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EPAs and the Demise of the Commodity Protocols[1]

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Abstract

With the entry into force of Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific (ACP) countries at the beginning of 2008, the three commodity protocols attached, first, to the Lomé Conventions and, subsequently, the Cotonou Agreement which benefited ACP exporters of sugar, bananas and beef have been terminated or shortly will be. This paper reviews the reasons for the termination of these protocols, and investigates whether EPAs help to maintain the economic benefits they provided to ACP exporters or whether they accelerate the erosion of these benefits. We conclude that EPAs extend the benefits of the banana and beef protocols but that the ending of the sugar protocol has more ambiguous effects. Other changes separate from EPAs have also contributed to the erosion of the benefits provided by the protocols.

Keywords: EU, ACP, commodity protocols, Cotonou, sugar, bananas, beef

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INTRODUCTION

The commodity protocols attached, first, to the Lomé Conventions and, subsequently, the Cotonou Agreement were key components of these agreements. With the entry into force of Economic Partnership Agreements (EPAs), the protocols have been terminated or shortly will be, although we need to be careful in concluding that it is the EPAs which have brought about this change. Nonetheless, African, Caribbean and Pacific (ACP) countries can legitimately ask whether EPAs help to maintain the economic benefits accruing from the protocols or whether they accelerate the erosion of these benefits. This is the question addressed in this chapter. We will conclude that the answer is mixed, not only across commodities but also across countries.

The commodity protocols provided for special undertakings on the part of the European Union (EU) for four commodities: sugar, bananas, beef and rum. In the sugar protocol (SP), the EU undertook to purchase and import at guaranteed prices 1.3 million tonnes of cane sugar, originating in specific ACP states and India, for an indefinite period. The banana protocol provided that, in respect of banana exports to the EU market, no ACP state 'shall be placed as regards access to its traditional markets and its advantages on these markets, in a less favourable position than in the past or the present'. Under the beef protocol, certain ACP states were allowed to export specified quantities of boneless meat to the EU at import duties reduced by 90 per cent. The Lomé Convention also provided for an annual quota within which rum could be imported duty free. However, ACP rum was granted unrestricted duty-free access to the EU market in 2000, and the rum protocol was eliminated in the Cotonou Agreement.

Table 1 lists the ACP countries that benefited from these commodity protocols. They have been an important source of foreign exchange and employment in the 28 ACP countries with access to them. The three products comprised almost 16 per cent of total ACP exports to the EU in the period 2000-04. Sugar accounted for 57.4 per cent of the exports under the protocols, banana for 35.7 per cent and beef/veal for the remaining 6.9 per cent (Swedish Board of Agriculture 2006).

[insert Table 1 here]

Article 36.4 of the Cotonou Agreement reaffirmed the importance of the commodity protocols, but also provided that the parties agreed to review them ‘in the context of the new trading arrangements, in particular as regards their compatibility with World Trade Organization (WTO) rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol’. In September 2007 the EU announced that it was invoking its right under the Cotonou Agreement to denounce the SP with effect from 1 October 2009. The Banana Protocol had already been weakened in the Cotonou Agreement compared to the Lomé Convention, and the gains to beneficiaries were further reduced by the reform of the EU’s banana import regime in 2006. The Beef Protocol is much less significant with just a handful of beneficiaries in Southern Africa, and successive CAP reforms have also reduced its value to these exporters.

These changes, particularly those affecting the SP, were strongly criticized by ACP countries as reducing the effective benefits they enjoyed from preferential access to the EU market. However, the ending of the commodity protocols took place in the context of improved access to the EU market for the protocol commodities. Under the terms of the EU’s market access offer made in May 2007 incorporated into those interim and full EPAs signed by the end of 2007, exports of sugar, bananas and beef from all EPA signatories (along with all other exports apart from arms) are admitted duty-free and quota-free (DFQF) to the EU market with effect from 1 January 2008 (with transition periods for sugar and rice). Arguably, these benefits would be available in any case to the least developed ACP countries under the EU’s Everything But Arms (EBA) agreement (in the case of sugar, with some delay until after October 2009). If this is the counterfactual, then only non-least developed country (non-LDC) ACP countries stand to benefit from the EU’s market access offer in the context of EPAs.[2] This immediately suggests that individual ACP protocol beneficiaries may be affected rather differently by the ending of the commodity protocols.

In this chapter, we look in detail at the operation of the three commodity protocols, the countries which benefited, and the substitute arrangements put in place under EPAs. We begin with sugar, continue with bananas, and conclude with beef. An

[2] Potentially more generous rules of origin under EPAs than under the EBA could provide an alternative incentive for LDCs to join an EPA. While these will not be relevant to the case of cane sugar, bananas or beef, more generous origin treatment of processed food products could assist in the development of processed food exports containing sugar, for example.

overall assessment of the protocols is provided in the conclusion. We again emphasize the need for care in drawing the conclusion that the ending of the protocols was *due* to the signing of the EPAs. Many pressures have been at work, of which EPAs were one.

THE SUGAR PROTOCOL

The EU sugar regime and the sugar protocol

The EU sugar market is heavily supported: the domestic price has averaged two to three times the world price. The EU common market organization (CMO) for sugar is based on the use of import tariffs, the special safeguard permitted under the WTO Agreement on Agriculture, export subsidies, production quotas, and a guaranteed minimum price. Under the 2006 EU sugar reform, the intervention price is reduced by 36 per cent over four years, and then replaced by a reference price supported by a private storage safety net system. Although the EU is the world's second largest exporter of sugar, it is also the second largest sugar importer, thanks to the role played by preferential agreements. Of these, the Sugar Protocol has been the most important.

The SP is a bilateral agreement between certain ACP States and India and the EU first agreed as part of the 1975 Lomé Convention and later incorporated into the Cotonou Agreement. Under the Protocol the EU undertakes to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originate in the signatory states and which these states undertake to deliver to the EU. The SP provides for duty-free entry of 1,304,700 tonnes of sugar, white sugar equivalent, with 1,294,700 tonnes allocated to ACP countries and 10,000 tonnes to India. These quantities are distributed to individual SP signatories as shown in Table 2. In addition, SP signatories have access to a market of around 220,000 tonnes per year under the Special Preferential Sugar (SPS) regime, although this figure is diminishing each year as LDC imports under the EBA initiative increase.[3] Table 2 also gives an indication of the importance of sugar exports to individual economies. Some countries have a particularly high dependence on sugar earnings, including Swaziland, St Kitts, Guyana, Fiji and Belize.

[3] To ensure supplies for EU cane sugar refineries, the EU sets a Maximum Supply Needs figure of allowable imports each year. Supplies come from ACP sources, overseas territories, EBA and MFN imports, with the balance being made up by SPS. Increased volumes of EBA sugar have gradually squeezed import volumes under SPS arrangements. Since 2006, the SPS quota is now referred to as the 'complementary quantity'.

Article 1(1) of the SP provides for the indefinite duration of the agreement separate from the fixed term of the Convention or Agreement to which it is attached.[4] However, Article 10 of the Protocol provided that it could be denounced by either side, subject to two year's notice.[5] Article 36.4 of the Cotonou Agreement quoted above would appear to mean that the Protocol could take a different form, but that the EU was compelled to maintain the benefits the Protocol provides, namely, guaranteed purchases of cane sugar at a reference price, without safeguards (O'Connor and Company 2004).

These benefits have been substantial in the past given that the EU internal price was often two to three times higher than the world price.[6] Because the value of these commitments depended on the difference between the EU reference price (less transport costs) and world market prices, and because the EU reference price was not fixed in the Protocol, the Protocol did not guarantee a fixed level of benefits to the signatory ACP countries. However, one important feature of the way the system worked in practice is that, whatever the level of rent earned on Protocol exports, this rent was secured by the ACP exporters. Underlying this rent transfer mechanism is that fact that the EU is required to buy from the SP exporters at the guaranteed reference price.

