

Miami Herald

November 1, 2004

International Column by Jane Bussey: jbussey@herald.com

Contradiction in WTO rules could develop into trade fight

When former international trade judge James Bacchus speaks of a "legal time bomb" ticking away inside the World Trade Organization, he is not warning of an explosion at the WTO's Geneva headquarters.

Bacchus -- a former Florida lawmaker who served eight years as a judge in the WTO tribunal known as the Appellate Body -- is talking about a contradiction within the rules of the WTO that could develop into one of the world's largest trade fights if any country decides to lob the first volley.

Most of the several hundred regional free trade agreements negotiated in the last decade have not actually received the WTO's stamp of approval, certifying that they are in compliance with Article XXIV -- a provision that allows countries to form regional trade blocs, such as the European Union or the North American Free Trade Agreement, and grant better trade status to selected trade partners.

Potentially, a third party country could file a complaint with the WTO, charging that regional trade agreements discriminate against the goods of countries outside the bloc.

Their argument would be that regional trade pacts are at odds with Article I of the 1994 WTO agreement, which stipulates that a country that grants "most favored nation" treatment to another country cannot discriminate against other foreign suppliers.

"There are many contradictions" in the WTO, explained Bacchus, who now heads the global trade practice group at Greenberg Traurig in Orlando and Washington.

Even some of the world's most comprehensive trade agreements, such as the North American Free Trade Agreement and Mercosur, haven't yet been approved by the WTO.

The agreement creating Mercosur, the customs union among Argentina, Brazil, Paraguay and Uruguay, is "under factual examination," according to the WTO website. And NAFTA's status is listed as "consultations on draft report."

Fights over bananas, beef hormones, Canadian wood and U.S. corporate taxes have all landed in the lap of the WTO trade justices, seven in total, who sit at a round table in Geneva to consider their rulings.

But so far no country has decided to challenge whether, for example, the United States can choose to favor its closest neighbors with NAFTA or whether the European Union can join in a trade agreement with Chile.

But just because no challenge has come so far, doesn't mean it won't.

"This is a legal time bomb waiting to happen," Bacchus said recently. "I am very glad it did not come to the WTO Appellate Body when I was a member."

The question of whether agreements have been reviewed and approved by the WTO is not an arcane issue.

It is emblematic of a deep divide among free trade proponents.

One side insists that only global efforts are truly beneficial since all countries move in unison in opening trade and investment rules.

The other side favors bilateral trade accords, which empower a region or a few countries. Critics charge that these smaller agreements distort trade by increasing trade from one country at the expense of another one without raising the overall level of commerce.

But given the rush to regional trade agreements, Bacchus said, so far no one has wanted to rock the boat.

Port Everglades

The volume of containerized cargo at Port Everglades rose 22 percent from July 2003 to July this year, setting a national record among the nation's top 15 container ports.

Port Director Ken Krauter attributed the increase in part "to the effective marketing of our increased container handling capacity."

From July 2003 to July 2004, the number of 20-foot equivalent units -- an industry standard -- grew from 239,721 to 293,244. Part of the additional volume comes from new service that includes Great White Fleet/Chiquita Brands Co., North America and a vessel-sharing agreement between Zim Israel Navigation Co., Evergreen and Lloyd Treistino.

Contact Jane Bussey at

jbussey@herald.com.