

What Future for Lomé's Commodity Protocols?

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"First it was the banana protocol, now rum, sugar is likely next, one by one they are falling. The protocols are part of the EU's commitment to the ACP and are vital to their economies and to allow them space to diversify and integrate into the world economy. Flexibility in WTO interpretation and application is possible if the political will exists. Otherwise ACP producers are caught in the middle of a bigger battle between bigger powers with their interests taken insufficiently into account."

Tony Cunningham MEP, speaking at a meeting of the Development Committee of the European Parliament with the EU Development Council President-in-Office, Mrs. Ferrero-Waldner (Austria) on November 24th 1998.

Summary

The Lomé Convention, a trade and development cooperation agreement between the European Union (EU) and 71 countries in Africa, the Caribbean and the Pacific (ACP), will expire on February 28th 2000. The current Convention (Lomé IV) covers 1990-2000 and negotiations for a new agreement began on 30 September 1998. However, nine months before Lomé-IV expires, there remains much uncertainty over the future agreement.

The most contentious issues include the future of the four commodity protocols annexed to the Lomé Convention. Since 1975, these have extended duty free access to the European market for fixed quantities of exports from "traditional" ACP suppliers of bananas, beef/veal, rum and sugar. For many ACP states, these are the most valuable elements of Lomé, generating substantial foreign exchange revenue and employment, as well as other less tangible benefits. Despite only 29 of the 71 ACP countries benefitting from the protocols, the contribution to the foreign exchange earnings of the ACP group as a whole is considerable (9% of the group's total exports to the EU in 1998).

Since Lomé IV was signed in 1990, the global context for ACP-EU relations has undergone substantial change. The pace of this change is likely to accelerate further during the next decade, with a new round of multilateral trade negotiations (the "Millennium Round") to be launched at the end of 1999. ACP states may no longer have "first call" on Europe's development priorities as it continues to reform its Common Agricultural Policy (CAP) in preparation for its enlargement to include new members from Central and Eastern Europe. The 1992 Maastricht Treaty also committed the EU to harmonise its development policy towards all developing countries — including the ACP — in pursuit of *"the smooth and gradual integration of developing countries into the world economy"*.

Beyond this, the creation of the World Trade Organisation (WTO) in 1994 has set the parameters for a rules-based trading system, inducing a dramatic cultural shift away from Lomé-type preferences towards regulated, non-discriminatory, free trade. Lomé's preferential trade arrangements have been opened up to the scrutiny of WTO members, including developing countries outside Lomé, who have been disadvantaged as a result. As the dispute over the EU banana regime has shown, the EU now has to "play by the rules" of the WTO. How it honours its commitments to the ACP is therefore no longer a matter for Brussels alone.

These factors have already begun to affect the EU regimes covering the protocols and to erode their value for ACP suppliers. However, each of them has reached a different stage along the road to open competition. Recent events concerning the EU banana regime have been well publicised. Less so, the EU-US "zero for zero" agreement on distilled spirits that signalled the end of the rum protocol in its current form. As for ACP earnings from beef and veal, they were reduced by the Agenda 2000 reform of the CAP. Finally, although the benefits of the sugar protocol remain largely intact, few would dispute that change of some kind is imminent. Overall, there is a growing recognition among Lomé actors that it is unlikely that protocols can be retained for ever.

Against this background, the Lomé framework, which commits the EU to address the problem of eroding protocol preferences resulting from general trade liberalisation, may be the best forum to establish a positive agenda for the ACP, with concrete transition plans for each sector. Failing to anticipate forthcoming changes, and to design adequate and timely responses, may cause considerable economic, social and political upheaval in several ACP countries. As the table below shows, many questions remain unanswered. This discussion paper contributes to the reflexion on these issues. It reviews the functioning of the four protocols, assesses the threats to their continuation and highlights the policy challenges confronting the Lomé partners.

Unanswered Questions on the Protocols

Before the expiry of Lomé IV < 29 th February 2000	After the expiry of Lomé IV > 29 th February 2000
<ul style="list-style-type: none"> • What are the consensus points between the ACP and EU on Lomé's protocols? • What are the legal obstacles for renewing the protocols beyond 2000? • For how long could they be renewed? Which parts of the GATS or GATT might need to be waived for a roll-over of the protocols beyond 2000? • Would a roll-over of the bananas, beef and veal, and sugar protocols until 2005 serve the interests of the ACP? Is this what the EU is proposing? • What is the EU's favoured option for each of the protocols? • Is the EU prepared to negotiate an alternative arrangement, or even a new protocol, for ACP rum before 2000? • Will the EU accept the ACP's proposals for rice and tuna protocols or are there any alternatives that would meet the special requirements of these industries? • How might the benefits of the protocols be preserved beyond 2000? 	<ul style="list-style-type: none"> • To what extent can the benefits of the protocols be maintained on the basis of a regional approach? Could the protocols be integrated into regional economic partnership agreements? • What are the legal obstacles to renewing the protocols beyond 2005 / 2010? • What would the protocols gain from being included in a Free Trade Agreement? Would it be best to exclude them under the "substantially all trade" clause of Article XXIV of the GATT? • How can the Lomé partners mitigate the impact of CAP reform and the WTO Millennium Round on the protocols? Is there a way to insulate the protocols from changes to the EU regimes through which they are implemented ? • Would decoupling the sugar protocol from a post Lomé arrangement be the ACP's preferred option? If so, when? Would this be economically and politically feasible? What additional benefits might it bring? • Can the preferential arrangements under the protocols be integrated into an "enhanced" Generalised System of Preferences (GSP)? Can a system of tariff quotas that favour the ACP over other developing countries be integrated into the GSP? • What changes to the GSP are necessary to allow for this? • What other options might permit a continuation of ACP preference under the protocols beyond 2005? What alternatives are available? • When should transitionary arrangements be negotiated with the EU ? What form should these take ?

Introduction

Both the EU and ACP negotiating mandates for a successor agreement to Lomé IV foresee a review of the commodity protocols during the post Lomé negotiations but, as Table 1 shows, there is disagreement on the extent of this. The ACP are clear that they do not wish the sugar protocol to be subject to this review, but that “*in the case of rum it will be necessary to achieve a new arrangement by 2000.*” They also propose that the beef/veal protocol be “*improved*” and that the banana protocol be “*consolidated.*”

The EU is more circumspect and their proposal for a review of the banana, beef/veal and sugar protocols is ambiguous in terms of the timing, perhaps deliberately so. The EU mandate states that, “*The banana, beef and sugar protocols will be reviewed in the context of the negotiation of economic partnership agreements.*” It continues, stating that, “*it is proposed that, for the first five years of the global agreement (2000-2005), the content of the existing trade provisions of the Convention be maintained.*” Does this mean that the EU is prepared to rollover the banana, beef/veal, and sugar protocols until 2005 and then to review them between 2000-2005? This is not explicit in the EU's negotiating directive but clarity is needed if the protocols are to survive in the rapidly evolving international context, as the sequential events listed later in this paper unfold.

At the time of writing, discussions on trade within the post Lomé negotiations have mainly revolved around the EU's offer to negotiate Regional Economic Partnership Agreements (REPAs) with ACP regional groups, sub-regional groupings or individual countries from 2000-2004, for implementation from 2005. The option of an “enhanced” GSP for ACP countries not wanting to enter into REPAs with the EU is also being explored. Meanwhile, the ACP are preparing proposals for “alternative trade arrangements” (ATAs) to be introduced after 2006. However, the debate on these options has yet to address whether the protocols should be integrated into these arrangements and, if so, how this might be structured in a way that preserves their value to the ACP.

The ACP mandate makes clear that, in order to arrive at satisfactory arrangements beyond 2000, consideration must be given to the protocols on a case-by-case basis. Anything less would fall short of the requirements of the ACP rum industries, for example, as the rum protocol has now been superseded by the 1997 “zero for zero” EU-US agreement. Interestingly, ACP exporters of rice and tuna have also requested separate commodity protocols from the EU in a post Lomé IV arrangement.

What are the Protocols?

There is no common definition for “commodity protocols.” In the Lomé context, they enshrine the ACP's preferred status as suppliers of bananas, beef/veal, sugar and rum to the EU market. This is achieved through tariff preference (0% in all cases apart from ACP beef) and quantitative restrictions through tariff quotas, either on ACP-wide basis (bananas¹ and rum) or through country specific quotas (beef/veal, sugar²). The duration of the banana, beef/veal, and rum protocols appears to be limited to the life of Lomé IV. Article 368 confirms this by stating that, “*the protocols annexed to this Convention shall form an integral part thereof.*” Only the sugar protocol is of an “indefinite” duration and has a different legal status.

¹ For bananas, country specific allocations within the ACP tariff quota of 857,700 tonnes were removed by the EU under EC Regulations 1637 and 2362 after the 1997 WTO Panel ruled that they contravened Article XIII of the GATT.

² ACP exporters of sugar also receive tariff quotas for additional quantities of unrefined cane sugar not covered by the sugar protocol, known as special preferential sugar (SPS).

Table 1: Post-Lomé Negotiating Positions on the Protocols

ACP Negotiating Mandate	EU Negotiating Mandate
<p>Many ACP States have derived significant benefits from the protocols. The ACP therefore, proposes that these commodity protocols be maintained and enhanced. However, in the light of changing circumstances and the specific needs of ACP countries, some of the protocols are to be reviewed. In this context, the ACP proposes that:</p> <p>In the case of rum, it is necessary to achieve a new arrangement before 2000, in light of the EU's unilateral decision of 24 March 1997 to eliminate duties on rum between 2000 and 2003. This should include an integrated package of measures to provide transitional protection including marketing and other forms of assistance to enhance the industry's global competitiveness. The position of rum originating from the French overseas departments will be relevant in this regard;</p> <p>For beef/veal, the protocol should be improved to take account of the evolving needs of the ACP countries concerned;</p> <p>The banana protocol will have to be consolidated so that market access and quotas are guaranteed and that there is no adverse impact on the export earnings of ACP banana exporting countries;</p> <p>The special status of the sugar protocol which has a legal identity of its own with its specific guarantees is recognised by all parties concerned and it should, therefore, not be the subject of review during the forthcoming negotiations on a successor Agreement to Lomé IV. However, the impact of the EU's restrictive sugar price policy should be taken into account and the EU should be urged to adopt appropriate measures so as not to jeopardise the massive investment programmes undertaken by the contracting parties to the protocol. This investment is intended to modernise and improve the efficiency and competitiveness of the industries.</p>	<p>The banana, beef and sugar protocols will be reviewed in the context of the negotiation of economic partnership agreements and in accordance with WTO rules, and taking into account the special status of the sugar protocol. Any necessary transition towards alternative agreements, including support for diversification, will be supported by assistance from the European Development Fund (EDF), in accordance with the cooperation strategies defined by the Convention.</p> <p>Given that the present tariff quotas will be abolished by the year 2000, the rum protocol will not be renewed. However, in view of the importance of this product to several ACP countries, the EC is prepared to examine any specific request which might be presented by the ACP with regard to this product.</p>

Source: ACP Secretariat, 1998; EU Council, 1998.