[insert Table 2 here]

Denunciation of the sugar protocol

On 28 September 2007, in Council Decision 2007/627/EC, the EU formally notified the ACP signatories that it intended to end the Protocol with effect from 1 October 2009. The Decision noted that

[4] Note that the commitment is to the indefinite duration of the agreement, not to its infinite duration. Thus, no end date for the agreement was set, but its possible denunciation was envisaged.

[5] In a declaration annexed to the SP, the EU qualified this expiry notice by indicating that 'the possibility of denunciation in that Protocol ... is for the purposes of judicial security and does not represent for the Community any qualification or limitation of the principles enunciated in Article 1 of that Protocol'. O'Connor and Company (2004) concluded that 'even if the Protocol is denounced, the commitments of the Community to import and purchase ACP cane sugar at guaranteed prices must be included in a new legal instrument'.

[6] Various estimates of the SP benefits have been made. Milner *et al.* (2004) calculated the potential income transfer to ACP SP beneficiaries in 2001 at just over 400 million US dollars. Laaksonen *et al.* (2006) estimate the sugar protocol comprised 0.5-5 per cent of GDP in the ACP sugar protocol countries.

> the arrangements for the Sugar Protocol can no longer be maintained. In the context of a reformed Community sugar market, the Community will cease to guarantee prices to European sugar producers as the former mechanism of intervention is being phased out. ... In the context of a transition towards liberalization of ACP-EC trade, unlimited quantities cannot coexist with the price and volume guarantees of the Sugar Protocol…

Further elaboration of the rationale for this decision was given by Commission spokespersons (Mandelson *et al.* 2007; European Commission 2007a). They highlighted the apparent inconsistency between offering unlimited duty-free access (albeit subject to some delay, see below) to all EPA signatories and continuing preferential market access terms for a sub-set of these signatories.[7] A second issue was the apparent incompatibility between guaranteeing a minimum price to Protocol signatories when the EU has abolished intervention prices in the EU.[8] The minimum price guarantee was linked to the EU obligation to purchase because both were ultimately underpinned by the EU's willingness to purchase cane sugar into intervention if private buyers could not be found. As intervention for white sugar will be abolished after 2010, the EU will no longer have a mechanism to enforce its purchase obligations. A third reason, advanced by observers outside the Commission, is that the EU's denunciation of the SP is complementary to its domestic reform efforts to restore balance to its sugar market following the adverse result in the WTO *EC-Sugar* dispute brought by Brazil, Australia and Thailand (South Centre 2007).[9] We argue below that the removal of the SP will result in reduced production in a number of SP signatories, thus making it easier for the EU to balance its sugar market.

Another reason for the EU's denunciation of the SP could have been that the legal waiver granted at Doha in November 2001 permitting the EU's discriminatory treatment of ACP countries in the context of WTO rules expired on 31 December 2007. An exhaustive analysis by O'Connor and Company (2004) rehearses the legal

[7] In a letter to the *Guyana Chronicle* setting out the EU position, Commissioners Mandelson, Michel and Fischer Boel wrote that 'Such an arrangement is not compatible with an agreement that provides special price and volume guarantees to some Caribbean countries on sugar but not to all… it makes no sense to maintain a system that will see some Caribbean countries trade on one set of terms and others on different terms' (Mandelson *et al.* 2007).

[8] 'We cannot justify paying guaranteed prices for Caribbean producers when we no longer guarantee prices for our own producers.' (Mandelson *et al.*, *op. cit.*).

[9] '... the decision to denounce the SP appears to have met the need for an ad-hoc measure aiming at a additional and complementary supply reduction, at the expense of the export earnings of the most vulnerable economies in the world' (South Centre 2007: 24).

arguments why the SP is in violation of these rules. However, this analysis treats the SP as part of the Cotonou Agreement, and not as part of EPAs. Discrimination can be legitimized by establishing WTO-compatible free trade agreements. In this context, the discrimination highlighted by the EU Commissioners' arguments was between some EPA signatories and others, and also between some sugar exported by an SP signatory and other sugar which would not benefit from SP terms. We have noted that there is nothing in the Protocol which prevents the Protocol from being changed provided that its benefits are safeguarded. At issue is the meaning to be attached to the word 'benefits'. On one interpretation, the benefits cannot refer to the value but must refer to the market security provided by the Protocol guarantees, given that the value of the benefit fluctuates according to EU and world market prices. Thus, in eliminating the price guarantee for specific quantities, the EU has reneged on this commitment. The EU argues that it is replacing the Protocol by removing all the remaining obstacles to its sugar market for Protocol signatories (and other EPA signatories) although they must sign an EPA to get this benefit. It has also offered to smooth the transition by applying a floor price for a number of years, and by providing financial assistance to help sugar growers in signatory countries to stay competitive or to diversify. On this interpretation, the EU argues that it is maintaining the value of the benefit, albeit in a different form.

Whether this package represents an equivalent benefit to Protocol signatories in return for its denunciation is a moot point. For one thing, the financial assistance was provided to offset the reduction in the guaranteed price for SP sugar as a result of its 2005 sugar market reform, and had nothing to do with renunciation. There is also the issue whether the SP benefits are to be maintained collectively, or separately for each individual signatory. Even if the EU might argue that unrestricted duty free access provides *in aggregate* benefits equivalent to those conferred by the SP, it is clear that some signatories will be worse off following the loss of SP rents. The difficulty is that the EU is both judge and jury when it comes to determining the equivalence of its market access offer to the SP benefits, and there is no court of appeal.

Implications of EPAs for ACP sugar producers

In this section we evaluate the trade-off between the renunciation of the SP and the EU's offer to extend, over a transition period, full DFQF access to sugar exports from

EPA signatories. This offer is only of interest to the non-LDC ACP countries, as the LDC ACP countries have this access under the EBA scheme. Ultimately, non-LDC ACP countries will have the same market access conditions as those granted to LDCs under the EBA, apart from the application of a safeguard clause to non-LDC ACP exports (Fautrel and Makhan 2007).

The ending of the SP benefits (a guaranteed market and guaranteed price for SP quantities, free of safeguards) will be felt by both LDC and non-LDC SP signatories. The guaranteed price, plus the licensing arrangements put in place to administer the SP quotas, ensured that the SP rents transferred to the ACP exporters. The ability of ACP countries to extract these rents in a more competitive market environment will be much more questionable. The allocation of preferential rents is a matter of the balance of market power between sellers and buyers. In the new market environment, there will be a very limited number of buyers of cane sugar in the EU, but potentially up to 30 or more EPA and LDC suppliers wanting to sell to them. The sugar refiners will be in a very strong position to play off one supplier against another and to bid the price down, thus extracting the preferential rent. Because the export supply curve of ACP and LDC exporters is not totally elastic, it is not realistic to suggest that ACP export returns will be depressed fully to world market levels, but it is equally unlikely that ACP exports will be remunerated at close to the EU market price as at present. The potential loss of this rent, whatever its value in the light of the 2006 sugar reform and any further reforms which might take place in the future, is the major loss from the disappearance of the SP.

