

11 April 1962

UNITED KINGDOM WAIVERS

Application in Respect of Customs Duties on Bananas

*Report by Panel
(L/1749)*

1. The United Kingdom informed the secretariat on 1 June 1961 (GATT/AIR/238 (SECRET)) that they wished to "modify the binding on item 08.01 (B) in the United Kingdom tariff, fresh bananas, and subsequently to invoke in respect of this item the Decision of the CONTRACTING PARTIES of 5 March 1955 (BISD, 3rd Supp., page 21), and the Decision of 24 October 1953 (BISD, 2nd Supp., page 20), as amended on 5 March 1955 (BISD, 3rd Supp., page 25)".
2. The Government of Brazil asked to be consulted with regard to the invocation of the Decisions referred to in paragraph 1. The Government of the United Kingdom agreed to this request.
3. At the request of the Government of the United Kingdom the item was put on the agenda of the nineteenth session of the CONTRACTING PARTIES. As the United Kingdom had not yet at that time completed the renegotiations under Article XXVIII with Brazil and as the date of the next meeting of the CONTRACTING PARTIES was not definitely known, the United Kingdom delegation requested that authority be delegated to the Council to take a decision on the application of the Decisions mentioned above when the renegotiations between Brazil and the United Kingdom had been completed (L/1674).
4. The CONTRACTING PARTIES agreed on 9 December 1961, in accordance with paragraph 4 of the Procedure relating to paragraph 3(1) of the Decision of 5 March 1955, to authorize the Council to deal with the question as suggested by the United Kingdom delegation (SR.19/12, page 203).
5. The negotiations under Article XXVIII between Brazil and the United Kingdom did not result in an agreement. The United Kingdom then notified Brazil that in the circumstances they proposed to avail themselves of the provisions of Article XXVIII:3 in order to modify the binding of the duty on bananas (L/1734, paragraphs 3 and 4). The item is therefore unbound. The United Kingdom requested the Council to resolve during its meeting on 22-28 February 1962 the issue under the Decisions of 5 March 1955 and 24 October 1953 (L/1734, paragraph 4).
6. Acting on the authority delegated by the CONTRACTING PARTIES, the Council appointed a Panel with the following terms of reference and composition:

"to consider the situation arising from the consultations requested on 7 July 1961 by the Government of Brazil in connection with the application by the United Kingdom dated 1 June 1961 (GATT/AIR/238 (SECRET)) under the Decisions of the CONTRACTING PARTIES of 24 October 1953, as amended, and of 5 March 1955; and to report to the Council".

Chairman: Mr. J. Lacarte (Uruguay)

Members: Mr. J.W. Evans (United States)
Mr. M.H. van Wijk (Netherlands)

It was agreed that, if requested by the United Kingdom delegation, the Council would hold a special meeting to consider the report of the Panel (C/M/9).

7. The Panel met in Geneva on 2-4 April 1962, representatives of Brazil and the United Kingdom appeared before it and explained their positions. They answered questions put to them by members of the Panel. The Panel annexes relevant statistical tables.

8. The Panel examined whether the 1953 Decision, as amended, is applicable to the present case. The representative of the United Kingdom explained that the United Kingdom invoked the 1953 Decision for a purely technical reason. The United Kingdom wants to avoid a situation whereby once they have established under the 1955 Decision a case for an increased preference in favour of dependent overseas territories they would be obliged to impose a duty on all other Annex A countries, even if there were no question that these territories could possibly benefit from the increased preference. He added that the use of the 1953 Decision in these circumstances was envisaged in the report of the working party appointed in 1955 to consider the special problems of the dependent overseas territories of the United Kingdom (BISD, 3rd Supp., page 136 - last sentence of paragraph 12).

9. The Panel, while appreciating these motives, considers that the invocation of the 1953 Decision is not necessary for the purpose that the United Kingdom has in mind. It could not have been the intention of the CONTRACTING PARTIES when they granted the 1955 Decision that the United Kingdom should be required to impose a duty in such circumstances. The United Kingdom is in fact authorized to depart from the rules of paragraph 4 of Article I subject to certain provisions set out in the Decision. The Panel considers that the relevant provision in this case is that the increased margin of preference should not also:

"afford material benefit, either in the domestic or in export markets, to industries or branches of agriculture of the United Kingdom or of any territory other than the dependent overseas territories". (Paragraph 2(b) of the Decision)

In circumstances where the 1955 Decision may be invoked in favour of dependent overseas territories the margin of preference may therefore be increased without imposing a duty on independent countries listed in Annex A to the General Agreement if it is clear that these countries will derive no material benefit from the increased margin. In any event the Panel considers that the invocation of the 1953 Decision would be inappropriate as the protection of domestic production in the United Kingdom is not involved.