Box 1 - Some History

Lomé's protocols for bananas, beef/veal, sugar and rum allow for duty free access to the EU market for fixed quantities of exports from traditional ACP suppliers, mainly former British and French colonies. These follow on from arrangements made before the First Lomé Convention in 1975 (e.g. Botswana and Swaziland traditionally enjoyed free access to the British market). The United Kingdom in particular had a dominant role in ensuring that these commitments were maintained through the three protocols introduced with the First Lomé Convention in 1975 (bananas, rum and sugar). Lomé I extended preferential treatment to ACP exporters of beef/veal (largely on the insistence of Botswana and Swaziland) and these arrangements were later turned into a protocol.

Rum is the only protocol for which it can be argued that the arrangements have operated against the interests of the ACP. Rum was singled out in the first Lomé Convention of 1975 as the only industrial product of agricultural origin whose duty-free access was restricted by a quota. Writing in 1985, Ravenhill stated that ACP producers “*are in the position of being competitive suppliers denied access to segments of the Community market in order to protect either producers in the French overseas territories or other third-party suppliers.*” He later noted that “*for the other two protocols [bananas and sugar], the compartmentalization of the Community market has worked to safeguard ACP interests.*”

In the case of sugar, the protocol was enshrined in the first Lomé Convention of 1975. The main elements of the Commonwealth Sugar Agreement between the United Kingdom and the countries of the Commonwealth - guarantees of duration, remunerative prices and export quotas - were incorporated into the sugar protocol. By contrast, the Lomé commitment to import ACP bananas only became a European Community concern with the advent of the Single Market in 1993. Previously, at a time when Member States could determine their own banana policy, this rested on a limited number of Member States (UK, France and Italy). As GATT and World Trade Organisation (WTO) complaints since then have shown, the harmonisation of banana policy has proved to be a divisive issue within and outside of the EU and continues to threaten the viability of ACP exports under the banana protocol.

Since 1975, the protocols have been subject to periodic reviews during the successive renegotiations of the Lomé Conventions. Further changes have also taken place on a protocol-by-protocol basis since 1975. To date these have resulted in both **administrative changes** (e.g. Zambia, Côte d'Ivoire, and Zimbabwe joined the sugar protocol; Namibia joined the beef protocol in 1991) and **commercial adjustments** (e.g. the terms of the rum protocol were modified from January 1, 1996 after the EU Council of Ministers agreed to remove the quota on “light rum” while introducing a tariff quota for “traditional” ACP rum to last only for the remainder of Lomé IV, until February 29th, 2000).

Grouping the four commodity protocols together can be misleading. Table 2 shows that each of them has a different character, and the nature of the EU's commitments to the ACP countries varies considerably. Not all are concerned simply with tariff advantage. The banana and rum protocols contain trade development measures whereby the EU undertakes to foster the development of banana and rum exports to the EU (although these provisions are more substantial for bananas than for rum). These are additional to the tariff preference that is common to all four arrangements. Lomé specialists are now giving particular emphasis to the trade development elements of the protocols - since the margin of tariff preference available to the ACP is being diminished through the gradual reduction of MFN tariffs resulting from trade liberalisation commitments made during the Uruguay Round.

Table 2 : Elements of the Protocols

	Banana	Beef/Veal	Rum	Sugar
Tariff Preference	✓	✓	✓	✓
Duty free	✓	✗	✓	✓
Tariff Quota	✓	✓	✓	✓
Country specific allocations	✗	✓	✗	✓
Purchase and sale commitment	✗	✗	✗	✓
Guaranteed prices	✗	✓	✗	✓
Trade Development provisions	✓	✗	✓	✗

Objectives of the Protocols

Beyond this, the objectives of the four protocols also defy uniform categorisation. Protocol 7 on beef/veal sets out the EU's commitment to “*enable ACP states which are traditional exporters of beef to maintain their position on the Community market.*” Protocol 6 on rum is not as modest in its aim with the Community “*willing to seek with the ACP states concerned measures to allow an expansion of their sales of rum in the Community market.*” Protocol 5 on bananas cites “*the objectives of improving the conditions under which the ACP states' bananas are produced and marketed and of continuing the advantages enjoyed by traditional suppliers.*” By contrast, Protocol 8 on sugar has more of the characteristics of a commercial contract between the EU and ACP, with Article 1 stating that “*The Community undertakes for an indefinite period to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originate in the ACP states and which these States undertake to deliver to it.*”

What the protocols do have in common, however, is the desire to favour ACP producers over other suppliers to the EU market. This is achieved by extending preferential treatment to ACP exporters either on price or access, or in the case of sugar and beef, a combination of the two. For sugar and beef/veal the price received by ACP exporters is linked to the artificially high price within the EU established by the Common Agricultural Policy (CAP). As well as specific arrangements on price, these two protocols extend country specific allocations to individual ACP suppliers on an annual basis, within an overall tariff quota for the ACP. These can be re-allocated if an ACP supplier shortfalls on its commitments. Tariff quotas are the trade policy mechanism used by the EU in all four protocols. In the case of bananas, sugar and rum these tariff quotas provide for duty free access. ACP exports of beef are the only protocol product which is still subject to a duty (288 euro/tonne)³, but they are exempt from the additional *ad valorem* duty which is levied on their competitors (e.g. Mercosur countries).

³ The specific duty replaced the old variable import levy on tariffication in 1995. The specific duty for MFN imports of beef is 3,603 euro/tonne.

Who Benefits from the Commodity Protocols?

Only 29 of the 71 ACP countries benefit from the protocols. Eleven benefit from two of them, Jamaica benefits from three protocols, and Madagascar benefits from all four (although its participation in each is negligible). Despite the fact that only 41% of the ACP group is party to any of the protocols, the contribution to the foreign exchange earnings of the ACP group as a whole is considerable, with exports of beef/veal, sugar, rum and bananas representing roughly 9% of the group's total exports to the EU in 1998 (sugar constituted 5% of the ACP group's total exports to the EU, bananas 2%, rum 1% and beef/veal 1%).⁴

Table 3: ACP Countries Benefiting from the Protocols

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

Note: Countries in bold are Least Developed (LDCs).
(*) Members of the ACP working group on rum, but exporting only minimal volumes.

Of the ACP's agricultural exports, only cocoa and coffee exceeded these figures, representing 7% and 6% of ACP total exports to the EU respectively.⁵ In terms of their monetary value in 1998, ACP exports of cane sugar earned 881,792,000 Ecus, bananas represented 394,079,000 Ecus and exports under Commodity Code 2208 (which in addition to rum and taffia also includes ethyl alcohol under 80% strength) amounted to 251,775,000 Ecus.

⁴ Source: *Eurostat*, 1998. The figure for rum and taffia (220840) is only an estimate as Eurostat figures only cite a four number commodity code.

⁵ In 2000, 50% of agricultural exports from the ACP will no longer enjoy preferences (i.e. MFN tariffs will be zero), including coffee.

The Banana Protocol

Of the twelve signatories to the banana protocol, seven are from the Caribbean and five from Africa.⁶ Côte d'Ivoire is currently the leading ACP producer, accounting for about 42% of all ACP banana production (BRIDGES, 10 May 1999). Banana production is a labour intensive process and in the Windward Islands, at least a third of the labour force is involved in the banana industry with many more involved in ancillary activities (e.g. transport).

The EU banana regime introduced on 1st January 1999 dismantled country-specific allocations for individual ACP countries — these were previously found to be inconsistent with Article XIII of the GATT (see Box 3) — in favour of a quota of 857,700 tonnes for the twelve “traditional” ACP suppliers of bananas to the EU market. This regime has also been found to be inconsistent with World Trade Organisation (WTO) rules.⁷ At the time of writing, the details of the European Commission's proposals were beginning to emerge. On 26th May 1999, the European Commission adopted a report to the Council of Ministers “*which outlines the state of play in the discussions between the Commission and interested parties in the banana dispute.*” According to the accompanying press release “*the options essentially fall into three categories which are: removing the tariff quota and applying a high flat rate tariff, retaining the two existing tariff quotas and removal of the limit on ACP preferences, which is at present 857,700 as recommended by the WTO panel, establishing a new tariff quota outside the current tariff quota for a volume higher than current ACP exports, within which ACP exports would benefit from a zero tariff.*” (European Commission, 1999)

Commission officials have indicated that a final recommendation would be made by August 1999 but analysts predict that changes may not be implemented until late 1999 or early 2000. During this interim period, the January 1999 regime will remain in force to avoid market collapse.

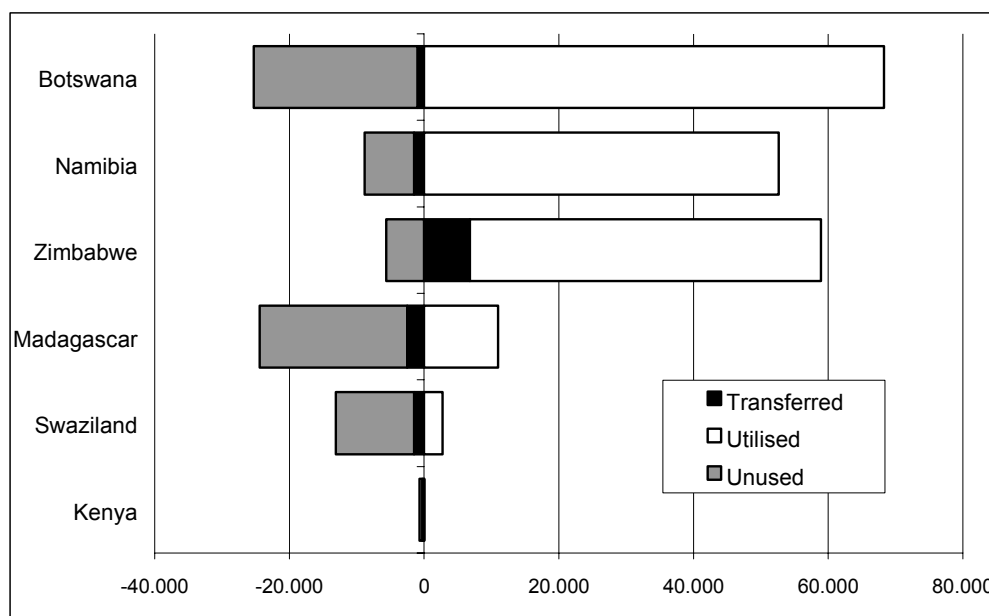
The Beef and Veal Protocol

In 1996, European prices were 50% higher than world prices, generating additional earnings for exporters of Ecus 30 million. The duty payable by ACP states (288 euro/tonne) represents a 92% reduction of the MFN tariff of 3603/tonne. Of the six beneficiaries, Botswana has the largest quota (18,916 tonnes of boneless beef) with Kenya allocated just 142 tonnes. The beef and veal protocol has traditionally been under-utilised (see Figure 1). Less than half of the quantity allocated was exported in 1997 compared with nearly 80% in 1995. Botswana, Namibia and Zimbabwe have been most successful in taking advantage of the concessions offered in this protocol. Botswana in particular has been a major beneficiary, receiving annual payments of Ecus 24 million from beef exports to the EU between 1990 and 1994. Kenya and Swaziland have been much less successful in filling their quotas. The cost of meeting the EU's stringent health and veterinary standards has often been cited as a contributing factor, as have changeable climatic conditions (e.g. the drought in Southern Africa in the early 1990s).