Non-LDC ACP SP signatories will weigh up the gains from additional market access after 2008 against the loss of this rent. The EPA market access offer will be phased in through three stages over seven years. The first phase will last from 1 January 2008 to 30 September 2008. In this phase, ACP LDCs which have signed an interim or full EPA will receive an additional quota of 150,000 tonnes on top of what they were allocated under the EBA scheme. A further additional allowance of 80,000 tonnes is made available to be distributed between non-LDC ACP signatories of the SP and non-LDC non-Protocol signatories. During the second phase, which will last from 1 October 2008 until 30 September 2015, the EU will grant free market access for EPA sugar, but subject to overlapping volume ceilings for imports from non-LDC ACP countries and from all ACP countries (the ‘dual safeguard’).[10] A surveillance mechanism covering sugar-containing products will be put in place to ensure that such imports are not used to circumvent the tariff rate quotas. Furthermore, until 2012, EU importers of EPA sugar would be required to pay a minimum price set at 90 per cent of the EU reference price. After 2012, this would be replaced by a market information system to provide price transparency. In the final stage, from October 2015 onwards, sugar originating from any EPA signatory will be granted DFQF access, subject to a safeguard based on the general EPA safeguard but which takes account of the ‘sensitivity’ of sugar for the EU (Council of Ministers 2007a).[11]

To date, it appears that only the additional quotas to be opened in the 2008/09 season have been agreed in the interim EPAs and the full Caribbean EPA, amounting to 230,000 tonnes in all (of which 80,000 tonnes are available for the non-LDC exporters).[12] Despite the larger ceiling of 1.6 million tonnes for non-LDC ACP exporters in the second phase up to 2015, it remains to be seen whether they will be able to take advantage of this, if indeed there is an increase at all, in the light of the ‘dual safeguard’.[13] The Commission’s own estimates of the future EU sugar market balance factor in import quantities of 2.2 million tonnes from LDCs from 2010 onwards, while recognising that the actual volume delivered will depend on whether major investments are undertaken in these economies (European Commission 2007b). The balance of 1.3 million tonnes under the ‘dual safeguard’ ceiling of 3.5 million tonnes is exactly the current SP quantity. Only a tiny proportion of this is currently supplied by LDCs (Madagascar, Malawi and Tanzania) so, even if some non-LDC exporters no longer find it worthwhile to continue exporting their quota quantities to the EU market,[14] the room available for additional supplies from other non-LDC exporters will be limited. This room would be further squeezed if LDC exports increase at a faster rate than expected. Press reports suggest that Illova plans to

[10] The volume ceilings for non-LDC ACP countries are 1.38 million tonnes in the marketing year 2009/10; 1.45 million tonnes in 2010/11; and 1.6 million tonnes from 2011/12 for the following four seasons. The ceiling for imports originating in all ACP states is 3.5 million tonnes in each year. The ceilings for imports from non-LDC ACPs may be further subdivided by region.

[11] In the case of sugar, a safeguard measure can be imposed if the average Community market price for white sugar falls during two consecutive months below 80 per cent of the average Community market price prevailing during the previous marketing year.

[12] See CTA (2008) for details on how these figures are broken down by region and country.

[13] See also the discussion in Stevens *et al*. 2008.

[14] Already, Trinidad and Tobago and St. Kitts & Nevis have decided to discontinue sugar production for export to the EU.

increase its production in southern Africa, mainly in LDCs, from 5 million tonnes currently to 8.5 to 9 million tonnes.[15] If this increase materialized and was largely destined for the EU market, there is even the possibility that non-LDC ACP exporters could be squeezed out of the EU market until after 2015.

Future developments

ACP countries argue that any potential benefits for non-LDC ACP countries depend on the continuation of high protection of the EU market and thus a high margin of preference against other third country suppliers. A number of factors could result in a further reduction in the EU's sugar protection, leading to the erosion of the expected benefits to ACP non-LDC countries from EPAs. These include further internal CAP reform to balance the EU sugar market, a successful outcome to the WTO Doha Round leading to a cut in sugar tariffs, or the conclusion of a free trade agreement with a country or region with significant sugar exports (Mercosur or India come to mind). For these developments to adversely affect ACP exporters, then the returns they receive must be related to the EU market price. We have argued that, given the market structure for cane sugar imports after the ending of the price floor arrangement after 2012, it is likely that ACP export prices will be depressed below the EU market price, if not entirely to the level of the world market price. Thus, much of the feared preference erosion is already foreseen in the EPA agreement, but these other factors could make this situation even worse.

The EU undertook a fundamental review of the common organization of its sugar market in 2005. Under this reform, the EU intervention price will be cut by 36 per cent over the four years 2006-10. The reference price for raw sugar imports under the SP was also cut in tandem by 36 per cent. Estimates suggest that the loss of export earnings to SP exporters could amount to 250 million euros, and even more if some exporters drop out of the market because the EU price no longer covers their production costs (Chaplin and Matthews 2006). The impact of the reform in eroding the preferential rents of SP exporters was recognized by the EU which made available a funding package of 1.2 billion euros over the period 2007-13 to assist countries to improve the competitiveness of their sugar industry or to diversify into other activities.

[15] Reported online at <http://agritrade.cta.int/en/commodities/sugar_sector/news> (accessed 28 June 2008).

Under the reform, it is planned to abolish intervention agencies by the end of the 2009/10 marketing year, replacing their role by a system of private storage. This could potentially lead to weaker EU market prices in a situation of over-supply. Although there is uncertainty over the volume of imports from EBA countries, the ethanol market for sugar beet will help to absorb some surplus EU production and is expected to attract an amount equivalent to the EBA imports of white sugar equivalent (European Commission 2007b). Nonetheless, sugar stocks are expected to remain high until 2010, and the Commission projects that there will be considerable pressure for supply adjustment in 2011 and 2012.

The second challenge to the value of ACP preferences in EPAs would have been a WTO Doha Round agreement leading to a substantial reduction in EU sugar tariffs. Following the collapse of the Doha Round negotiations in Geneva in July 2008, no agreement is likely in the near future, so the EU will not be under any immediate pressure to cut these tariffs. However, if future negotiations take up where the Geneva talks stalled, the deal which was on the table at that point provides some pointers to what might be expected if a deal is ever reached.

The ad valorem equivalent of EU sugar duties is a substantial 130.3 per cent on cane sugar for refining and an even higher 161.1 per cent tariff on white sugar. Currently, there may be some water in these tariffs given the reduction in the internal market price and the EU's continued reliance on exports to balance its markets.[16] These tariffs would fall into the top tier of tariff reductions outlined in the draft of the Falconer modalities circulated in May 2008 (WTO 2008a). While the exact size of the tariff reduction to be applied in this tier was not agreed, the bracketed figures suggest cuts of the order of 68-73 per cent. In addition, the future of the Special Safeguard Mechanism (SSM) which allows the EU to impose additional duties if the import price of sugar falls below the average in the 1986-88 period was not decided. If the EU no longer had access to an effective SSM, it would likely apply sensitive product status to sugar, in which case the required tariff reduction would be between one-third and two-thirds of these reductions, but with a corresponding obligation to provide additional market access in the form of a tariff rate quota (Fischer Boel 2008). Depending on the size of the cut this could necessitate a sugar TRQ of between 485,000 and 675,000 tonnes (op. cit.).

[16] Water in the tariff means that the tariff could be lowered without immediately affecting the price received by domestic producers.

The situation is complicated by further provisions in the draft modalities concerning tropical and preference products. The provisions are designed to accelerate liberalization of tropical products – alternative proposals suggest imports could be subject to a range of cuts significantly higher than those envisaged for tariffs in the top tier. On the other hand, there would be slower liberalization for products with long-standing preferences – alternative proposals suggest either a two or ten-year delay in starting tariff cuts. Where the two overlap, the tropical products provisions could override those of preferences, except for some products (still to be identified). Sugar appeared only on the preference list, although some members were pushing for it also to be defined as a tropical product. However, in the unsuccessful Geneva negotiations, the Latin American countries apparently agreed to allow sugar to be treated as a preference product provided agreement was reached with the EU to significantly cut its banana tariff. Nonetheless, the potential for further preference erosion from a Doha Round agreement exists if negotiations resume in the future. This would be exacerbated if a bilateral trade agreement with Mercosur or India (which is an SP signatory) and which are both currently negotiating a free trade agreement with the EU) were to open up a large TRQ for additional sugar imports from these sources.

THE BANANA PROTOCOL

Article I of Protocol 5 to the Fourth Lomé Convention signed in 1990 stated that:

> In respect of its banana exports to the Community markets, no ACP State shall be placed, as regards access to its traditional markets and its advantages on those markets, in a less favourable situation than in the past or at present.