10. The Panel therefore concentrated its attention on the applicability of the 1955 Decision. An examination of the situation as regards the export trade of the territories concerned shows that the United Kingdom is purchasing practically all their exports and that competition from sources outside the United Kingdom preferential area and not subject to quantitative restrictions does not constitute a real threat to the export trade of the dependent overseas territories in the United Kingdom market. The Panel understands that the United Kingdom's application is therefore not directed towards affording immediate relief but towards affording long-term protection to dependent overseas territories when the United Kingdom undertakes the total liberalization of imports of bananas from the dollar area. The United Kingdom representative said that, if the CONTRACTING PARTIES agree that it may invoke the Decision in this case, the United Kingdom intends to liberalize imports of dollar area bananas within three or four years and that its immediate intentions are to increase the present yearly dollar area quota of 4,000 tons to 8,000 tons in 1963 and 14,000 tons in 1964. The Panel therefore feels "that the need for the measure proposed by the United Kingdom is unlikely to arise during the course of 1963 and 1964, since even the largest of these figures represents only 3.7 per cent of total United Kingdom imports in 1961. They accordingly feel that the United Kingdom has failed to establish that there is a need for an increased preference in the near future.

11. The representative of the United Kingdom pointed out, however, that since Jamaica is shortly to achieve independence the United Kingdom feels it necessary to invoke the Decision now. He explained

that if they failed to do so before Jamaica achieved independence the United Kingdom would lose the right to invoke the Decision.

12. With respect to this contingency the Panel feels that it would be more appropriate to present the problem to the CONTRACTING PARTIES if and when it arises. The CONTRACTING PARTIES have in the past had to deal with similar problems, e.g. in the cases of Libya and Somaliland and, as in these cases, would undoubtedly consider the problem sympathetically in the light of the circumstances then prevailing.

13. In the light of its findings in paragraph 10 the Panel did not feel it necessary to pursue the question of material benefit to independent countries raised in paragraph 9 above. If, however, these findings had been different the Panel considers that a serious problem would arise under this heading at least with respect to the Southern Cameroons.

ANNEX I - ANNEXE I

Imports of Bananas into the United Kingdom/
Importations de bananes au Royaume-Uni

	1958	1959	1960	1961
	£	£	£	£
<u>Commonwealth</u>				
Jamaica/Jamaïque	8,215,633	8,317,408	8,709,493	8,520,819
Leewards Is./Iles Leeward	-	799	23,354	4,431
Windward Is./Iles Windward	4,333,704	6,603,903	6,589,411	7,579,112
Trinidad & Tobago/ Trinité & Tobago	227,005	291,987	211,154	168,941
Southern Cameroons/ Cameroun méridional	4,909,013	3,299,869	4,160,484	4,870,697
Ghana	143,309	121,533	325,749	271,028
Others/Autres	19,950	4,426	3,781	7,588
<u>Foreign/Etranger</u>				
French West India Is./ Antilles françaises	-	-	225,627	-
Canary Is./Iles Canaries	1,578,890	1,614,158	932,523	1,329,536
Spanish West Africa/ Afrique occid. espagnole	559,068	494,280	517,722	379,295
Dominican Republic/ République Dominicaine	-	184,754	201,069	229,623
Brazil/Brésil	559,451	326,882	202,329	235,461
Others/Autres	122,259	45,288	93,658	157,468
Total all sources/ Total des importations de toutes provenances	20,668,282	21,305,287	22,196,354	23,753,999

Source: From the statistical appendix to the United Kingdom memorandum GATT/AIR/238/Add.1
Annexe statistique au mémorandum du Royaume-Uni (GATT/AIR/238/Add.1)

ANNEX II

VOLUME OF EXPORTS OF BANANAS FROM SELECTED COUNTRIES, 1951-1960

(thousand metric tons)

	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
JAMAICA	49.8	62.0	126.0	157.5	147.3	152.4	148.3	135.1	140.2	141.9
TRINIDAD AND TOBAGO	3.0	3.0	4.1	2.0	1.0	3.0	4.1	4.5	4.1	4.2
WINDWARD ISLANDS	6.1	9.1	14.2	21.3	24.4	37.6	53.8	66.0	96.5	93.1
FORMER BRITISH CAMEROONS	73.0	74.2	91.8	82.6	68.1	69.7	79.2	87.4	68.1	66.8
CANARY ISLANDS	148.4	180.7	164.6	151.5	195.0	194.9	189.5	149.3	251.6	..
BRAZIL	190.3	213.8	178.7	239.2	210.7	188.1	218.5	271.4	213.1	241.9
DOMINICAN REPUBLIC	42.0	38.1	35.4	43.5	42.7	38.0	51.8	85.8	100.6	180.4

SOURCE: FAO Trade Year Book and Commonwealth Economic Committee Fruit.