⁶ Some 92% of ACP exports of bananas to the EU are covered by the protocol. Most of the remaining 8% is exported by the Dominican Republic, the leading “non-traditional” ACP supplier to the EU, which was not granted the benefits from the protocol when it joined the ACP group.

⁷ The January 1999 regime was found to contravene WTO rules. The WTO Panel concluded that “the reservation of the quantity of 857,700 tonnes for traditional ACP imports under the revised regime is inconsistent with paragraphs 1 and 2 of Article XIII of GATT”. WT/DS27/RW/ECU, 12th April 1999.

**Figure 1: Cumulated Utilisation of Beef Quotas by ACP Countries, 1992-96
(tonnes of boneless beef)**



Source: Calculated from McQueen et al., 1998.

The Rum Protocol

This protocol is unique in that there is no list of signatories and any ACP exporter of rum to the EU may participate in the arrangements. However, the principal beneficiaries of the rum protocol are six Caribbean countries (Bahamas, Barbados, Dominican Republic, Guyana, Jamaica and Trinidad and Tobago), although rum production is not confined to the region. Fiji, Madagascar, Mozambique and Mauritius are all rum producers but are not currently exporting to the EU. In 1998, Trinidad and Tobago was the main beneficiary, earning Ecus 113,897,000 (equivalent to 30% of its total trade with the EU). Rum was Caricom's third largest export to the EU in 1998, contributing Ecus 248,885,000 to the region's foreign exchange earnings and 13% of total exports to the EU.⁸ The Caribbean rum industry employs 10,000 people, concentrated in the six exporting countries.

The Sugar Protocol

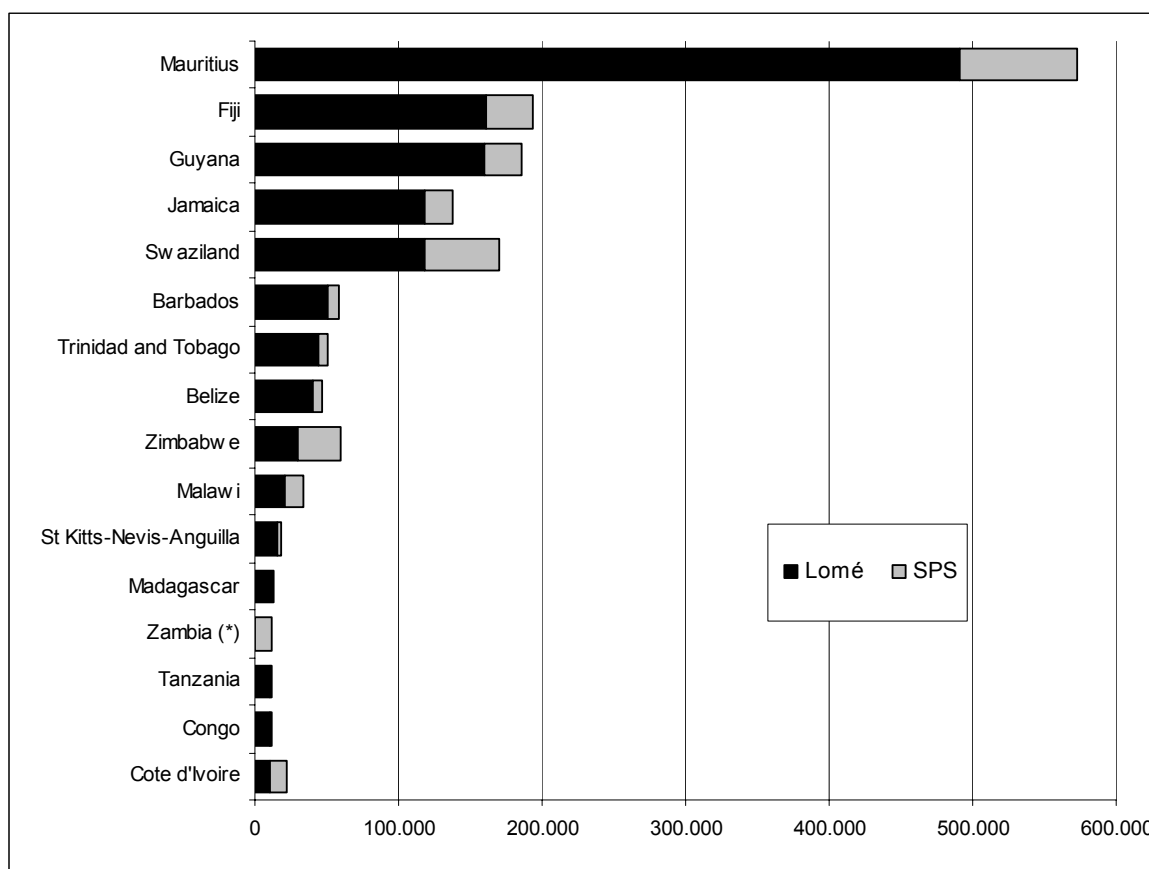
Eurostat statistics for 1998 show that ACP exports of cane sugar were valued at Ecus 881,792,000. Nineteen percent of exports by Pacific countries to the EU was cane sugar through Fiji's participation in the sugar protocol. Fourteen percent of Caricom exports to the EU are under the sugar protocol.

The sugar protocol differs from the other protocols in that all regions in the ACP derive benefit from it. In 1997, it was estimated that the industry employed 276,500 people directly in the 16 ACP states producing sugar and 359,300 indirectly (ACP Secretariat and ACP London Sugar Group, 1998). In eight of these countries, sugar accounts for more than 30% of revenue from agriculture with extreme dependence in St. Kitts (49% of total GDP) and Swaziland (60% of total GDP). The total of the ACP preferential access has remained largely unchanged since the inception of the sugar protocol. When some countries have fallen short, the Commission has used its discretionary powers to reallocate the quota. Mauritius currently has the largest preferential quota of 491,000 metric tonnes (see figure 2).

⁸ These figures exclude exports from the Dominican Republic which is not a member of the Caricom.

Discussions on the benefits of protocols usually focus on their development impact in the ACP. However, the EU has also profited from them. Benefits have accrued to the EU as a whole (predictability in terms of a guarantee of supply) and to specific sections of the EU business community (cane sugar refiners, banana marketing companies, EU shipping lines). In particular, substantial profits have been made by some EU traders of ACP protocol products from the import licenses issued by the European Commission — that allow traders to import limited quantities of products at reduced (or zero) tariffs — under the tariff quotas of the protocols. Profits from the use of import licenses are often referred to as "quota rents". These rents are captured by the holder of an import license who buys a product at a low price in the export market, imports it while paying a reduced (or zero) tariff permitted by the tariff quota, and re-sells it at a higher price in the import market.

Figure 2: Allocation of European Sugar Quotas to the ACP, by Country (sugar protocol and special preference sugar, in tonnes per annum)¹



Source: SASA, 1997.

Notes: (*) shortfall allocation Zambia, which has a zero-quota, is granted when other suppliers cannot fill their own.

(1) In addition to the "Lomé" quotas, new supply arrangements — known as Special Preferential Sugar — were introduced by the EU in 1995. This provides that between 1995/96 and 2000/01, the EU opens special tariff quotas for the import of raw sugar from the ACP. The price paid is less than under the sugar protocol (the difference is 8.1 Euros per 100kg). See ED&F Man Sugar Ltd, 1996, p.17.

The issue of quota rents is a complex and sensitive one. Once again, the situation differs from protocol to protocol. Supporters of the system argue these quota rents are a fair remunerative reward for EU traders importing ACP products. Others believe that, in some cases, the quota rents available to EU traders are too high, and export licenses should be administered directly by an authority within the ACP, so that earnings from quota rents can be used for development and economic diversification. Without further research, it is hard to establish exactly how much of the benefits from each protocol is

captured through quota rents, and to whom they accrue (ACP suppliers or EU traders). However, two points seem to emerge: the “rent value” of import licenses varies substantially from protocol to protocol and much depends on the negotiating power of the individual ACP supplier.

The Benefits Extend Beyond Monetary Value

Understanding the importance of the protocols to ACP countries is more complex than measuring their impact in terms of foreign exchange earnings and employment. The benefits of the protocols for the ACP are not always so tangible. The success of Mauritius in using the income generated by the Lomé sugar protocol to diversify its agricultural production (into financial services and textiles in particular) has been well-documented. However, it is also important to explore the evolving national and regional contexts of the ACP countries concerned. The recently concluded South Africa/EU free trade agreement (FTA), for example, extends EU access to South Africa's regional trading partners in SADC and, although the protocol products are currently excluded from liberalisation, this may change over time. Integration is moving at varying speeds within the ACP and is, in many cases underpinned by ACP industries producing protocol products.

In all cases, the production and export of protocol products have important multiplier effects (on transport, employment of casual labourers during harvest, etc.). Earnings from the protocols have also made substantial contributions to the welfare infrastructure of ACP countries. In some regions of Guyana, Swaziland and Zimbabwe, sugar industries are responsible for the provision of some local services, such as education, health (including hospital care and public health programmes), housing, recreation and community services. This has led supporters of the sugar protocol to claim that some ACP sugar industries are a model for “multifunctional” agricultural activities.