The context for this declaration was the forthcoming negotiation of a common organization of the market for EU bananas to replace various national trade regimes as part of the EU’s move towards a single market in 1993. The Article implies a legal obligation on the part of the EU to maintain access to EU markets for bananas from traditional ACP exporters on at least as favourable a basis as had been enjoyed by those exporters up to the signing of the Convention in 1990. Article 2 of the banana protocol provides for activities to ‘improve the conditions for the production and marketing of bananas’, and mentions research, harvesting, packaging and handling, internal transport and storage, marketing and trade promotion. The balance between securing access to the EU market through addressing long-term competitiveness issues or through trade preferences has always been a difficult one for the ACP beneficiaries to maintain (McQueen *et al.* 1997).

When the Cotonou Agreement came to be negotiated, the ACP banana preferences under Lomé had already been struck down by a WTO dispute panel (see below). Both sides agreed that it was not possible to maintain the banana protocol contained in Lomé IV providing for preferential access to the Community market (Huber 2000). The Second Banana Protocol attached to the Cotonou Agreement therefore does not contain any specific provisions on market access. Instead, the Second Banana Protocol attached to the Cotonou Agreement replaced the previous Article 1 as follows:

> The Parties recognize the overwhelming economic importance to the ACP banana suppliers of their exports to the Community market. The Community agrees to examine and where necessary take measures aimed at ensuring the continued viability of their banana export industries and the continuing outlet for their bananas on the Community market.

Arguably, given the high cost structure of many traditional ACP exporters particularly in the Caribbean, this commitment implied the continuation of preferential treatment even if it was not stated explicitly.

This preferential treatment was delivered through the common organization of the market for bananas. The single market regime established in 1993 was designed to ensure that traditional ACP suppliers retained equivalent benefits under that common regime. The regime consisted of a tariff-free quota for traditional ACP exporters (initially split on a country-specific basis) and a tariff-quota at a low in-quota duty for Latin American exporters, while non-traditional imports from ACP and third country imports in excess of these quotas were subject to punitive import duties. In addition, a licensing system for the imports of Latin American bananas allocated 30 per cent to operators marketing EU and traditional ACP bananas which provided a further encouragement to import ACP bananas. An important difference with the SP was that the ACP banana quota had no guaranteed price or obligation to buy provisions.

This regime was challenged in 1996 in the WTO by Ecuador, Guatemala, Honduras, Mexico and the US (the latter defending the interests of its companies which had invested heavily in the banana industry of the Latin American countries). The case became known as Bananas III given that the EU had already defended two previous banana disputes under the General Agreement on Tariffs and Trade (GATT). In 1997, the WTO ruled in favour of the complainant countries, finding that the EU regime violated a number of GATT and General Agreement on Trade in Services (GATS) provisions, including in particular non-discrimination and national treatment.

In the run-up to the start of the Doha Round negotiations in 2001, two ‘Understandings’ with Ecuador and the US on the implementation of Bananas III were reached. On foot of these Understandings, the EU was granted two waivers at the WTO Doha Ministerial Council meeting in 2001. The first waiver (the ‘Cotonou’ waiver) covered the grant of tariff preferences to ACP countries, including for the import of bananas, under the Cotonou Agreement until 1 January 2008. It also provided for the introduction of a tariff-only regime for bananas no later than 1 January 2006 and incorporated the EU’s assurance that this regime would ‘at least maintain total market access for most favoured nation (MFN) banana suppliers’ (WTO 2001a). The second ‘banana’ waiver covered the reservation of a duty-free tariff rate quota for ACP bananas until 1 January 2006 (WTO 2001b).

The EU banana regime underwent several modifications between 1993 and 2004 in response to these and other changes, such as EU enlargement. Thus, on the eve of the new tariff-only regime introduced in 2006, the ACP duty-free quota (now open to any ACP country) amounted to 777,500 tonnes. The MFN (Latin American) quota had increased from its original 2,200,000 tonnes to 2,700,000 tonnes on which a low tariff of 75 euros per tonne was paid. The out-of-quota tariff was 680 euros per tonne with a tariff preference of 300 euros per tonne for ACP out-of-quota exports. Also in 2001 the EU introduced its EBA scheme which provided for duty-free access for all exports except arms from least developed countries, with transition periods for bananas as well as rice and sugar (Council Regulation (EC) No. 416/2001 of 28 February 2001). The transition period for bananas ended on 1 January 2006 and since that date all LDCs, whether an ACP country or not, enjoy duty-free access to the EU market for bananas.

In January 2005, the EU proposed a 230 euros per tonne tariff on bananas imported from MFN countries[17] while stating that the preference regime for ACP exporters would be maintained without specifying this preference regime in more detail.[18] The proposed tariff was based on the 'price gap' methodology set out in the Uruguay Round Agreement for calculating the tariff equivalent of complex forms of protection (Anania, 2006).[19] This compared to the 75 euros per tonne tariff on imports within the MFN quota previously. This tariff was appealed by Latin American countries to the WTO. The arbitrator found that, while the price gap methodology would be appropriate to determine the equivalent level of protection to the domestic EU industry and to maintain a constant total level of banana imports, it failed to take into account the impact which the increased margin of preference for ACP suppliers would have on the relative competitiveness of ACP and MFN suppliers on the EU market. The arbitrator therefore ruled that the proposed regime did not satisfy the requirement to at least maintain total market access for the MFN banana suppliers. In September 2005, the EU proposed a significantly lower MFN tariff (187 euros per tonne) along with a duty-free quota of 775,000 tonnes for ACP suppliers. This was again appealed by the Latin American exporters and struck down by the arbitrator.

Following the arbitrator's second ruling, the EU went ahead and introduced its new tariff-only regime for imports of bananas to the EU on 1 January 2006 with a tariff rate of 176 euros per tonne for bananas (Council Regulation (EC) No. 1964/2005). The Regulation continued the grant of an autonomous quota of 775,000 tonnes subject to a zero-duty rate for imports of bananas originating in ACP countries until 31 December 2007. The EU argued that the banana waiver would not be extended beyond that date, nor was it willing to try to seek an extension. In its view, EPAs provided the only mechanism to secure preferential access for ACP bananas after 2007. This view was not shared by the ACP countries, which believed that the EU was using the threat of the withdrawal of the banana (and other) preferences to put pressure on the ACP countries to sign EPAs. Nonetheless, the EU view prevailed and

[17] See the Commission's press release online at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/118&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed 27 March 2008).

[18] 'The EC will maintain a preference for African, Caribbean and Pacific (ACP) countries, in a manner respecting entirely the EU's obligations and commitments towards all interested parties.', op.cit.

[19] The price gap methodology involves calculating the difference between internal and external prices of bananas during a reference period. The difference between the two (i.e., the 'price gap') provides a measure of the level of protection afforded to domestic producers on the market.

the banana protocol ceased to have significance after December 2007 with the grant of unlimited duty-free access to all EPA signatories.

Supply trends on the EU banana market

There were originally twelve countries with preferential access to Europe's banana market under the Banana Protocol. They included seven Caribbean and five African exporters: Ivory Coast, Cameroon, St Lucia, Jamaica, Belize, St Vincent and the Grenadines, Dominica, Suriname, Grenada, Somalia, Cape Verde and Madagascar. The last three African countries all ceased to export bananas to the EU during the 1990s. More recently, the Dominican Republic joined the ACP and Ghana started exporting bananas for the first time. Both were regarded by the EU as 'non-traditional' banana exporters until 2001, but this distinction was abolished in the reform of 2001. At present, the main ACP beneficiaries of banana quotas are Cameroon and Côte d'Ivoire in Africa and the Windward Islands (St Lucia, St Vincent, Dominica) and Belize in the Caribbean. Traditionally, bananas are a highly important export product in the Caribbean, especially in the Windward Islands exporters and Belize. Although banana exports from Cameroon and Cote d'Ivoire have grown in importance, bananas do not play the same role in these economies because of their more diversified export structures. Banana exports to the EU in 2005 accounted for 39 per cent of Dominica's total exports, 33 per cent of the exports of St Lucia and 18 per cent of the exports of the Dominican Republic. For Cameroon and Cote d'Ivoire, the proportions were 9 per cent and 7 per cent, respectively (CTA 2007a).

