After Lomé IV: ACP-EU Trade Preferences in the 21st Century

The ACP countries and the EU recognise that the present non-reciprocal and discriminatory Lomé preferences must be replaced with WTO compatible arrangements. This means that the agreements conform either to the free trade area provisions of Article XXIV or to the GSP. This article sets out the key elements of ACP preferences and examines the potential advantages and disadvantages for various groups of ACP countries of possible forms of free trade areas and a 'Lomé-equivalent' GSP.

The fundamental problem of Lomé preferences for the ACP (African, Caribbean and Pacific) countries is that being non-reciprocal, they are not covered by Article XXIV of the GATT, while being available only to the ACP countries and not to all developing countries, they are discriminatory and not covered by Part IV of the GATT or the Enabling Clause of 1979. The current Convention is covered by a waiver from Article I(1) and the EU will seek to obtain a further waiver when the Lomé IV expires on 29th February 2000. A renewal of the waiver should not, in principle, be difficult to achieve. Lomé is not the only preferential trade agreement covered by a WTO waiver and Australia, Canada and the US currently have a total of 5 waivers covering arrangements with particular regional groupings of developing countries. It is also recognised that Lomé covers most of the world's poorest and most vulnerable countries, although crucially, it does not cover all of the world's poorest countries, while some of the ACP group are clearly middle-income countries.

Both the ACP and the EU recognise, however, that in the post-1994 orthodoxy emphasising a WTO rules-based system for international trade, a further waiver will only be acceptable to the member states of the WTO if it is clearly a transitional measure to allow sufficient time to replace the Convention with WTO consistent arrangements, although the ACP and EU differ on the time period of the transition. Also, as the bananas dispute has vividly illustrated, any WTO member state can challenge any aspect of the Convention and the disputes panel and the Disputes Settlement Board (whose decision can only be overturned by an unlikely 'consensus to reject') will narrowly interpret the waiver to allow departures from WTO rules only for measures strictly required by the Convention, which do not raise undue difficulties for trade from other countries, and for which WTO compatible procedures are not available.

The only WTO compatible options are reciprocal ACP-EU preferences, covered by the free trade provisions of Article XXIV, or unilateral EU preferences under the GSP, although it is important to note that even these arrangements may also be subject to challenge, at any time, in the WTO.

The EU's negotiating mandate emphasises the benefits of all ACP regions and sub-regions in Sub-Saharan Africa concluding Regional Economic Partnership Agreements (REPs) the trade element of which would conform with Article XXIV and which would incorporate a degree of asymmetry favouring the ACP. The negotiation of agreements would take place in the period 2000-2005, with an implementation period thereafter of ten years or more. ACP countries which are not classified by the UN as least developed (LCDs) and which are for 'objective reasons' not in a position to join REPs may be offered Lomé-equivalent preferences in the review of the GSP in 2004 by making use of differentiation permitted by WTO rules.

In a parallel, but separate development, the EU (following the WTO ministerial meeting in Singapore, December 1996) has extended the 'super GSP' to give all least developed countries (classified by the UN) tariff preferences equivalent to those of the Lomé Convention on all products not subject to tariff

---

1 Negotiating directions for the negotiation of a development partnership agreement with the ACP countries, Information note 10017/98, Brussels, European Union, The Council (30 June).

2 'Mandate', page 18, note 8.

* University of Reading, England. The author is grateful for advice and comments from Dr. Christopher Stevens, IDS University, Sussex; the ACP Ambassadors and the ACP Secretariat, Brussels; financial support and comments from the Economic Affairs Division of the Commonwealth Secretariat, London; and for working documents and discussions with the European Commission, DG VIII. The content of the paper is, of course, entirely the responsibility of the author.
quotas. As a result, the 39 ACP-LDCs which do not conclude REPAs should be able to retain their tariff preferences for all products, except sugar, beef and bananas (which may be covered under separate Protocols), not subject to tariff quotas.

The ACP's negotiating mandate is for Lomé to be extended by a ten year WTO waiver to 2010 and for discussions on alternative trade arrangements to Lomé to begin in 2006, when there should be more information available on the revision of the GSP in 2004, the new Millennium Round of multilateral trade negotiations in the WTO, reform of the CAP and EU enlargement. There is little enthusiasm either for REPAs or the GSP option but on balance, the former is preferred, provided WTO rules on Article XXIV are relaxed to allow looser free trade areas (FTAs), in terms of product coverage and the schedule for import liberalisation.

The two negotiation mandates, however, are a compromise between substantial differences of opinion within the ACP and the EU on appropriate forms of future trade arrangements (as demonstrated, for example, by the late inclusion in the EU mandate of a possible Lomé-equivalent GSP for the non-LDC, ACP countries). The debate also takes place against a substantial erosion of ACP preferences and, partly as a result of this, a general recognition that the new arrangements need to focus more on developing the international competitiveness of ACP countries than has occurred, in practice, in previous ACP-EU agreements.

This paper seeks to clarify these complex issues by outlining the key elements of ACP preferences as the background to analysing the options of free trade agreements and a Lomé-equivalent GSP.

Preferences for Protocol Products

ACP exports of bananas, beef, veal and sugar to the EU are governed by individual Protocols in the Lomé Convention and the 'value' of these preferences, in terms of the 'tariff revenue forgone' by the EU in 1995 was Ecu 579.3 billion, or three-quarters of the total 'value' of ACP preferences.香蕉: EU imports of bananas from the ACP are almost wholly accounted for by France (from Cameroon and Côte d'Ivoire) and the UK (from the Caribbean, particularly the Eastern Caribbean). The production costs of Caribbean bananas are more than twice those of 'dollar bananas' from Latin America, while shipping and handling costs are substantially greater because of the larger number of port calls needed for the Caribbean islands and the lack of modern port handling facilities. Risks of low yields and crop failure are high because of highly variable rainfall and hurricane damage. In addition, dollar bananas attract a quality price premium in the EU market because of a lower wastage rate and greater attractiveness to consumers.

Most Caribbean producers can therefore only export to the EU under high levels of protection. Protection solely through exemption from EU tariffs would require a common external tariff which would be unacceptably high for most Member States and so the EU has operated a complex system of import licenses, country specific tariff quotas and tariffs. 'Traditional ACP suppliers' and 'non-traditional ACP suppliers' were allocated separate duty free tariff quotas, with a reduced rate (Ecu 750 per tonne) of duty for above-quota imports from 'non-traditional suppliers'. Dollar bananas were allocated a tariff quota, based on their previous level of exports to the EU, subject to a duty of Ecu 75 per tonne and a further above-quota duty of Ecu 850 per tonne (equivalent to an ad valorem duty of about 200%). Import licenses for dollar bananas were divided into three groups of which the most controversial were 'B licenses' which allocated 26% of dollar imports to ACP banana importers. The purpose of this arrangement was, effectively, to cross-subsidise imports of high-cost ACP bananas from the quota rents earned on imports of dollar bananas.

This import regime was subject to a successful challenge by the US and by the Latin American producers in the WTO. The EU response in 1998 was to abolish 'B licenses' but to retain the remainder of the import regime and, in the absence of agreement with the dollar exporters, to use Article XIII(2)(a) to impose country specific tariff quotas on 'traditional operators' based on EU imports for 1994-96. A further objection was made against the EU and in 1999 the WTO again ruled against the revised import regime.

The final outcome has, to date, not been determined but it is clear that the EU will only be able to provide the Caribbean producers with a much lower level of import protection than in the past, within the framework of the Lomé waiver and compatible with Article XIII. Without this level of protection, Caribbean production will collapse with particularly serious effects on the economies of the Eastern Caribbean.