In the case of rum, the benefits of the protocol also extend beyond foreign exchange values. Given the small size of domestic rum markets in the Caribbean, economies of scale for some plants in the region can only be generated through the production of large volumes. This would not be possible without the export of rum to the EU market which enables Caribbean rum producers to produce for domestic consumption keeping the per unit cost at an acceptable level. Without the relationship with Europe through the rum Protocol it is unlikely that rum production in the Caribbean would be sustainable, not least because non-subsidised Caribbean rum would have to compete with global alcohol production, 87% of which is subsidised (Berg, 1998).

Is it all Positive?

Despite the fact that the quotas have mostly been filled, except for the beef/veal Protocol, some argue that protocols have caused a high degree of export dependence and have not stimulated economic diversification or tackled supply side bottlenecks in the ACP. Stevens, McQueen and Kennan (1998) note that *“Lomé preferences are generally perceived to have failed to stimulate and diversify ACP exports to any significant extent. An important perceived reason for this has been the failure of many of the ACP states to liberalise their import regimes, and so reduce the very high levels of discrimination against the export sector.”*

The effects of the EU's CAP can also be seen as a double-edged sword. The EU meets its obligations to the ACP for beef/veal and sugar through the commodity regimes established by the CAP. These provide artificially high prices to ACP suppliers. So long as the CAP maintains artificially high prices and so long as its level of border protection remains high, the protocols for beef and sugar will continue to be of value to the ACP. Stevens et al (1998, p. 39) write that *“were the CAP to be reformed totally, the sugar industry in most of the Caribbean states would almost certainly collapse as they could not compete on a free market.”*

The CAP's potential for distorting domestic agricultural production and trade has also been evident. In 1997, South Africa and Namibia complained that low-priced (subsidised) exports of EU beef were driving domestic producers out of the market. The devastating effect of the alleged dumping of subsidised EU beef occurred when there was a huge beef surplus in Europe, partly because of the "mad cow" disease scare. Referring to the incident in March 1997, the Chair of South Africa's Parliamentary Trade and Industry Committee stated that "*it is a major problem and it is estimated that the loss to South Africa and Namibian producers is larger than the total amount of EU aid made available to South Africa and Namibia. Namibia is estimated to have lost about 11% of its beef export market.*"⁹

What about dependence? For many countries, as Table 4 shows, the benefits of the ACP-EU commercial relationship is highly concentrated in the export of certain products to the EU under the protocols. Although the indicator used is the percentage of total export earnings from the EU, in some cases the dependence is so acute as to be critical to the economic prosperity of the ACP country concerned. Exporters of bananas in the Windward Islands of the Caribbean are particularly vulnerable in this respect. In the case of the protocols, the issue of dependence is also linked to that of small size. Many ACP sugar, banana and rum industries are located in Small Island Developing Countries (SIDS), which complicates the diversification process in a number of ways (e.g. limited internal market, climate changes, vulnerability to natural disasters; see ECDPM, 1998). Fiji, for example, is currently exploring possibilities for diversification but, "*because of soil conditions, climate and vulnerability to natural disasters, no other crops have been identified which could replace cane sugar production in the short or medium term. The resilience of the sugar cane crop after suffering from natural disasters is also a tremendous advantage over other agricultural commodities*" (Communication from Fiji to the WTO, 1999).

Concerns about the dependence of ACP states on preferences under the Lomé Convention have caused some analysts - and indeed some EU Member States - to conclude that although preferences have, in many cases, enabled ACP countries to maintain their position in the EU market, they have also acted as a powerful disincentive to increase the competitiveness of ACP exporters or to diversify their export structure. This is a common accusation levelled against Lomé preferences in general, including the protocols where the concessions are among the most generous and long lasting.

Detractors also point out that the ACP countries have not always met their quota obligations (particularly for beef/veal and bananas). According to the ACP Secretariat, "*one of the difficulties of making a precise assessment of the impact of the loss of preference on ACP trade is the fact that many ACP countries did not take full advantage of the preferences offered under the successive Lomé Conventions*" (ACP Secretariat, 1996).

It should be noted that the issue of dependence also applies for some EU business interests. The present arrangements for sugar, for example, mean that port refiners of cane sugar in the EU are largely dependent on ACP sugar for their supplies.

⁹ Mail&Guardian, *Tough trade test ahead*, March 27, 1997.

Table 4: Dependence of ACP beneficiary countries on exports of protocol products

% of total export earnings from the EU	Sugar	Beef	Bananas	Rum
More than 70%	Fiji (84) St. Kitts & Nevis (72) Swaziland (67)		St. Lucia (88) Dominica (73)	
50-70%	Guyana (63)			
30 - 50%	Barbados (48) Mauritius (30)	Botswana (32)	Somalia (43) St. Vincent (41)	Bahamas (37) Trinidad & Tobago (30)
10 - 30%	Belize (28) Jamaica (15) Malawi (13)	Namibia (10)	Belize (25) Jamaica (10)	
1 - 10%	Trinidad & Tobago (5) Tanzania (5) Zimbabwe (5) Congo-Brazzaville (3) Madagascar (1)	Zimbabwe (4)	Suriname (9) Cameroon (5) Côte d'Ivoire (4)	Barbados (7) Guyana (2) Jamaica (2) Dominican Republic (1)
Other signatories	Uganda, Zambia , Kenya, Suriname, Côte D'Ivoire	Kenya, Madagascar, Tanzania	Cape Verde, Madagascar, Grenada	(Madagascar), (Fiji), (Mauritius)*

Source: 1998 Eurostat statistics. Percentage figures for each country are in brackets. Countries in bold are Least Developed (LDCs)

* There are no "signatories" to the rum protocol. Any ACP exporter of rum can be party to its provisions

How Valuable are the Preferences under the Protocols?

Tariff preference is only possible if protection exists. Tariff preferences are relative and their value is derived from the margin of preference over competing countries. The value of Lomé protocols has been substantial while MFN tariffs have been high. Kennan and Stevens (1997) found that of the 32 most valuable exports from the ACP group as a whole, 22 will face MFN tariffs of 0 by 2000. In other words, the tide of liberalisation is steadily rising to engulf Lomé preferences. However, it has yet to submerge the four protocols where preference will still be possible beyond the new millennium, to varying degrees.

Table 5 confirms that preferences under the protocols will continue to be of considerable value to the ACP after the expiry of Lomé IV on 29th February 2000. Out of quota MFN tariffs on bananas, beef/veal and sugar remain prohibitively high for non-preferred exporters of these products. The next WTO Round will doubtless seek to reduce agricultural protection but, as the Uruguay Round Agreement on Agriculture demonstrated, negotiating tariff reductions is a lengthy process that may not result in a substantial lowering of tariff barriers (in the case of sugar, the EU undertook to reduce over six years the out-of-quota tariff by 20%).

However, tariff preference is not the only determinant of the value of the protocols for the ACP. Preferential access will be rendered meaningless if the price for ACP protocol products (e.g. sugar and beef) is not sufficiently remunerative to bridge the gap in competitiveness.

It is also important to note that the four protocol products are currently excluded from the European Union's Generalised System of Preferences (GSP). Indeed, integrating these arrangements into the current GSP would immediately erode all their value for the ACP as all developing countries, apart from those classified as Least Developed (LDCs) and others enjoying special preferences, receive equal treatment.¹⁰

Table 5: Value of Lomé Commodity Protocol Preferences over MFN Trade in 1998 and 1999

	MFN IMPORT TARIFF	PREFERENTIAL TARIFF
EU banana regime 08 03 00 19 00 Imports of bananas, fresh (excl.plantains) (of 1st January 1999)	737 euro/tonne (bound, out-of quota tariff) (75 euro/tonne - for MFN tariff quota of 2.2 million tonne ¹¹ for third country and "non-traditional" ACP bananas.)	ACP banana protocol : - in quota: 0 - out of quota: 200 euro/tonne
EU regime for beef/veal 02 01 30 00 10 Imports of fresh chilled high quality beef/veal - boneless 02 02 30 10 10 Imports of frozen high quality beef/veal - boneless	15.2% plus 3603 euro/tonne 15.2% plus 2,625 euro/tonne	ACP beef protocol: 288 euro/tonne ACP beef protocol : 210 euro/tonne
EU rum market 22 08 40 11 10 Imports of rum and taffia in containers of 2 litres or less 22 08 40 51 00 Imports of rum and taffia in containers of 2 litres or more	Bottled rum above price break: reduce MFN tariff to 0 by 2003 in stages. Bottled rum below price break: reduce MFN tariff to \$1.67/proof gallon by 2003 in stages. Bulk rum above price break: reduce MFN tariff to 0 by 2003 in stages. Bulk rum below price break: reduce MFN tariff to \$1.48/proof gallon by 2003 in stages.	ACP rum protocol: 0 ACP rum protocol: 0
EU sugar regime 1701 11 10 00: Imports of cane sugar for refining 1701 11 90 00: Imports of cane sugar other than for refining	367 euro/tonne (subject to SSG ¹²) 454 euro/tonne	ACP sugar protocol: 0 ACP sugar protocol: 0

Source: Compiled from Swinbank et al (1999), WTO Secretariat and ACP rum industry. Commodity Codes are from the Harmonised System (HS) and were correct as of 1st May 1999.

¹⁰ In 1990, the EU extended, on a temporary basis, LDC-equivalent status to Bolivia, Colombia, Ecuador and Peru in view of their struggle against the production and trafficking of illegal narcotics. This form of "super" GSP is still in force for these countries but has recently been challenged at the WTO by Brazil.

¹¹ This was augmented by a further 353,000 tonnes (unbound) following the accession of Austria, Finland and Sweden to the EU in 1995. Under the January 1999 regime, four Central and Latin American countries (Colombia, Costa Rica, Panama and Ecuador) were allocated fixed percentages of the MFN tariff quota as "substantial suppliers" and pay an in quota import duty of 75 euro/tonne.

¹² SSG is the acronym for the Safeguard Clause. Under Article V of the WTO Agreement on Agriculture on "Special Safeguard Provisions", additional duties may be imposed.