The trends in the shares of different groups of suppliers are shown in Table 3. There has been a steady if fluctuating increase in EU-25 consumption of bananas from around 4.0 million tonnes in 1999 to 4.8 million tonnes in 2006. The contribution of internal production has been declining both in absolute terms and as a share of the total (from 16 per cent in 1999 to 13 per cent in 2006). Latin American (MFN) exporters have steadily increased their exports. The main MFN countries exporting bananas to the EU in 2006 were Ecuador, Colombia, Costa Rica, Panama, Brazil, Guatemala, Peru, Honduras, Venezuela, Mexico, and Nicaragua.

[insert Table 3 here]

The ACP countries' quota was mostly underused until 2005, but was significantly exceeded in 2006. However, the relative shares of different ACP sources has changed over time (CTA 2007a). There has been a decline in the share of traditional Caribbean island suppliers (including Suriname but excluding Belize which is a low-cost producer) falling from 52.3 per cent of total ACP banana exports in 1992 to 13.7 per cent in 2005. This has been balanced by an increase in African banana exports from 37.4 per cent of the ACP total in 1992 to 60.5 per cent of total ACP banana exports in 2004 but falling back to 57.5 per cent in 2005, and an increase in exports of bananas from the Dominican Republic and Belize from 9.8 per cent of total ACP banana exports in 1992 to 28.8 per cent in 2005. Exports from LDCs have remained tiny. The EU reports that since 2000 only four LDCs (Rwanda, Uganda, Somalia and Cape Verde) have benefited from the EBA preference mainly because only a limited number have the capacity to export bananas (WTO 2008b).

Impact of EPAs on ACP banana exporters

The Commission's market access proposal of 4 April 2007 to remove all remaining quota and tariff restrictions on exports to the EU market following the entry into force of EPA agreements included bananas, although this was initially questioned in the EU Council by France and Spain (Søgaard 2007). When the General Council endorsed the Commission's market access proposal in May 2007, the need to take account of the EU's specific commitment to the outermost regions as well as ongoing trade developments (specifically, WTO panels, the Doha Round negotiations and negotiations with the Central American and Andean countries) was stressed. The Commission was asked to evaluate the impact of DFQF access on EU banana producers and to submit relevant proposals in order to ensure adequate treatment was provided (Council of Ministers 2007c).

Bananas were an issue in the EPA negotiations with three regional groupings. Seven banana exporters are members of CARIFORUM (Dominican Republic, Belize, Suriname, St Lucia, Jamaica, St Vincent and Dominica); two are members of ECOWAS (Cote d'Ivoire and Ghana); and one is a member of CEMAC (Cameroon). In the end, bananas were sufficiently important to the African countries to lead them to break ranks with their regional partners (which were reluctant to sign an interim EPA) and to sign individual interim EPAs. Smith (2008) describes the lobbying activity of the Compagnie Fruitière to persuade the governments in each of the three countries where it has plantations to sign EPAs, to prevent the imposition of the 176 euros per tonne tariff on its exports to the EU.

The economic, and even more so, the legal, consequences of these EPA agreements for ACP banana exporters appear to be positive. The economic consequences arise because countries that sign interim or full EPAs now have full duty-free and quota free access to the EU market. The previous duty-free quota of 875,000 tonnes has been lifted and supplier countries are free to export to the EU whatever quantity of bananas they find profitable. As in the case of sugar, this is principally a benefit to non-LDC ACP countries given that the LDCs have this access under the EBA. The value of this additional preferential market access in both cases will depend on the extent of continued protection against low-cost dollar bananas. The Caribbean exporters, in particular, fear that further erosion of the EU preference margin would undermine the profitability of their industry.

However, perhaps the more important consequence of EPAs, in the longer term, is their legal implications. We have seen how the discriminatory nature of the ACP preferences has been continually attacked by the Latin American exporters and the US through the WTO dispute mechanism. The EU and ACP countries believe that incorporating their banana trade arrangements into EPAs will remove the basis for further WTO challenges, given that EPAs provide a WTO-compatible basis for trade preferences for the non-LDC ACP exporters The question is whether the Latin American countries (and the banana multinational companies operating in them) will be prepared to accept this, or whether they will attempt to challenge the WTO-compatibility of the EPAs themselves because they continue the discrimination against them in the banana sector? The compatibility of a free trade agreement with GATT rules has never been tested, and such a challenge would have significant reverberations for the world trading system.

Future developments

Securing the legal certainty of the banana preferences would be a pyrrhic victory if those preferences suffer continued erosion. This is the nightmare scenario feared by the ACP exporters. On the positive side, the EU banana regime underwent a further reform in 2007 when the previous scheme of compensatory payments to EU banana producers was replaced by more general aids. The resulting fall in the effective price for bananas is expected to lead to a drop in EU production and a consequent increase in EU imports (European Commission 2006) which some ACP exporters will be in a position to supply. However, the unresolved disagreement over the appropriate level of the EU tariff on MFN bananas; the treatment of bananas in the WTO Doha Round negotiations; and the impact of a potential free trade area agreement between the EU and Central America, could all lead to further preference erosion.

The Doha Cotonou waiver recognized that any rebinding of the EU's tariff on bananas 'should result in at least maintaining total market access for MFN banana suppliers'. Ecuador and the US complained that the EU tariff-only regime introduced in 2006 more than doubled the MFN tariff from 75 to 176 euros per tonne, while also reducing by more than half the ACP out-of-quota tariff from 380 to 176 euros per tonne and increasing the zero tariff quota for bananas from ACP countries from 750,000 to 775,000 tonnes. The panel noted that the EU's commitment in its WTO schedule with regard to bananas consists of a tariff binding of 680 euros per tonne as well as a tariff quota for 2.2 million tonnes at a bound in-quota tariff rate of 75 euros per tonne. It observed that no allowance is made in the new tariff-only regime for the maintenance of a tariff quota for the importation of bananas from MFN countries at rates below the 176 euros per tonne tariff duty. It therefore concluded that the imposition of the 176 euros per tonne tariff without consideration of the tariff quota for 2.2 million tonnes bound at an in-quota tariff rate of 75 euros per tonne must be considered to be an ordinary customs duty in excess of that set out in Part I of the EU's Schedule (WTO 2008b).

This reasoning, which appears to ignore the EU's approach of trying to 'average' the protective effect of the complex TRQ system using the 'price wedge' methodology used in the Uruguay Round, invites the EU to revert to a TRQ arrangement for the import of MFN bananas. If re-opening a TRQ of 2.2 million tonnes for Latin American exporters is the price of peace, it would hardly disturb the EU's banana market given the existence of out-of-quota imports (although there would be a redistribution of EU tariff revenue to the exporting countries or, more likely, the exporting companies). However, there is little interest by either side in a re-introduction of a banana TRQ for Latin American exporters.

The EU tariff on bananas was vigorously contested in the Doha Round negotiations in Geneva in July 2008. The EU banana bound tariff has been set at an ad valorem equivalent of 117.1 per cent, which would put it into the top tier under the tariff reduction formula likely to emerge. The Falconer draft circulated in May 2008 suggests a reduction of between 66-73 per cent in this top tier (WTO 2008a). This would reduce the current MFN bound rate of 680 euros per tonne to between 183.6 and 217.6 euros per tonne. However, this reduction in the MFN bound tariff would have no effect on the MFN tariff currently applied. Again, the situation was complicated by the further provisions in the Falconer draft modalities concerning tropical and preference products discussed earlier in the case of sugar. Bananas appeared both on the tropical products list (slated for more vigorous liberalization) and the preference list (slated for slower liberalization). In the event, the EU and Latin American countries negotiated a bilateral deal which, despite ACP apprehensions and opposition, would likely have formed part of a Doha Round agreement if the July 2008 negotiations had been successful.

