, which is in a series of gradual reductions. On 27 July 2012, the new commitments of EU were circulated. After that WTO members were provided three months to object. The agreed maximum tariff rates are given below in Table 4.5

Table 4.5: Commitment made by European Union regarding Tariffs in the Geneva Agreement on Trade in Bananas

15 December 2009–31 December 2010	148 €/tonne
1 January 2011	136 €/tonne
1 January 2012	132 €/tonne
1 January 2013	127 €/tonne
1 January 2014	127 €/tonne
1 January 2015	122 €/tonne
1 January 2016	117 €/tonne
1 January 2017	114 €/tonne

Source: WTO: 2012

Concluding Remarks

The banana war predated the creation of the WTO. Though, for the first time the actual manifestation of the war came up in the WTO as a result of a complaint given by the US. Banana cases were important for the WTO in the sense that it tested the dispute resolution process of WTO. However, the banana dispute explained the procedural biases for which developing countries whether they are complainants or respondents were marginalised and adversely affected by the outcome. In the WTO there are total nine cases of bananas and most the cases were filed by the Latin American countries with the support of the US against the EU.

Banana disputes at the WTO in general are characterised by political and legal complexities that involve international organisations like the EU (Alter& Sophie 2006:362). The sroot of the banana dispute as seen lay primarily in the European Union's adopted regime on Bananas. The dispute was complex for several reasons. "The banana dispute was a brilliant distraction from the more fundamental issue of what to do about the unequal treatment of the poorest communities in the global trading system and the intimate relationship of this inequality to the persistence of abject poverty in the world" (Gassama 2010: 472).

Table 4.6: Trade Surplus Based on Export and Import of Bananas: 2017

Country	**Net export surplus (Percentage)**
Ecuador	Up 30.7 since 2013
Costa Rica	Up 33.7
Colombia	Up 20.3
Guatemala	Up 35.3
Philippines	Down – 28.7
Dominican Republic	Up 134.4

Cote d'Ivoire	Up 131.5
Cameroon	Up 280.8
Honduras	Down -5.9
Panama	Up 858.9
Mexico	Up 49.7
Peru	Up 67.8
Ghana	Up 5694
Nicaragua	Up 229.2
Bolivia	Up 67.7

Source: Workman 2017

Table 4.7: Negative net export of bananas: 2017

Country	**Net export deficit (percentage)**
United States	Up 11.7 since 2013
Russia	Up 14.2
Japan	Up 4.2
United Kingdom	Down – 3.2
Germany	Down – 11.3
China	Up 71.7
Italy	Down – 0.7
Canada	Up 2.7
France	Up 22

South Korea	Up 44.2
Belgium	Up 95
Saudi Arabia	Up 30
Netherlands	Up 557.2
Poland	Up 7.7
Argentina	Up 23.3

Source: Workman 2017

Banana dispute is significant for several reasons: The cases according to one scholar are "a good illustration of the ascendency of rules in trade conflict between powerful and less powerful countries, the 'banana split' in transatlantic trade relations is an interesting case study of how particularistic interests prevailed in the trade policy decision making in the EU and the USA" (Melo 2015: 378).The Banana cases pointed out the hardship that even with the law developing countries face in order to get market access. In other words, without the backing of powerful trading partner it is impossible for them to enter into markets of other developed countries. Secondly, the Banana disputes raised the issue of MFN. EU was violating this principle by providing trade preference to developing countries which had rocked the WTO system. The banana cases were also interesting because two largest trade partners of the world, the US and EU were involved in a conflict over a fruit which was not produced by them. Moreover, the Banana case highlighted the difference between the GATT and WTO dispute settlement mechanism. The basic difference that came out of the banana case is that EU had no obligation to accept any panel ruling under GATT dispute rules. However, under WTO dispute settlement rules EU had to made amendments or changes in their banana import regime with compliance with WTO rules. Moreover, those changes are challenged by various parties to the banana dispute.

Chapter V

Conclusion

The main purpose of this research was to understand the international banana trade in the context of WTO. In order to do so, the research looked at how the trade in bananas was regulated historically by some powerful states. It also sought to throw light on the agricultural negotiation process within the WTO and looked at the role of developed countries in protecting their trade in agriculture through various negotiations like Agreement on Agriculture. To bring out the relation between WTO and banana trade, the research chose to specifically examine the nine banana related cases that came up at the WTO and the role of the Dispute Settlement Body.