Threats to the Commodity Protocols

Although the future of the Protocols can only be accurately assessed on a case by case basis, all share the common threat of trade liberalisation. This is recognised by Annex XXIX of the current Lomé Convention, which commits the EU to exploring, jointly with the ACP, ways in which the impact of trade liberalisation might be mitigated. It states “*the Contracting Parties note that the Community is conscious of the need to ensure, in the overall application of the Convention, the maintenance of the competitive position of the ACP States where their advantages on the Community market are affected by measures relating to general trade liberalisation. The Community declares its willingness, whenever ACP States bring to its attention any specific case, jointly to study specific appropriate action with a view to safeguarding the interests of the latter.*”

Each protocol is at a different stage on the road to liberalisation. To differing degrees, and with dissimilar results, the benefits accruing to ACP states through the protocols have already begun to diminish. This is the result of different forces —WTO challenges, liberalisation by the EU, and CAP reform— that have induced changes to the structure of EU regimes of which the protocols are integral parts. The erosion of benefits under the protocols for ACP exporters in terms of price (beef/veal) and access (bananas, rum) is illustrated below:

- i. **The WTO challenges to the EU Banana Regime - (Access).** On April 12th 1999, after a successful challenge by Ecuador, the WTO's Dispute Settlement Body (DSB) ruled that the EU's revised banana regime contravened various aspects of the GATT and GATS. This may have dire consequences for ACP banana exports. The EU has yet to identify its preferred option for a new banana regime consistent with the WTO Panel report. The European Commission is now caught between its commitments to the ACP through Article 1 of Protocol 5 on bananas and its obligations at the WTO. Article 1 of the Protocol states 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.*” Keeping to this promise may be impossible as the WTO demands substantial changes to its banana Regime.
- ii. **Liberalisation of the EU rum market after 2003 on an MFN basis- (Access).** In March 1997, in the margins of the WTO Singapore Ministerial Meeting, the EU and the United States concluded an agreement on distilled spirits tariffs. The agreement contained a special annex with respect to rum. This provided for a progressive decrease from July 1, 1997, and the abolition from 2003, of MFN duties and quotas on most bulk and bottled rums entering the EU and the USA. The agreement thus throws most of these two markets – and virtually the entire branded market – open to worldwide competition on a duty-free and quota-free basis following a short transition period. This was negotiated without consulting ACP exporters of rum, whose competitive position has been eroded as a result. In order to minimise the damage to Caribbean economies, however, the agreement also provided for retention of MFN tariffs (for non-ACP rum) - and thus of the duty preference favouring ACP suppliers - on rum below specified price levels.¹³ Although the agreement was implemented on an MFN basis (i.e. multilateral), it was the result of a unilateral decision taken by the EU without consulting the ACP.

This major change in the EU rum market severely limits the access enjoyed by the ACP under the rum protocol. Tariff preference will only continue to be possible on a small percentage of the rum market after 2003, since tariff protection will still exist for rum (bulk) below the price break. However, for this to apply after the expiry of Lomé IV, preferences for ACP rum will have to be

¹³ After 2003, MFN tariffs will apply on bulk (in containers of more than 2 litres) and bottled (less than two litres) rum below the specific price breaks (\$ 4.92/proof gallon) for bulk and \$ 19.43/proof gallon for bottled "rum agricole". For bulk and bottled rum below these price breaks the following tariffs would apply : \$ 1.48/pg for bulk and \$ 1.67/pg for bottled rum. This is the margin of tariff preference still available for ACP rum which enters the EU duty free.

negotiated between the EU and ACP. ACP exporters of rum have made clear in their representations to government in Europe and the ACP that they will be at a competitive disadvantage after 2003 when larger subsidised producers will be able to compete on equal terms for the ACP's market share of the EU rum market above the agreed price break. In conclusion, the 1997 so-called "zero for zero" agreement on rum effectively signalled the end of the rum Protocol in its present form, without the introduction of appropriate transitional arrangements.

- iii. **The Agenda 2000 reforms to the CAP and EU Beef Regime - (Price).** In March 1999, after fractious negotiations between EU Member States, the EU Council of Ministers reached agreement on the reform of the CAP, based on the Commission's proposals in Agenda 2000. The basic price for beef was fixed at 224 euro/tonne, which is equivalent to a 20% price reduction, arrived at in three equal steps. It is important to note that Agenda 2000 did not reduce import tariffs for beef/veal. Reducing the EU support price for beef, however, will reduce the returns that the ACP exporters can gain from the EU market. This points to the declining value of the beef/veal protocol in terms of the price received, even though access for the ACP remains at the same levels.

The EU sugar regime was reformed in 1995 to take account of the outcome of the Uruguay Round on Agriculture concluded in 1994. Despite this, it has remained largely untouched, as have the benefits to ACP exporters under the sugar protocol. As part of its Uruguay Round commitments, the EU is reducing its out-of-quota tariff by 20% over 6 years (from 524 euro/tonne to 419 euro/tonne) and limiting the volume of subsidised sugar exports. The Uruguay Round Agreement on Agriculture also contains a commitment to negotiations in 1999 on "*continuing the reform process.*"

Analysts believe that the EU may have to start reforming its regime as early as July 2000 due to existing Uruguay Round obligations to limit subsidised exports of sugar.¹⁴ In 1999, world sugar prices have sunk to a 13-year low and this is proving costly for the EU as it compensates its ACP sugar exporters with higher subsidies. The concern is that the EU will exceed its Uruguay Round spending limits on subsidised exports of sugar agreed within a six year implementation period (1995-2001). If this proves to be the case, it will have to adjust its regime in order to bring the level of export subsidies back within Uruguay Round limits. Such changes may take the form of production or import reductions, a reduction of the internal support price, or a combination of the two. EU subsidies on exports of sugar, isoglucose and inulin have ranged between 520 and 550 euros (\$551 and \$583) per tonne in the first five months of 1999, or more than triple current world prices.

The sugar protocol guarantees a price equivalent to the EU price, and is negotiated on an annual basis by the Lomé partners. It is inextricably linked to changes in the EU sugar regime. Reducing the out-of-quota tariff for imports of sugar into the EU is likely to increase the downward pressure on the EU sugar price. Internal calls for change are also likely to arise from the accession of new Member States (e.g. Poland or Hungary), where the price for sugar is considerably lower. What is certain is that the pressure to bring the EU sugar price more into line with the price on the world market is set to increase, as are calls for a further reduction in the EU's export subsidies for sugar.

This may also be accompanied by greater access for non-ACP developing countries to the EU market. Referring to developing countries and the new WTO Agreement on Agriculture, John Cuddy, head of UNCTAD's trade division, recently urged developing countries to focus on ways to further reduce agricultural tariffs, noting that developing countries' major export products such as **sugar**, tobacco, cotton, and processed foods are frequently hit with some of the highest tariff peaks in developed countries (BRIDGES, 3 May 1999).

¹⁴ By the terms of the Uruguay Round Agreement on Agriculture, developed countries must reduce their export subsidies by 21% in terms of volume and 36% *ad valorem* over a six-year implementation period starting no later than 1st July 1995.

Future Challenges to the Commodity Protocols

Each Lomé protocol faces a particular set of forces bringing about change. However, for all of them, the pace of liberalisation — and specifically the erosion of the benefits of the protocols — will be determined, in broad terms, by the following events:

- i. **The outcome of the post Lomé negotiations** between the EU and ACP which are scheduled to be concluded by February 29th, 2000.
- ii. **The expiry of the WTO waiver** for Lomé IV on February 29th, 2000 (see box 2).
- iii. **The post Lomé intentions of the most recent ACP signatories** concerning the protocols, e.g. the Dominican Republic and Haiti, and possible future signatories such as Cuba.
- iv. **The WTO “Millennium” Round**, due to begin in January 2000, and the subsequent reductions of MFN tariffs. Reaching agreement on agricultural reforms was, during the Uruguay Round, a lengthy process. According to Hathaway and Ingco (1996) *“agricultural issues were largely responsible for the negotiations dragging on three years beyond the scheduled completion date.”* It was also the case that only last-minute agreement between the US, EU and Japan over agriculture enabled the Round to be completed. The scope for the ACP to influence these last minute compromises appears to be limited.
- v. **The negotiations with the EU after 2000 for a new ACP/EU trade relationship.** Agreement on the scope, content and timing of these negotiations has so far eluded ACP and EU negotiators. Unanswered questions concerning the treatment of the protocols in an new ACP/EU trade arrangement are listed in the summary of this paper.
- vi. **The expiry of the EU Sugar Regime** in June 2001. The EU sugar regime was “rolled-over” four times between 1986 and 1994 (1986,1991,1993 and 1994) pending the outcome of the Uruguay Round. Industry specialists predict that the current regime may again be rolled over until the end of the Millennium Round, scheduled to be concluded by late 2001.
- vii. The progress of **the EU's negotiations for Free Trade Agreements with third countries.** An EU-Mercosur Summit is scheduled for June 1999, during which the two blocs are expected to announce their intention to create an FTA to be implemented from 2005. It is highly unlikely that this will be possible without significant concessions by the EU on agriculture. Brazil is expected to seek greater access for its exports of sugar and Argentina and Uruguay may do likewise for beef.
- viii. **The Reform of the Common Agricultural Policy (CAP) and the expansion of the Union.** There can be little doubt that the Agenda 2000 compromise, agreed earlier this year, will necessitate a more radical reform of the CAP before the expansion of the Union. Paradoxically, the Agenda 2000 proposals for the CAP - which were supposed to reduce EU budgetary expenditure on agriculture to prepare the way for expansion - have led to increased costs in the form of compensation payments. Fear of crippling compensation payments was reportedly one of the main reasons why the Agenda 2000 proposals were “watered down” before the EU Council of Ministers reached agreement in March 1999. Despite this, CAP reform is likely to increase access to EU markets by non-ACP producers, reduce guaranteed prices in European markets, and reduce the level of subsidies for exports.

- ix. The **review of the Generalised System of Preferences (GSP)** in 2004.¹⁵ For the ACP, this review is both a challenge and an opportunity. On the one hand, it may further reduce the margin of preferential access for the ACP by granting competing developing country further concessions on agriculture. On the other hand, it may offer the ACP an opportunity to call for a revision of the criteria under which countries qualifying for the GSP are classified, conceivably based on vulnerability. The current GSP extends special preferences to LDCs, Central American and Andean countries and countries that respect certain agreements, such as those of the International Labour Organisation and the International Tropical Timber Organisation.

These events are all likely to challenge the ACP preference under the protocols. Arguably the most critical issues, however, relate to timing. The prospects for the continuation of the protocols will be complicated by the onset of the sequential events listed above, beginning with the multilateral negotiations on agriculture during the WTO Millennium Round. This threatens to subject the protocols to forces outside of the ACP/EU relationship as the EU steers its way through potentially troublesome talks with its WTO partners. As the events above unfold and the EU comes under pressure to liberalise its agricultural regime, the options for the future of the protocols may become increasingly limited. Between 2000 and 2005 the global context for the ACP/EU trade relationship will undergo dramatic changes, as the EU prepares to integrate the Central and Eastern European countries. In this sense, the post Lomé negotiations represent an opportunity to agree transitional arrangements for each of the protocols, during the relative calm before the storm.