The agreement was based on an initial proposal by the WTO Director-General that the EU would gradually reduce its import tariff for Latin American bananas to 116 euros per tonne by 2015 with a downpayment of 26 euros, implying a 2009 tariff of 150 euros. ACP countries accepted the final tariff level but wanted it introduced from 2020 rather than 2015. Latin American exporters held out for more, and the EU eventually agreed to a final tariff of 114 euros by 2016, with a downpayment of 28 euros in 2009. ACP countries were equally unhappy with this offer, seeking financial support to compensate for the export revenues lost as well as a two- or three-year grace period before EU tariffs were lowered. With the collapse of the negotiations, no definitive conclusion was reached. However, the EU remains in breach of its WTO obligations in the light of the arbitrator’s finding, so it remains possible that the Geneva agreement will form the basis for a bilateral settlement to this dispute. This would result in further significant preference erosion for ACP banana exporters.

In addition, the EU has made clear its interest in pursuing bilateral trade agreements and it may now intensify these efforts given the collapse of the Doha Round. Negotiations are currently underway for an EU-Central America free trade agreement with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama. These countries are substantial banana exporters and are looking for tariff concessions on bananas as a quid pro quo for reciprocal tariff cuts on their part. Although bananas have not been included in the EU’s first market access offer as of June 2008, it seems inevitable that the EU will have to make concessions in this area if it wants a successful conclusion to these negotiations. This would most likely take the form of an increased TRQ for these banana exporters. However, if bananas imported under the TRQ simply displace MFN bananas, no further preference erosion would take place. We thus conclude that preference erosion has taken place as a result of the introduction of the tariff-only regime in 2006, and preferences will be further reduced as part of the settlement of the WTO dispute with Latin American exporters. However, foregoing EPAs would not avoid this outcome. Indeed, EPAs provide the opportunity for additional market access for those ACP exporters (mainly but not only in Africa) capable of competing on the EU market at the lower price.

The beef protocol

The beef protocol was introduced in 1976 granting preferential access for a specific quantity of beef from designated African States. This regime is of less significance to ACP states than the sugar or banana protocols. Only six countries currently have access to the beef protocol - all six are African nations. The protocol allowed the African countries to sell specified quantities of beef at a much reduced import duty – the total quantity amounted to 52,100 tonnes.

The EU import regime for beef consists of an ad valorem tariff and a specific charge per tonne. Following the phasing in of the Uruguay Round reductions, these have amounted to a 12.8 per cent ad valorem tariff plus a specific tariff of 1,768 euros per tonne for beef carcases. The specific duty rises to 3,034 euros on boneless cuts which are the relevant product for ACP exporters.[20] The duty imposed on ACP countries for beef exported within the quota is 0 per cent plus 242 euros per tonne, which implies a 92 per cent tariff reduction. Where a country did not fill its quota in one year due to unforeseen circumstances, its quota could be expanded by this amount in the following year. Also, quota unused because one exporter could not meet EU standards could be reallocated to another exporter.[21] The division of the quota between the six countries is shown in Table 4.

[insert Table 4 here]

[20] The EU insists on deboning as a precaution against foot-and-mouth disease.

[21] Protocol 4, Articles 3 and 4 of the Cotonou Agreement.

Despite these favourable import arrangements, the African countries do not manage to fill their quotas. Three countries – Kenya, Madagascar and Zimbabwe – have been unable to access their quota because of their inability to comply with the strict sanitary standards for export to the EU market. Kenya has only supplied beef in one year, 1992. Madagascar has not supplied any beef to the EU since 1998. Zimbabwe has not supplied the EU market since 2002 and the outbreak of foot-and-mouth disease (CTA 2007b). ODI (2007a) estimate that over the 1994-2006 period, Botswana fulfilled on average 55 per cent of its quota, Namibia fulfilled 71 per cent and Swaziland fulfilled just 10 per cent of it quota. Swaziland last exported in 2004. Thus only Botswana and Namibia have been able to benefit in recent years. In the case of both these countries, it is reported that the major constraints in filling the quota have been environmental constraints and the limited number of high quality cattle to source the premium meat cuts which are the only marketable product in the EU (ODI 2007a and 2007b) .

Because these are specific quotas allocated to individual countries, the benefit of the quota rents accrue to the exporters. Botswana beef is exported by the parastatal Botswana Meat Corporation which has the sole right to export meat, while Namibian beef also has a sole exporter Meatco. Botswanan beef is sold to an EU firm which is owned by the BMC and it also handled Namibian beef exports to the EU until recently. These arrangements ensure that the value of the quota rent is passed back to the exporters. The value of beef preferences has reduced over time with the implementation of CAP reform (some evidence on the adverse impact on the unit value of Botswanan and Namibian beef exports is presented in CTA 2007b). Recent estimates based on the value of the tariffs foregone on current export volumes suggest that the value of these preferences amounted to 30.8 million euros in the case of Namibia and 19.8 million euros for Botswana in 2006 (ODI 2007a, 2007b).[22] These figures over-estimate the actual benefit of the preferences to these countries because of their high unit export costs, which mean that they would not be able to maintain exports to the EU at the out-of-quota tariff which these calculations assume.

What will now be the effect of duty-free access to the EU market for all beef exports? Observing that none of the six current beneficiaries of the beef protocol can fill their existing quotas, in the short run there is no reason to suppose that beef

[22] Botswana's beef exports were abnormally low in 2006. The tariff revenue saved averaged over the 1996-2006 period would amount to 36.3 million euros (ODI 2007a).

exports will increase. Thus, the main initial benefit will be the removal of the remaining 8 per cent tariff levied on existing beef protocol exports. This benefit for Botswana and Namibia might amount to around 5 million euros annually (based on estimates in ODI 2007a). In the longer term, the benefits of the EPA offer will depend on the volume of exports which will be determined, in turn, by the profitability of exporting. ODI (2007) have made illustrative projections of alternative scenarios in the case of Botswana without giving judgement on the plausibility of any one of them. In its pessimistic scenario, the growth of domestic demand for beef combined with static production would lead to a greater focus on the local and regional markets which are less demanding to supply, with the likelihood that exports to the EU would decline. Its more optimistic scenario would see the establishment of feedlots to encourage a shift from a low-off-take oxen production system to a high off-take weaner and feedlot system which would help to increase the supply of high-quality cattle. This is the preferred strategy in Botswana's national development plan, but its feasibility remains to be demonstrated.

The EPA market access offer means that the benefit of DFQF access to the EU market is no longer confined to the beef protocol beneficiaries. Africa has a significant cattle population, but it faces formidable obstacles in developing export-oriented beef production to the EU due to the EU's strict sanitary requirements. In this context, it is significant that there has been no development of beef exports from LDCs which have enjoyed duty-free access for beef to the EU market since 2001. EU imports of beef must comply with three requirements (CTA 2007b). First, the exporting country must be recognized as eligible to export, which means it is free of certain diseases. Because of endemic cattle diseases such as foot and mouth disease (FMD), contagious bovine pleuropneumonia (CBPP) and east coast fever (ECF), most African countries cannot pass this first hurdle. Second, individual processing establishments must be certified as eligible to export to the EU. Establishments exporting meat must also comply with Directive 93/119/EC on animal welfare. An EU survey concluded in 2002 that only five African countries (Botswana, Cape Verde, Namibia, South Africa and Swaziland) had some sort of animal welfare protection rules or industry guidelines. Third, animal health certificates provided by the local competent authority must accompany all individual consignments of beef to indicate that they meet EU standards. Strict requirements for the use of hormones and other substances such as antibiotics, as well as for maximum allowable residues, must be observed. Laboratories must comply with EU standards. Traceability must be in place for cattle destined for export. As a result, only a handful of countries (Botswana, Namibia, South Africa, Swaziland, Zimbabwe) are allowed to export some meat products to the EU.