ANNEX III

EXPORTS OF BANANAS FROM SELECTED COUNTRIES
TO ALL DESTINATIONS AND TO THE UNITED KINGDOM, 1958-1960

(thousand metric tons and thousand dollars)

(QUANTITIES (Q) AND VALUES (V))

	1958		1959		1960	
	Q	V	Q	V	Q	V
JAMAICA	126.6	13992	143.3	13843	141.9	13364
of which to UNITED KINGDOM	..	..	143.3	13843	141.9	13364
TRINIDAD	4.5	..	4.1	304	4.2	312
of which to UNITED KINGDOM	..	..	4.1	301	4.2	308
WINDWARD ISLANDS	60.9	5776	95.2	7988	93.1	7471
of which to UNITED KINGDOM	(59) ¹	..	(90) ¹	..	(90) ¹	..
FORMER BRITISH CAMEROONS	86.3	9139	67.3	7302	66.8	7297
of which to UNITED KINGDOM	83.4	8854	..	..	66.4	..
CANARY ISLANDS	149.3	19603	251.6	25240	..	..
of which to UNITED KINGDOM	26.3	3173	22.8	2870	..	..
BRAZIL	271.4	10900	213.1	4370	241.9	4561
of which to UNITED KINGDOM	11.6	455	7.4	297	4.4	73
DOMINICAN REPUBLIC	85.8	4775	100.6	5977	180.4	11246
of which to UNITED KINGDOM	-	-	3.4	239	3.6	262

¹Imports into the United Kingdom from the Windward Islands.

SOURCE: NATIONAL STATISTICS.

ANNEX IV

IMPORTS OF BANANAS INTO THE UNITED KINGDOM, 1951-1961

(thousand metric tons and million dollars)

(QUANTITIES (Q) AND VALUES (V))

	1951		1952		1953		1954		1955		1956		1957		1958		1959		1960		1961	
	Q	V	Q	V	Q	V	Q	V	Q	V	Q	V	Q	V	Q	V	Q	V	Q	V	Q	V
JAMAICA	43.9	5.9	58.5	8.7	119.3	21.1	140.8	25.5	138.7	26.4	148.0	26.8	147.9	28.6	123.3	23.0	135.3	23.3	140.0	24.0	140.0	23.9
WINDWARD ISLANDS	..	..	8.2	1.2	15.7	2.6	20.1	3.6	22.1	4.4	34.8	7.1	48.2	9.8	59.3	12.1	89.9	18.5	89.9	18.4	103.4	21.2
SOUTHERN CAMEROONS	66.7	9.0	74.5	10.3	85.7	14.5	77.0	13.4	70.0	12.2	68.2	11.9	69.9	13.2	74.8	13.7	57.9	9.2	71.4	11.7	86.6	14.9
OTHER COMMONWEALTH COUNTRIES	5.2	0.7	2.9	0.4	1.1	0.1	0.8	0.2	1.7	0.4	6.2	1.1	8.3	1.5	6.7	1.1	6.6	1.2	7.8	1.6	8.6	1.1
<u>TOTAL COMMONWEALTH COUNTRIES</u>	115.8	15.6	144.1	20.6	221.8	38.3	238.7	42.7	232.5	43.4	257.2	46.9	274.3	53.1	264.1	49.9	289.7	52.2	309.1	55.7	330.0	60.0
CANARY ISLANDS	27.8	4.1	25.2	3.7	14.4	2.5	17.3	3.0	44.0	7.1	36.0	5.2	20.5	3.3	26.6	4.4	29.9	4.5	17.0	2.6	23.8	3.7
SPANISH WEST AFRICA	..	..	-	-	-	-	1.3	0.2	3.3	0.5	7.9	1.2	11.5	1.8	9.7	1.6	8.8	1.4	10.5	1.4	7.7	1.1
BRAZIL	21.4	2.5	-	-	23.6	2.9	33.6	3.6	29.9	4.4	17.1	2.3	10.2	1.3	10.8	1.6	6.9	0.9	4.8	0.6	5.5	0.6
OTHER FOREIGN COUNTRIES	1.1	0.1	-	-	3.9	0.6	3.2	0.5	1.9	0.3	1.9	0.3	2.2	0.4	2.1	0.4	4.0	0.7	8.2	1.4	6.4	1.1
<u>TOTAL FOREIGN COUNTRIES</u>	50.3	6.7	25.2	3.7	41.9	6.0	55.4	7.3	79.1	12.3	62.9	9.0	44.4	6.8	49.2	8.0	49.6	7.5	40.5	6.0	43.4	6.5
<u>TOTAL IMPORTS</u>	166.1	22.3	169.3	24.3	263.7	44.3	294.7	50.0	311.6	55.7	320.1	55.9	318.7	59.9	313.3	57.9	339.3	59.7	349.6	61.7	373.4	66.5

SOURCE: Annual statement of the trade of the United Kingdom
Accounts relating to trade and navigation of the United Kingdom