Will the Protocols Survive after 2000?

In terms of their duration, the banana, beef/veal, and rum protocols would appear to share the same time frame as Lomé IV, expiring on February 29th 2000. Article 368 seems to support this by stating that *“the Protocols annexed to this Convention shall form an integral part thereof.”* Only the sugar protocol can claim longevity beyond this. Article 8(2) contains provisions for the application of the Protocol once Lomé IV expired. It states that, *“in the event of the Convention ceasing to be operative, the sugar-supplying States referred to in paragraph 1 and the Community shall adopt the appropriate institutional provisions to ensure the continued application of this Protocol.”* In addition, Article 1 of Protocol 8 states that, *“The Community undertakes for an indefinite period to purchase and import, at guaranteed price, specific quantities of cane sugar.”* The ACP mandate for a successor agreement to Lomé IV reinforces this by highlighting the unique legal status of the Protocol, referring to *“the special status of the sugar protocol, which has a legal persona of its own with its specific guarantees is recognised by all parties concerned”* (ACP Secretariat, 1998). The EU mandate is more circumspect on this point, referring only to the *“special status”* of the sugar protocol. In a speech in May 1999, EC Commissioner Franz Fischler, stated that, *“the Union also imports around 1.6 million tonnes of sugar each year from the ACP countries at preferential prices - in other words 13% of total EU consumption. Sugar imports have been around this level since the Lomé Convention was signed in 1975. And the agreements in question are not limited to a specific time frame”* (Fischler, 1999).

¹⁵ The EU post Lomé mandate contains a Statement by the Council and the Commission indicating that this review of the GSP is an alternative for the ACP, particularly non-LDCs not wishing to enter into FTAs with the EU. It states *“In particular the Council and the Commission will take into account their (non-LDC ACPs) interests in the review of the GSP in 2004, making use of the differentiation permitted by WTO rules”* (EU Council, 1998).

The sugar protocol is also unique in that Article 10 lays down the procedure for its abrogation, although this too has been the subject on “behind the scenes” debate among the principal stakeholders. Article 10 of Protocol 8 states that “*the provisions of this Protocol shall remain in force after the date specified in Article 91¹⁶ of the Convention. After that date the Protocol may be denounced by the Community with respect to each ACP state and by each ACP state with respect to the Community, subject to two years notice.*”

Article 368 suggests that the banana, beef/veal, and rum protocols have no legal status outside of the Lomé Convention, of which they are “*integral parts.*” Their renewal, and that of the sugar protocol would therefore be a negotiable issue between the Lomé partners. Could the rollover of the protocols until at least 2005 be achieved without a more complete waiver at the WTO than that obtained for the duration of Lomé IV? Of all the issues currently confronting the EU and ACP negotiators, the expiry of the waiver for Lomé IV merits the most attention. What strategy should the Lomé partners adopt to ensure that the waiver sets out a sound legal basis for the continuation of the protocols? For how long should such a waiver be requested? Which articles of the GATT should be included in the waiver request? How will this be justified? These questions are as central to the future of the Protocols as they are for the trade aspects of the post 2000 ACP/EU trade relationship in general.

The only legal status that the Convention has at the WTO is through the waiver that permits the EU to break WTO rules and the Enabling Clause in order to discriminate among developing countries in favour of the ACP. In December 1994, the European Communities were granted a waiver from its obligations under Article I:1 of GATT (on the principle of most-favoured nation - MFN) until the expiry of Lomé IV. It is the only article of the GATT which has been waived for the Convention. The waiver allows the EU to “*provide preferential treatment for products originating in ACP States as required by the relevant provisions of the Fourth Lomé Convention, without being required to extend the same preferential treatment to like products of any other contracting party.*” As with all WTO waivers it is reviewed annually.

The EU and ACP mandates differ over the duration of a new WTO waiver. The EU's mandate states that “*For the first five years of the global agreement [i.e. 2000-2005] the Community and its ACP partners will have to negotiate a waiver under Article IX of the WTO Agreement.*” In contrast the ACP propose that this waiver be sought for a ten-year period (2000-2010). It is important to note that it will be the EU alone that has to request the post Lomé waiver, as it is the EU that will be seeking to break WTO rules. The current waiver allows the EU to discriminate **among** WTO members (and developing countries) by extending tariff preference to the ACP. As the banana dispute has shown, the Lomé IV waiver lacked precision, leaving the ACP vulnerable to the challenge by WTO members. The country specific allocations for ACP suppliers were not covered by an Article XIII waiver, nor were the licensing arrangements that were found to be discriminatory under the GATS.

There can be little doubt that the issue of the WTO waiver requires the most urgent attention in the post Lomé negotiations. A nightmare scenario for the Lomé partners would become reality if the new waiver for a post 2000 ACP/EU trade relationship had not been secured before the expiry of Lomé IV. This would place the entire Convention in a state of limbo in which Lomé preferences would have no legal standing at the WTO.

¹⁶ This, however, is confusing as Article 91 of Lomé IV does not specify a date and instead refers to the Centre for the Development of Industry (CDI).

Box 2 : The WTO Waiver, Bananas and the Protocols

Many factors will determine the outcome of the EU's waiver negotiations at the WTO. In some cases, the obstacles are more political than legal. These include:

The political mood at the WTO when the request is made. In 1999, the EU was engaged in two high profile disputes (bananas, and hormone-treated beef) that have attracted criticism from WTO members. This may reduce the level of flexibility for the ACP, particularly as the EU's treatment of developing countries through the Generalised System of Preferences (GSP) and the "super" GSP for Andean and Central American countries has recently provoked rumblings of discontent from at least one WTO member (Brazil). How much political capital will the EU have left at the WTO by late 1999? Will it be willing to expend this on ACP interests?

The final outcome of the banana dispute. Trade policy specialists have been predicting that the EU's new Banana Regime will require a new waiver at the WTO if the regime is to preserve a margin of tariff preference for the ACP over other developing country suppliers. Much will depend on the EU's ability to achieve consensus at the WTO before implementing its new regime. The timing for this waiver request may also coincide with the expiry of the current waiver on February 29th 2000. It is important to note that the current waiver for Lomé IV was granted for the Lomé Convention as a whole, although it was acknowledged that the motivating force behind the request was protection of the EU Banana Regime. Does this mean that a post Lomé-IV arrangement will also be covered by an EU request for a waiver for its new Banana Regime? If not, will the EU have to request two separate waivers, (a) to implement its Banana Protocol commitments to the ACP and (b) for a post Lomé-IV agreement, including the remaining protocols? Requesting two waivers would seem an unlikely course of action and politically problematic to deliver. The more likely scenario is that the EU will again negotiate a waiver for the Lomé Convention as a whole. But for how long will it seek to waive the relevant article(s) of the GATT ?

The justification for the waiver. It is clear that WTO members will not accept a waiver to extend Lomé preferences in perpetuity. They will consider whether, and for how long, the waiver is necessary to facilitate a genuine liberalisation process. However, it is unclear whether this means that, by February 29th 2000, the ACP will have no alternative but to commit themselves to a chosen path to liberalisation from 2005/10, or whether a "menu of options" could be put forward for the post 2005 or 2010 relationship, all sharing the ultimate aim of liberalisation (e.g. REPAs, GSP "enhanced" or otherwise, Alternative Trade Arrangements).

Constituency building by the Lomé partners. It is also important to note that under current WTO rules a waiver requires a three-quarters majority rather than the two-thirds majority that was the case in 1995 when only 50 of the ACP were contracting parties to the GATT. This may make its successful negotiation all the more problematic, especially as not all ACP countries are contracting parties to the GATT and members of the WTO. However, 53 ACP states are now members of the GATT. Concerted action by these countries would help to achieve a consensus on the need for a waiver.

The scope of the waiver request. Will the EU seek to waive Article I.i again or will it also include further provisions in this request (e.g. Article XIII) ?

Are Tariff Quota Arrangements Safe?

The failure of the Lomé IV waiver to cover all aspects of the EU's banana regime has been well documented. The current waiver expires with Lomé IV and will have to be renewed if the current ACP/EU trade relationship, including the commodity protocols, is to continue beyond that date. Although a complete discussion of a WTO waiver is beyond the scope of this paper¹⁷, tariff quotas -

¹⁷ Stevens, et al. (1998, p. 79) propose a strategy for the ACP group at the WTO including a multifaceted approach to obtaining a WTO waiver.

the principal trade policy mechanism used by the EU to implement its commitments on access to the ACP countries under the protocols - warrant further consideration. Tariff quotas are extended by the EU either on a country specific basis (beef/veal, sugar) or for the ACP as a whole (bananas and rum).

Table 6: How are the Protocols Implemented?

	MECHANISM ON ACCESS	IMPLEMENTED THROUGH.....	ARE QUOTAS WTO BOUND OR AUTONOMOUS?
BANANA PROTOCOL	ACP tariff quota ¹⁸ (without country specific allocations as of 1/1/99)	EU Banana Regime under the CAP	Part WTO bound, part autonomous Autonomous /unbound tariff free quota of 857,700 tonnes for ACP. WTO bound MFN tariff quota of 2.2 million tonnes for third country and non-traditional ACP suppliers.
BEEF/VEAL PROTOCOL	ACP tariff quota (with country specific allocations)	EU Beef Regime under the CAP	Autonomous Autonomous tariff quota for ACP beef.
RUM PROTOCOL	ACP tariff quota for traditional rum to be abolished on 1/1/2000	EU rum Market under the CAP ¹⁹	Autonomous Autonomous tariff quota for white rum.
SUGAR PROTOCOL	ACP tariff quota for 1.3 million tonnes of ACP sugar.	EU Sugar Regime under the CAP	Part WTO bound, part autonomous EU committed to import 1,294,700 tonnes from ACP and 10,000 tonnes from India under Uruguay Round commitments. However, amounts over and above these (i.e. Special Preferential Sugar, SPS) are not WTO bound.

Country specific allocations *per se* are not incompatible with WTO rules. Actually, the controversy over bananas did not focus on the principle of such allocations, but on the basis for setting their volumes (see Box 3), and the manner in which import licenses were distributed within the EU. Furthermore, country specific allocations within tariff quotas are not unique to the EU. The US sugar regime, for example, includes forty country-specific allocations within its raw cane sugar tariff quota, "*based on the countries' historical trade to the United States*" (USTR, 1998). The Dominican Republic has the largest tariff quota.