As for the other protocol commodities, multilateral liberalization combined with CAP reform will result in the EU becoming a less remunerative market in future years. Existing beef suppliers such as Botswana and Namibia are already high cost suppliers, and are not competitive with Latin American beef exporters. Our conclusion, therefore, is that it is very unlikely the EPA offer will lead to an expansion in beef exports in the near future; its main benefit will be the transfer of the remaining tariff duties, worth about 5 million euros, to Botswana and Namibia if they can maintain the current average level of beef exports.

CONCLUSIONS

With the entry into force of the EPAs at the beginning of 2008, the three commodity protocols which benefited ACP exporters of sugar, bananas and beef came to an end, albeit with transitional arrangements for sugar. The purpose of this chapter was to review the reasons why these protocols were terminated, and to evaluate the combined effect of their termination together with the opening of DFQF access for EPA signatories to the EU market for these commodities.

The termination of the SP was the most contested of the three, principally because of its provisions which guaranteed a market at a guaranteed price to the SP signatories. Neither the banana nor beef protocols contained these guarantees, and were thus easier to assimilate into the EPA trading regime. The ACP countries argued that the EU could have maintained the protocol benefits as part of the Cotonou discriminatory preferences by seeking a further waiver from the WTO. Instead, the EU argued that the way to maintain the benefits was to embed them within the framework of WTO-compatible free trade arrangements in the form of EPAs. In this context, its reasons for denouncing the SP were not based on legal argument but had more to do with eliminating discrimination between different individual EPA signatories in the context of EPAs, as well as simplification of the sugar regime and making easier the achievement of a balanced sugar market. Its view was that any losses to ACP countries from termination would be compensated by the extension of DFQF access to the EU market.

Indeed, this is the case for bananas and beef. However, because of SPS barriers, the extension of DFQF access for beef is largely notional. The benefits are much more real in the case of bananas. The value of the banana preferences was considerably eroded in 2006 when the EU complied with the terms of the Doha Cotonou waiver and introduced a tariff-only regime. Indeed, some Caribbean exporters ceased exporting to the EU as a result. Further preference erosion will take place as part of the settlement of the WTO dispute with Latin American exporters. In this scenario, high-cost Caribbean producers face an enormous challenge in improving their competitiveness and/or seeking to obtain a premium price by concentrating on 'fair trade' bananas. However, the African producers have a favourable platform from which to increase production and exports in the medium-term.

The story for sugar is less promising. The ending of the guaranteed minimum price for ACP exports after 2010, together with increased import supply of cane sugar, will lead to a sharp fall in the value of all ACP sugar exports. It is possible that if world sugar markets tighten as part of the general lift in world commodity prices, or in response to increasing biofuel demand, then the EU minimum price would no longer be relevant to ACP exporters. In principle, low-cost producers can compensate for lower prices by expanding exports beyond the SP quotas. However, in the period up to 2015 the 'dual safeguard' could operate not only to limit any increase but even to force a decrease in the current export volumes from non-LDC exporters. Swaziland and Mauritius could be major losers as a result. In these circumstances, there will be a compelling argument to revisit the 'dual safeguard' ceiling. LDC exporters in southern Africa will benefit, even though their access is guaranteed under the EBA scheme regardless of what happens to EPAs. Their anticipated gains were reduced by the 2006 EU sugar reform, although for existing SP exporters, financial compensation worth 1.2 billion euros is being provided by the EU in recognition of the loss in revenues they experienced as a result of this reform. Unlike bananas, the collapse of the Doha Round means that ACP sugar exporters will not face further preference erosion in the near future, as the EU is no longer under immediate pressure to further reduce its sugar tariffs.

Commodity protocols were an example of trade-related aid. Because the quantities benefiting were limited by quotas, the main gain to ACP exporters was the additional rents they earned on protocol exports. For some individual countries with a high dependence on protocol exports, these rents were an important share of overall

GDP. The Protocols helped to sustain high cost production which would not otherwise have been viable. However, the existence of the Protocols, particularly the SP with its guaranteed market at very favourable prices, may have helped to induce some of the high production costs in the first place. While the protocols might have been successful in maintaining exports, they provided little incentive to improve the competitiveness of ACP production. Thus, from a dynamic perspective, some of the short-term gains may have had a longer term cost. Sugar cane yields in ACP sugar producers with EU quotas fell more than 30 percent relative to other developing country sugar producers and more than 20 percent relative to other LDC sugar producers from 1975-79 to 2000-04 (Mitchell 2005). Only in a couple of countries, most notably Mauritius, was it possible to use the rents from sugar production to kick start the diversification of the rest of the economy. They were also heavily criticized for the high cost of the implicit aid transfer. The value of the protocols depended on continued high protection for these commodities on the EU market, which imposed a significant cost on EU consumers and on other developing country exporters. For example, banana preferences cost consumers in the EU about 2 billion US dollars a year, while only 150 million US dollars reaches its target (Borrell 1999). In the case of sugar, it costs the EU and US economies 5.17 US dollars for every dollar of aid delivered to selected countries by preferential access, while 2.75 US dollars of economic damage is imposed on other developing country exporters due to denied access (Borrell and Pearce 1999).

Thus we should not mourn the disappearance of the commodity protocols. They were a relic of a period of dependent development and had outlived their usefulness. EPAs provide some measure of preference but in a market-oriented environment which should help to avoid some of the worst side effects of the SP. They provide a safeguard against further challenges to the commodity preferences in the WTO because they take the form of a WTO-compatible free trade area. In the longer-term, this is a more secure basis for ACP countries on which to build.

References

Anania, G. (2006) ‘The 2005 WTO arbitration and the new EU import regime for bananas: a cut too far?’, *European Review of Agricultural Economics,* 33, 4: 449-84.

Borrell, B. (1999) *Bananas: Straightening Out Bent Ideas on Trade as Aid*, Canberra: Centre for International Economics.

Borrell, B. and Pearce, D. (1999) *Sugar: the Taste Test of Trade Liberalisation*, Canberra: Centre for International Economics.

Chaplin, H. and Matthews, A. (2006) ‘Coping with the Fallout for Preference Receiving Countries from EU Sugar Reform’, *The Estey Centre Journal of International Law and Trade Policy*, 7, 1: 15-31.

Council of Ministers (2007a) ‘Council Regulation Applying the Arrangements for Products Originating in Certain States which are part of the ACP Group of States provided for in agreements establishing, or leading to the establishment of Economic Partnership Agreements’, Regulation (EC) No. 1528/2007, Brussels.

Council of Ministers (2007b) ‘Decision denouncing on behalf of the Community Protocol 3 on ACP sugar appearing in the ACP-EEC Convention of Lomé’, 2007/627/EC, Brussels.

Council of Ministers (2007c) ‘Economic Partnership Agreements (EPAs) - Conclusions of the Council, 15 May 2007’, Brussels. Available online at <http://register.consilium.europa.eu/pdf/en/07/st09/st09560.en07.pdf> (accessed 2 July 2008).

CTA (2007a) ‘Bananas: Executive Brief’. Available online at <http://agritrade.cta.int/en/commodities/banana_sector/executive_brief> (accessed 26 June 2008).

CTA (2007b) 'Beef: Executive Brief'. Available online at <http://agritrade.cta.int/en/commodities/beef_sector/executive_brief> (accessed 26 June 2008).

CTA (2008) 'Sugar: Executive Brief'. Available online at <http://agritrade.cta.int/en/commodities/sugar_sector/executive_brief> (accessed 26 June 2008).

European Commission (2006) 'Towards reform of the aid scheme for Community banana producers: Impact analysis summary', COM(2006)489, 20 September.

European Commission (2007a) 'Background on the EU proposal to denounce the SP and market access for ACP sugar under EPAs', Directorate-General for Trade, 14 September.

European Commission (2007b) 'Prospects for Agricultural Markets and Income in the European Union 2007-2014', Directorate-General for Agriculture and Rural Development, July.