Evolution of banana trade had been historically regulated by European countries and the US although production of banana has been associated with mostly developing countries of Latin America and African Caribbean and Pacific (ACP) states. From the beginning i.e from 19th century onwards, companies like the United Fruit Company and others with the assistance of their home state established a monopoly over the land, politics and people of banana producing countries. There were two system of banana trade that were created- (i) US and its companies concentrated on Latin American countries in order to produce bananas based on large scale plantations, and (ii) European countries concentrated on ACP states and later through the Lome Convention of 1957 gave preferential market access to ACP countries. However, there was no uniform regulation system and as a result individuals regions developed their own regulatory mechanisms. For example, European Economic Community devised its own regulatory framework.

However, in the late 1970s due to economic nationalism, confrontation occurred between banana companies and exporting countries of Latin America. As a result the Latin American Countries initiated institutionalisation processes and came together to sign the Panama accord in 1974. The Latin American Countries also formed cartels to promote common policies to ensure remunerative prices for sale and purchase of bananas. The aim was to generate more income from banana exports. In the ACP states, colonial government created Banana Growers

Associations (BGAs) to see the interests of small farmers. Moreover, with the creation of Single European Market, a common import regime was created by abolishing all national regimes.

However preferential access created by European Community for ACP states, was seen as a serious obstacle for Latin American countries as well as the US. US companies like Chiquita had invested huge capital in Latin American countries that were dependent on export earnings of the banana trade. Hence some of the Latin American countries went to the GATT DSB body to challenge the European banana import regime. There were two cases on bananas under the GATT and both the cases found that the EC regime violated GATT rules. However, GATT ruling was blocked by EC as GATT dispute settlement system was not formalised and lacked the institutional backing to enforce its decision unlike the DSB under the WTO.

The purpose of the research was also to examine the role of the WTO in regulating agricultural trade related to bananas. Agriculture as a sector is highly subsidised and protected one. Agriculture had been excluded from the GATT system and historically developed countries through protectionism had controlled trade in agriculture. As a result, developing countries were not given equal market opportunity. Developed countries used non- tariff barriers in the form of quotas and tariffs to discriminate developing country exporters. Under the WTO an Agreement on Agriculture (AoA) was negotiated in the Uruguay Round. It strengthened the rules for agricultural trade and had three pillars on which the agreement was based - market access, domestic support and export subsidies.

Apart from this, a Committee on Agriculture was also established to look specifically into agriculture related negotiations. The AoA aimed at reducing tariff as well as removal of all sorts of quantitative restrictions so that market access could be given to developing countries. There were separate reduction commitments for developed and developing countries with different time frameworks. Significantly agricultural exporters from developed countries were few in comparison to developing countries, but the developed countries dominated the negotiation process. Rather than providing a level playing field, WTO rules on agriculture gave chance to developed countries to abolish Special and Differential Treatment and enhance their capacity to use agricultural protectionism. Thus developing countries highlighted the asymmetry of AOA as most of the agricultural support and protection was provided by developed nations. At the same time, reduction commitment provided by the AoA was far from enough to eliminate inequalities

as 90 percent of world famers lived in developing countries. Another point is that farmers of developing countries lacked economic power and political power and thus rather than countries it was corporations who engaged in agricultural trade.

Looking at the connection of banana trade and WTO, the research heavily focused on the performance of DSB as there were 9 cases at the WTO. All the cases involved various provisions of GATT, GATS, TRIM and SPS measures. Banana cases were important for the WTO in the sense that it tested the dispute resolution process of WTO. However, the banana disputes brought forward the procedural biases. While the ACP and Latin American states were hugely involved in the export of bananas, yet when it came to negotiations, they were excluded with bilateral agreements between the US and the EU were concluded. Rather than giving importance to the banana producing countries, it was US and EU who dominated the banana cases. Finally the WTO banana cases also revealed the disadvantage of the DSB with regard to the small and developing member countries. Such countries could be discouraged from making complaints at the WTO if the prospects of implementing rulings in their favour were bleak as a result of limited retaliatory power. Developing member countries could choose to exercise self-restraint in choosing not to threaten privileges of the more powerful.

There were two major hypotheses that guided the primary research:

1. WTO as a system has failed to protect economic sovereignty of developing and Least Developed Countries especially in the area of agriculture.
2. Developed countries/consumers not Least Developed Country/producers dictate the terms of international banana trade.

To conclude, it may be reiterated that both these hypotheses have proven to be true. In case of the first hypothesis, the study in emphasising the history of banana trade shows that only certain developed countries and their MNCs regulate the banana trade and the WTO rules formulated on Agriculture seeks to protect the interests of those very actors. The cases at the WTO show that the organization failed to address the interests of banana producing Latin American and ACP states. The second hypothesis is also true as the Agreement on Agriculture and the WTO DSB experience amplify the inequalities between developed and developing countries/ LDC with regard to the trade in bananas.

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