¹⁸ At the WTO in 1999, the European Communities argued that the amount of 857,700 tonnes for traditional imports from ACP States did not constitute a tariff quota subject to Article XIII. Instead the EC claimed that it was "*an upper limit on a tariff preference*" (i.e. a ceiling). However, the WTO ruled that, by definition, a tariff quota is a quantitative limit on the availability of a specific tariff rate. Thus, Article XIII applied to the 857,700 tonne limit, the Arbitrators report stated.

¹⁹ There is no common market organisation for rum or Spirits. However, Council Regulation 1576/89 of 12 June 1989 laid down common provisions on the definition, description and presentation of spirit drinks.

Losing any of the protocol *tariff quotas* would be disastrous for the ACP group, but the cost for some ACP suppliers of losing the *country specific allocations* within the quotas may also be particularly high. Production costs vary greatly within the ACP. Should country specific allocations be removed in favour of "global" tariff quotas for the ACP, the more efficient ACP suppliers would increase market share at the expense of the least efficient producers. Taking the example of bananas, the loss of a guaranteed level of access - previously afforded to all of the twelve protocol signatories through the country specific allocations - may marginalise the least competitive exporters from participation in the EU market. A recent working paper from the International Labour Organisation (ILO) on the Caribbean banana industry concurs with this view: "*it seems certain that especially the end of individual country quotas for the benefit of one global ACP quota will put additional pressure on smaller-scale producer countries. Fears exist that the same multinationals that operate in Latin America would be able to use their price advantage through their large estates in other ACP countries, such as in Côte D'Ivoire or Cameroon*" (ILO, 1999, p.19).

Box 3 : Article XIII of the GATT

By WTO rules, tariff quotas are to be administered in accordance with Article XIII, and in principle they should be non-discriminatory. Article XIII of the GATT refers to the "non-discriminatory administration of quantitative restrictions." This is highly relevant to Lomé's protocols because tariff quotas are the EU's mechanism for implementing its protocol commitments to the ACP. The quotas are of value to the ACP precisely because they extend preference to one set of developing countries (the ACP) over another (e.g. Latin American countries).

Article XIII.1 states that if a State restricts a product from one member, they must apply similar restrictions on the same products from all members.

The banana Panel found that the EU regime, introduced on 1st January 1999, was in violation of this article. They found that ACP traditional suppliers could export their products to the EU under the "others" category in the MFN tariff quota but, in contrast, non-ACP suppliers had no access to the ACP tariff quota of 857,700 tonnes. This, the Panel concluded, amounted to unequal treatment and contravened Article XIII.1.

Article XIII.2 obliges Member States when applying import restrictions to aim "*at a distribution of trade approaching as closely as possible the shares which the various parties might be expected to obtain in the absence of such restrictions.*" The allocation of shares of a quota is determined according to the "*substantial interest*" of Member States in supplying the product concerned. This, in turn, is defined on the basis of a "*previous representative period.*" The banana Panel found that no period could serve as a "*representative period.*" Private discussions are already taking place on whether a "*previous representative period*" can be established for the EU sugar regime.

During the banana Panel, the EU argued that country allocations for the MFN tariff quota (mainly for Latin American suppliers) were calculated on the basis of imports during the period from 1994 to 1996. In the EC's view, this was the most recent three-year period for which reliable data were available. Ecuador challenged the EU's allocation of the MFN tariff quota on the grounds that its share does not approximate the share that it might be expected to obtain in the absence of restrictions. It also argued that given the history of trade-distortive EU banana measures, it was impossible to base any such calculations on the idea of a representative period.

The Panel concurred with this view, stating that "*with the introduction of the common market organization for bananas in mid-1993, we note traditional ACP supplier countries were guaranteed country-specific allocations at pre-1991 best-ever import levels, which were far beyond their actual trade performance in the recent past.*" The Panel concluded that "*while Members have a degree of discretion in choosing a previous representative period, it is clear in this case that the period 1994-1996 is not a representative period. Accordingly, we find that the country-specific allocations assigned by the European Communities to Ecuador as well as to the other substantial suppliers are not consistent with the requirements of Article XIII:2.*"

To date, only Lomé's banana quota has been scrutinised by a GATT or WTO Panel. Some analysts have suggested that this could set an unwelcome precedent for the country specific allocations to individual ACP countries under the beef/veal and sugar protocols. However, it has also been argued that like-for-like comparisons between the banana and sugar protocols are ill-made as each has a different relationship to the EU regimes through which they are implemented, and each of the tariff quota arrangements has a different status at the WTO.

Within the WTO context, the EU's tariff quotas to the ACP fall into two categories: those that are WTO-bound and justified in the EU's Uruguay Round schedules, and those that are not WTO bound which are called "autonomous" arrangements (i.e. unilaterally extended to the ACP by the EU). Table 6 demonstrates the current situation regarding Lomé quotas under the protocols and their status at the WTO. It suggests that the access arrangements under the protocols have yet to be fully integrated into the multilateral trading system at the WTO.

This issue of specific country allocations within tariff quotas is just one of the areas that warrants detailed consideration if the waiver secured for a post Lomé arrangement is to avoid the shortcomings of its predecessor. Eliminating completely the risk of a WTO challenge would seem to be an impossible task. Any trade agreement that does not conform to the principle of Most Favoured Nation (MFN) - the cornerstone of the GATT - may always attract the scrutiny of WTO members whose competitive position is affected as a result.

Political Aspects of the Debate

Historically, the issue of Lomé's protocols has been politically divisive. Ravenhill (1985) writes "*Britain's commitment to safeguard the interests of developing country members of the Commonwealth Sugar Agreement proved to be the most difficult issue to resolve in the negotiations for the first Lomé Convention.*" This trend has continued to the present day and there are opposing views in the EU as to the value of the protocols and their continuation. It was reported that during the final consultations for the EU negotiating mandate, the Nordic members of the Union proposed that the protocols be discontinued after the expiry of Lomé IV.

On a political level, the situation is complicated by the fact that ACP interests in the protocols conflict with domestic interests in EU Member States (e.g. French, Spanish, and Portuguese banana producers, French rum producers, European beef farmers and European beet sugar producers). Candidates for accession to the EU will also swell European production of protocol products (e.g. Polish sugar). Domestic EU producers would normally be expected to oppose granting concessions on agriculture that might affect their interests (e.g. the EU agricultural lobby's opposition to the proposed free trade agreement with Mercosur). A notable exception to this is the mutually supportive Joint Accord that has been reached between the French rum industry based in its overseas Departments (DOM) and the Caribbean rum producers of the Cariforum grouping (WIRSPA), traditional competitors in the EU market.

The forces "pushing" and "pulling" the arrangements surrounding each Commodity Protocol vary. Opposing positions are often taken by the stakeholders or interest groups in each industry. In all cases, however, these actors extend beyond the Lomé relationship indicating that it will be increasingly difficult to isolate the EU-ACP trade relationship from trade liberalisation. The examples of the sugar and banana regime are good illustrations:

	IN FAVOUR OF CHANGE	STATUS QUO
EU sugar regime under CAP (through which sugar protocol commitments to ACP are honoured)	EU consumers, EU industrial users (e.g. Cadbury's ²⁰) - lower price	ACP exporters
	Third country producers (including the Cairns Group of developed and developing countries) – greater access	EU cane sugar refiners
		EU beet producers and processors
		European Commission
EU banana regime under CAP (through which banana Protocol commitments to ACP are honoured)	“Group of 5” who brought formal WTO case in 1996 (US, Guatemala, Honduras, Mexico and Ecuador). Later joined by Panama.	ACP exporters
	US multinationals (e.g. Chiquita, Dole)	EU marketing companies and shipping lines
	Individual EU Member States (e.g. Germany)	Individual EU Member States (e.g. UK)
		European Commission?

Reform of the EU banana regime is a politically divisive issue within the EU as well as among WTO Member States. European producers such as Spain, France and Portugal are keen to protect their growers but others, such as Germany, are pressing for liberalisation. This scenario indicates the difficulty that the European Commission may have in the future when dealing with other Protocols as the sole negotiator charged with achieving a satisfactory solution against a background of warring Member States defending national interests. As well as being a potential source of inter-governmental tension within the EU, the future of the protocols is also likely to be influenced by the positions taken by the CAP farming lobby on the changes to the EU regimes for beef/veal and sugar and other commercial interests within the Union, such as European producers of rum in the French overseas departments.

Within the ACP, the positions taken by individual ACP states also reflect domestic political concerns. In some Caribbean states, the welfare of the sugar industry has a political significance beyond its contribution to the region's economies. Sugar policy has in the past had a prominent role in political campaigning leading up to elections in ACP countries. There may also exist differing levels of commitment to the continuation of the protocols within the ACP group, particularly as only 29 out of the 71-nation grouping benefit from these arrangements. It may be recalled that although Lomé is a government-to-government arrangement, its trade provisions mostly affect ACP private firms. This has sometimes resulted in tensions between ACP private sector actors exporting under the protocols and their governments, who are responsible for their negotiation with the EU.

Finally, and particularly important in the context of the WTO, the political debate on the future of the protocols is likely to be influenced by the positions of third countries outside of the ACP/EU relationship. These include members of the Cairns Group (e.g. Australia), competing developing country producers (e.g. Brazil), the candidates for accession to the EU (e.g. Poland), and the USA. Encouragingly, the US has indicated that it will support the continuation of the Lomé waiver, including for the protocols. In its “blueprint for a US-Africa Partnership for the 21st Century”, it was stated that the USA “will support a request for a continuation of the current WTO waiver for a sufficiently long transitional period for non-reciprocal trade preferences and **commodity protocols** in favor of African Caribbean and Pacific (ACP) states in a post-Lomé IV period as required by the current Convention.”²¹

²⁰ *Cadbury's attacks EU on cost of sugar*, Financial Times, January 12 1999. It remains unclear whether the benefit of lowering the price for EU sugar will be transferred to European consumers in the form of a commensurate reduction of the price of the final product (e.g. a chocolate bar), or whether this will result in higher profits for industrial sugar users.

²¹ US-Africa Ministerial Blueprint for a US-Africa Partnership for the 21st Century, Released at the conclusion of the US-Africa Ministerial Meeting, Washington, DC, March 18 1999.

Scenarios for the Future

In broad terms, there are two sets of issues that threaten the continuation of the protocols beyond 2000. **The first set** concerns the negotiable options that are available within the context of the future ACP/EU trade relationship.