Fautrel V. and Makhan, D. (2007) 'EU-ACP sugar trade and the EPAs: taking the sweet with the sour', *Trade Negotiations Insights*, 6, 6: 3-4.

Fischer Boel, M. (2008) 'The future of the sugar industry in Europe', Speech to the seminar "Sugar and Seed – future perspectives" organised by DANISCO, Copenhagen, 8 May.

Mandelson, P., Michel, L. and Fischer Boel, M. (2007) 'Why has the EU proposed to end the EU-ACP Sugar Protocol?', *The Guyana Chronicle*, 25 July.

Huber, J. (2000) 'The past, present and future ACP-EC trade regime and the WTO', *European Journal of International Law*, 11, 2: 427-38.

Laaksonen, K., Mäki-Fränti P. and Virolainen, M. (2006) 'Lomé Convention, Agriculture and Trade Relations between the EU and the ACP Countries in 1975-2000', TradeAg Working Paper 06/20.

Laurent, E. (2005) 'Commodity protocols, the WTO and EPAs', *Trade Negotiations Insights*, 6, 5: 4-5.

LMC International, Oxford Policy Management (2004) *Safeguarding the Benefits of the Sugar Protocol to ACP countries*, Report prepared for CTA, Netherlands, LMC International and Oxford Policy Management.

McQueen, M., Phillips, C., Hallam, D. and Swinbank, A. (1997) 'The Lomé Banana Protocol', Chapter 8 in ACP-EU Trade and Aid Co-operation Post-Lomé IV, Paper prepared for the Summit of ACP Heads of State and Government, Libreville, Gabon, 6-7 November.

Milner, C., Morgan, W., and Zgovu, E. (2004) 'Would All ACP Sugar Protocol Exporters Lose from Sugar Liberalisation?', *The European Journal of Development Research*, 16, 4: 790-808.

Mitchell, D. (2005) 'Sugar preferences – more harm than good?', *The International Development Magazine*, December.

O'Connor and Company (2004) *Report on the WTO Aspects of the ACP Sugar Protocol*, Annex 8 to LMC International, Oxford Policy Management (2004) *Safeguarding the Benefits of the Sugar Protocol to ACP countries*, Report prepared for CTA, Netherlands, LMC International and Oxford Policy Management.

ODI (2007a) 'Analysis of the Economic and Social Effects of Botswana's Loss of Preferential Market Access for Beef Exports to the European Union', London: Overseas Development Institute.

ODI (2007b) ‘Analysis of the Economic and Social Effects of Namibia’s Potential Loss of Current Preference to the European Union’, London: Overseas Development Institute.

Smith, A. (2008) ‘The usual last-minute banana peels’, *Trade Negotiations Insights*, 7, 1: 11.

South Centre (2007) ‘The Reform of the EU Sugar Sector: Implications for ACP countries and EPA Negotiations’, Geneva: South Centre. Available online at < http://www.southcentre.org/index.php?option=com_content&task=view&id=597&Itemid=67> (accessed 4 July 2008).

Søgaard, K. (2007) ‘New chapters in EU banana dispute underway as EPA negotiations speed up’, *Trade Negotiations Insights*, 6, 3: 1-2.

Stevens, C., Meyn, M. and Kennan, J. (2008) ‘EU Duty-Free and Quota-Free Market Access – What is it worth for ACP countries in 2008 and beyond?’, London: Overseas Development Institute.

Swedish Board of Agriculture (2006) ‘Agriculture and Development in the EPA Negotiations’, Rapport 2006: 32E, Stockholm.

WTO (2001a) ‘European Communities – The ACP-EC partnership agreement’, WT/MIN(01)/15. Ministerial Conference, Fourth session, Doha Decision of 14 November.

WTO (2001b) ‘European Communities – transitional regime for the EC autonomous tariff rate quotas on imports of bananas’, WT/MIN(01)/16. Ministerial Conference, Fourth session, Doha Decision of 14 November.

WTO (2008a) ‘Revised draft modalities for agriculture’, TN/AG/W/4/Rev.2, 19 May.

WTO (2008b) ‘European Communities – regime for the importation, sale and distribution of bananas’, Second Recourse to Article 21.5 of the DSU by Ecuador, WT/DS27/RW2/ECU, 7 April.

Table 1. ACP countries benefiting from the Commodity Protocols

	Sugar	Bananas	Beef/veal	(Rum)
Africa	Congo-Brazzaville Cote d'Ivoire Kenya *Madagascar* *Malawi* Mauritius Swaziland *Tanzania* *Uganda* Zambia Zimbabwe	Cameroon *Cape Verde* Cote d'Ivoire *Madagascar* *Somalia*	Botswana Kenya *Madagascar* Namibia Swaziland Zimbabwe	*(Madagascar)* (Mauritius)
Caribbean	Barbados Belize Guyana Jamaica St. Kitts & Nevis Suriname Trinidad & Tobago	Belize Dominica Grenada Jamaica St Lucia St Vincent & Grenada Suriname	-	(Bahamas) (Barbados) (Dominican Republic) (Guyana) (Jamaica) (Trinidad & Tobago)
Pacific	Fiji	-	-	(Fiji)

Source: Swedish Board of Agriculture, 2006. Least developed countries are italicized.

Table 2 . ACP sugar quotas under the Sugar Protocol

Country	Quota (tonnes)	Total sugar revenue as % of GDP	Total directly employed
Barbados	50,312	1.7	3,500
Belize	40,348	10.5	9,000
Congo	10,186	n/a	2,000
Fiji	165,348	10.8	35,000
Guyana	159,410	26	23,500
Cote d'Ivoire	10,186	0.9	5,000
Jamaica	118,696	2.6	42,000
Kenya*	0	n/a	n/a
Madagascar	10,760	3.9	9,000
Malawi	20,824	3.5	14,400
Mauritius	491,030	7	37,000
St Kitts & Nevis	15,590	49	3,100
Suriname	0	n/a	n/a
Tanzania	10,186	3.1	32,000
Uganda	0	n/a	n/a
Zambia	0	2.3	8,000
Zimbabwe	30,244	2.7	25,000
Total	1,294,700		

Note: * 0 indicates a signatory to the Protocol but with no quota

Source: Laaksonen *et al.* 2006.

Table 3 . Total sales of bananas in the EU-25 (tonnes)

Origin	1999	2000	2001	2002	2003	2004	2005	2006
EU	742,804	790,675	777,068	801,122	765,416	758,206	648,375	641,754
(share of total)	15.8	16.9	17.1	17.4	16.3	16.4	14.8	13.3
ACP	688,707	771,857	748,779	739,825	799,896	784,427	763,675	891,218
(share of total)	17.4	16.5	16.5	16.0	17.0	17.0	17.5	18.5
Non-LDC	688.158	771,451	748,181	739,483	798,538	783,810	763,675	891,133
LDC - other	549	406	598	342	1,358	617	0	85
Non-ACP LDC	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
MFN	2,521,823	3,119,605	3,015,474	3,073,124	3,143,631	3,078,430	2,963,745	3,293,679
(share of total)	63.8	66.6	66.4	66.6	66.8	66.6	67.7	68.2
Total	3,953,334	4,683,137	4,541, 321	4,614,071	4,708,943	4,621,063	4,375,795	4,826, 651

Source: WTO (2008b). The table is based on figures provided by the EU as part of its defence against the complaint by Ecuador against its tariff-only regime. For 1999, Ecuador provided higher figures than the EU which would lead to an increase in the MFN total to 2,889,441 and an increase in total EU sales of 4,330,952.

Table 4 . Quota allowances under the Cotonou Beef Protocol

Country	Quota allowance Tonnes
Botswana	18 916
Kenya	142
Madagascar	7 579
Namibia	3 363
Swaziland	9 100
Zimbabwe	13 000

Source: Article 2, Protocol 4 Beef and Veal, Annex 5, Cotonou Agreement. Allowances are expressed in terms of boneless beef.

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