Lomé negotiators have yet to agree on the following: the duration of the roll-over of the Convention's current trade provisions, the nature of the new ACP/EU trade relationship to be introduced thereafter, and when this should be introduced. The ACP's position, articulated in their negotiating mandate, is to seek a ten year waiver at the WTO and consider alternative trade arrangements from 2006 when there will be more clarity on the revision of the EU's GSP, the reform of the CAP, the outcome of the "Millennium" Round in the WTO and the EU enlargement. In contrast with this "wait and see" approach, the EU's mandate offers to roll-over Lomé preferences until 2005 with a five year waiver, and then switch to WTO compatible trade arrangements which will not require a waiver (i.e. REPAs). At what stage during these events will the future of protocols be discussed? When will preparations begin for suitable transitional arrangements? What should the "framework agreement" contain on the protocols? Once again the timing will be a critical component to determining the options available.

The second set of issues relates to how these arrangements might be implemented and, by extension, changes within the EU's regimes for bananas, beef/veal, sugar and within the market for rum.

Principal among these will be the reform of the CAP, which is only mentioned in passing in the EU's mandate. The fact that such a fundamental issue to the nature of the future ACP/EU trade relationship, and the protocols for beef/veal and sugar in particular, was not explored in more detail clearly irritated some Lomé observers, including the Select Committee for International Development of the British House of Commons. In their report on "the re-negotiation of the Lomé Convention," the Committee noted that, "*Reform of the CAP is of fundamental importance not only to the farmers and producers of the EU but also to the developing world. It is certainly inextricably linked to the trade proposals of the Lomé Convention. Yet the documents arising from the Commission on these two issues hardly refer to this inter-relationship. This makes a mockery of the Maastricht commitment to policy coherence*" (International Development Committee, 1998).

Keeping with the theme of policy coherence on the EU side, it is also unclear which part of the European Commission will have the predominant role in managing the delivery of future arrangements for the protocols. Will this be DGI (External Relations: Commercial policy and Relations with North America, the Far East, Australia and New Zealand), DGVI (Agriculture and Rural Development) or DGVIII (Development)?

Not only is the issue of CAP reform central to the nature of the future ACP/EU trade relationship, it is also critical to the protocols, and the arrangements for ACP exports of beef/veal and sugar under the CAP in particular. Bananas and rum, although ostensibly covered by the CAP are not treated in the same way as beef/veal and sugar and their regimes fall outside of the remit of CAP reform. However, in the case of beef/veal and sugar, there is a direct inter-relationship between the reform of the CAP and the value of the protocols. Any change in these CAP regimes may have a direct impact on ACP exporters either in terms of the prices received or their terms of access to the EU market. Influencing such events as they happen would also appear to be beyond the scope of the ACP/EU dialogue. Since the panorama for CAP reform between 2000 and 2005 will be further complicated by a range of external pressures (e.g. WTO Millennium Round and the expansion of EU), it is presently impossible to accurately predict what will be the precise consequences of CAP reform for ACP exports of beef veal, and sugar.

Perhaps the only generalisation that can be made is that reform, however slow, is likely to continue to reduce the value of the ACP's preferential arrangements under the protocols. In addition, the political space for flexibility towards the ACP at the WTO would appear to be contracting due to the banana

and hormone-treated beef disputes. The former has forcibly demonstrated the difficulty for the EU to achieve the right balance between satisfying the Lomé commitment to the ACP in a manner acceptable to EU Member States and the WTO. The proposals in the EU's negotiating mandate implicitly acknowledge the increasing difficulty of this delicate balancing act, and are permeated by references to the need to comply with WTO rules.

REPAs and the Commodity Protocols

One of the only certainties concerning discussions on trade within the post Lomé negotiations is that the European Commission's preferred option for its relationship with ACP countries beyond 2005 is Regional Economic Partnership Agreements (REPAs). Proposals for an “enhanced” GSP and “Alternative Trade Arrangements” still need further conceptual elaboration. At this stage in the negotiations, REPAs would appear to be the only “off the peg” solution on the negotiating table, even though the proposal remains undefined in terms of the all important details that will permit informed choices to be made regarding their suitability for the ACP.

What would REPAs mean for the protocols? Accurate analysis is difficult given the many imponderables referred to in this paper. However, if the EU's intention is to elicit a commitment by the ACP to REPAs for the post 2005 trade regime before the expiry of Lomé IV, then certain working assumptions are needed to answer the question. The first is that the protocols will be rolled-over until 2005. The second is that they will not be challenged at the WTO; the third is that tariff preference for the three protocols (bananas, beef/veal and sugar) will continue to be significant enough to merit their extension beyond 2005 or 2010. Lastly, and perhaps the greatest assumption of all, is that ACP states will agree to the “regionalisation” of the Lomé partnership in this way.

The EU mandate states that the ultimate aim of the REPAs is to establish FTAs with ACP regional groupings, or individual ACP states. Under current WTO rules (Article XXIV) free trade agreements have to cover “*substantially all trade*” between the contracting parties. Would the protocol products be included or excluded in these agreements? As Box 4 shows, the EU/South Africa agreement excluded all four protocol products (by placing them on “reserve lists”), at least for the time being. The EU mandate states that “[REPAs] will cover *substantially all trade between the parties, excluding no sector but taking into account the sensitivity of certain products of both parties.*”

If the EU and ACP were to fully liberalise their trade in the protocol products, ACP industries would compete directly with European products (i) in their own markets, which in the case of beef may have important negative impacts, and (ii) in the EU market, where there would no longer be a tariff-quota to guarantee a certain volume of exports for bananas, beef, rum or sugar. Which of the ACP industries could compete with European production of the same products, much of which is made artificially competitive through subsidies? Would ACP sugar be able to withstand the competition from EU producers, including newcomers such as Poland?

Levels of competitiveness vary greatly within ACP countries, especially in the case of bananas and sugar. For instance, production costs of bananas are substantially lower in Côte d'Ivoire than in the Windward Islands. Such diversity is also apparent in the ACP sugar industries.²² Leaving the question of whether REPAs would include or exclude protocol products unanswered makes it impossible to accurately assess the impact of these agreements on particular industries in the ACP.

By extension, it would appear unwise to ask the ACP to commit themselves before February 29th 2000 to an agreement of such economic importance without having the basis upon which to make an

²²The UK's Department for International Development is commissioning a study on the possible effects of erosion of preferences on ACP sugar producing countries. One of the objectives of the study is to “*try and establish the possible winners and losers in the process [of preference erosion]*”.

informed choice. Doubts surrounding the impact of REPAs will add to the palpable sense of uncertainty concerning the future of ACP production in some countries, particularly as investment decisions are likely to be postponed in the face of such an uncertain outlook. From another perspective, REPAs may lead to investment diversion to LDC producers of protocol products who will not be asked to reciprocate by opening their markets to EU production.

Box 4 - Commodity Protocols in the South Africa/EU Trade Agreement

The example of the South Africa's recently concluded 3½ years of negotiations with the EU for a Trade, Development and Cooperation Agreement is often cited as a useful reference point for the conduct of the post Lomé negotiations, particularly on trade. When South Africa presented its trade offer on a Free Trade Area (FTA), it called for "*free trade with asymmetrical coverage of all trade and sectors and special protocols to cover sensitive products.*" However, the final Trade, Development and Co-operation Agreement between the EU and South Africa, approved by the EU Council on 24th March 1999 did not include any Protocols annexed to the agreement. [The agreement established the framework for a reciprocal, but asymmetrical FTA, that will cover 90% of bilateral trade by value over a reference period (1994-1996)]

It was reported that, during the negotiations, there were differing views as to the meaning of a "protocol". The EU reportedly interpreted protocols in the context of Lomé's protocols, and the attendant benefits on price and access that they extend to the ACP. South Africa, by contrast, viewed special protocols as being an attractive mechanism for setting aside sensitive products from the main agreement that were to be liberalised at a later date.

The EU and South Africa finally agreed to place on "reserve lists" products that were considered "sensitive" and which require further negotiation before any liberalisation is to take place (i.e. they were excluded through GATT Article XXIV's "substantially all trade" provision). These included all four products covered by Lomé's protocols.

Conclusion

In common with the general provisions of the Lomé trade relationship, the commodity protocols face dramatic changes. Managing the agenda of change is the challenge to policy makers in both the EU and ACP if the Lomé partners are to avoid dysfunctional responses, often the by-product of change. Their continuation is inextricably linked to the fundamental issues now confronting Lomé negotiators in Negotiating Group 3 on Economic and Trade Cooperation.

The EU mandate for the post Lomé negotiations proposes that the “*economic partnership agreement could be enhanced dynamically over a number of stages*” of which, “*The first stage (1998-2000) would be the negotiation of an overall framework agreement that would set out the medium and long-term objectives for economic partnership and agree the approach for the achievement of those objectives.*” What should the overall framework agreement contain for the protocols? The EU mandate implies that its offer will be to roll-over the protocols for bananas, beef/veal, and sugar until 2005 and to consider new transitional arrangements for ACP rum. Will this be enough to encourage the requisite security and stability necessary for the long term growth of these industries in the ACP?

All these uncertainties regarding the future of the protocols point to difficult policy dilemmas for the Lomé partners. The inescapable reality is that the value of ACP preference under these arrangements will continue to decline, particularly as the pace of global liberalisation will once again be accelerated by the Millennium Round. The challenge is to ensure that suitable transitional arrangements are put in place to mitigate the impact on ACP countries of declining tariff preferences, worsening terms of market access, and falling EU prices. In this sense, the ACP should take advantage of the EU's offer to “*take account of the level of development of the countries concerned and the social impact of trade measures*” when addressing the future of EU/ACP future trade relationship. For bananas, the EU has established a special framework of technical and financial support for traditional ACP suppliers (EC, 1998).²³ Will it have the political will to introduce similar “frameworks of assistance” for ACP exporters of the remaining protocol products?

The ACP might also propose that the EU “multilateralises” its commitments to the ACP during the Millennium Round (i.e. registers the volumes of imports from the ACP for each protocol product). To be of value to the ACP, any transitional arrangement will also need to acknowledge the diversity of the protocols, the differing levels of competitiveness, and the evolving national and regional contexts of the individual protocol signatories. Beginning to develop practical, creative proposals on a case-by-case basis may be a first step to ensure the survival of these ACP industries in the melting pot of trade liberalisation.

²³ This will be implemented over ten years from 1st January 1999 to assist “*traditional ACP suppliers of bananas to adapt to the new market conditions following the amendments made to the common organisation of the market in bananas*”.

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