

Lomé Negotiating Brief



The Future of Lomé's Commodity Protocols: Fiddling while Rum Burns?

Eight months before the fourth Lomé Convention expires on 29 February 2000, the future of four commodity protocols providing preferential access to EU markets remains undecided. Unless quick progress is made on these rather complicated issues, countries in Africa, the Caribbean, and the Pacific are likely to suffer in the short to medium terms. This brief sets out some of the issues and likely consequences.

Trade issues are among the most contentious in the Lomé renegotiations, but the future of the four commodity protocols covering bananas, beef/veal, rum and sugar may be the most contentious of all. This issue epitomises the contradictions between the EU's commitments to its traditional trade partners and towards the multilateral trade system. It also highlights the debate over the value of trade preferences as a tool for development. It is clear, however, that failing to anticipate forthcoming trends and changes, and to design adequate and timely responses, will put many ACP countries at considerable risk.

Four different arrangements

The four commodity protocols annexed to the Lomé Convention allow duty free access to the EU market for fixed quantities of exports of bananas, beef/veal, sugar and rum from "traditional" suppliers. They originate in separate arrangements between former colonies and metropolises (UK and France), which pre-date the first Lomé Convention. Like Lomé tariff preferences, the protocols favour ACP producers over other suppliers, but with three main differences.

- (i) they cover ACP exports *competing* with goods that Europe produces (most ACP food exports such as coffee and cocoa barely compete with European

production),

- (ii) in two cases, they guarantee *prices* above the levels of world markets (by extending to ACP producers of beef and sugar some of the CAP benefits provided to European farmers), and
- (iii) they provide *higher margins of preference* than other "simple" tariff preferences, because competing imports from third countries face huge restrictions on the European market. Indeed, in a free trade world, ACP exports of beef/veal, bananas and sugar would probably not have been competitive in the EU market.

Each protocol has a different character, and EU commitments to the ACP vary considerably from one to the other (see table on next page). Moreover, the sugar protocol enjoys a special status, as it is legally independent from the Lomé Convention and has an indefinite duration.

Benefits and limitations

In terms of the revenues generated and the jobs preserved or created, protocols are undoubtedly among the most valuable elements of the Lomé Convention for many ACP countries. In the smallest ones, they account for a crucial share of the economy. Thus, in Dominica and St. Lucia, one third of the labour force is involved in the banana industry which depends entirely on the European market.

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June 1999

	Bananas	Beef/veal	Rum	Sugar
Aim	"[improve] the conditions under which the ACP states' bananas are produced and marketed and [continue] the advantages enjoyed by traditional suppliers".	"enable ACP states which are traditional exporters of beef to maintain their position on the Community market".	"allow an expansion of [ACP states'] sales of rum in the Community market".	"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 [...]".
Expiry	29 Feb. 2000	29 Feb. 2000	29 Feb. 2000	Indefinite (regime to be renewed in 2001)
Fixed quantities	X	X	X	X
Duty free	X	Duty reduced	X	X
Guaranteed prices	-	X	-	X
Trade development measures	X	-	X	-
			(unimplemented)	
Geographic coverage	12 "traditional" exporters of bananas to the EU: Côte d'Ivoire, Cameroon, St. Lucia, Jamaica, St. Vincent, Dominica, Somalia, Belize, Surinam, Grenada, Madagascar, Cape Verde (country quotas removed after 1997 WTO panel ruling)	Botswana, Kenya, Madagascar, Namibia, Swaziland, Zimbabwe	All ACP exporters of rum (<i>de facto</i> Bahamas, Barbados, Guyana, Jamaica, Trinidad and Tobago)	Mauritius, Fiji, Guyana, Swaziland, Jamaica, Zimbabwe, Barbados, Belize, Trinidad and Tobago, Malawi, Côte d'Ivoire, Zambia, Madagascar, Tanzania, St. Kitts & Nevis, Surinam, Uganda, Congo, Kenya

Many argue that even substantially increased aid flows can never take over the role of these "multifunctional" trade arrangements in promoting socio-economic development, e.g. through incomes directly trickling down to small farmers. Conversely, critics stress that the largest share of the benefits — the *quota rents* — is actually captured by European firms acting as intermediaries, and that indefinitely maintaining artificially high prices and market access for uncompetitive exports is not conducive to a real process of development and economic diversification.

Challenges: present and future

The four protocols are threatened by (i) the process of trade liberalisation which is eroding their benefits, and (ii) the enforcement of WTO rules that seek to limit or ban discriminating trade arrangements, such as protocols. Each also faces different challenges.

Bananas. A 6-year long conflict over the EU's banana regime — a complex system of quotas for producers and licenses for shippers — was triggered by Latin American banana exporting countries, backed by the US government under pressure from American multinational companies trading the fruit. It culminated in the 1998-1999 EU-US "banana war". Central to this controversy was the EU's discrimination in favour of the ACP. Several rulings by the WTO Dispute Settlement Body found various aspects of the regime to be inconsistent with Europe's obligations under the

GATT and GATS. The EU eventually accepted the ruling and has proposed several options for a new regime. Although the eventual impact on ACP economies remains unclear, their capacity to access the EU market will be negatively affected.

Beef/veal. As a result of the CAP reform (Agenda 2000), EU *prices* will be progressively reduced by 20 percent in 2002. European farmers will be compensated through higher direct payments but the returns from ACP beef exports to the EU will decrease. Conversely, since EU *tariff protection* so far remains untouched, the substantial tariff exemption enjoyed by the ACP remains of considerable value. However, the prospects of further liberalisation of trade in agriculture during the Millennium Round, and to a lesser extent the possibility of an EU-MERCOSUR free trade agreement, threaten to wipe out the benefits of the protocol for the ACP over the next decade.

Rum. During the 1997 WTO Ministerial Meeting, the "zero for zero" tariff agreement between the EU and the US on distilled spirits provided for the progressive abolition of MFN duties and quotas on both markets. From 2003, ACP rum exporters will have to compete with larger subsidised producers on a virtually free market. A "sweetener" to the bigger EU/US deal on information technology, this arrangement — in which the ACP were not consulted — dramatically erodes the ACP margin of preference and effectively signals the end of the rum protocol in its present form.

Sugar. The Uruguay Round was a mixed blessing for the beneficiaries of the sugar protocol. On the one hand, the EU agreed to reduce some of its tariffs between 1995 and 2001, increasing the downward pressure on the EU price received by ACP exporters. On the other hand, quotas were bound in the GATT, and thus appear less likely to be challenged. Since then, the EU sugar regime has not been affected by ongoing CAP reforms. But, when the current sugar quota regime ends in 2001, the EU is likely to lower its support to internal prices - a drop of about 20 percent is expected. The enlargement of the EU to include countries that produce low-cost sugar, as well as the next multilateral Round, will probably increase the pressure to bring EU sugar prices into line with world market prices.

Overall, there is a wide recognition that protocol-related benefits will continue to decline, and in the long run, protocols themselves will eventually go. Most also agree that before it happens, they — or some successor transitory arrangements — can still be of great value to the ACP, and help them manage a difficult process of transition away from special preferences. The challenge for Lomé negotiators is to strike an agreement on such arrangements. However, this seems remote, as the complex web of vested interests influencing the negotiators impedes the elaboration of a compromise.

Stakeholders and their motives

Protocols are probably one of the areas of the Lomé trade negotiations where disagreements between the two parties (and among Europeans) are the strongest. The ACP group has a fairly homogenous position. The twenty-nine beneficiaries of the protocols are among the most vocal defenders of the overall current trade regime. They have managed to mobilise ACP solidarity behind the defense of the protocols as part of this. This may change if trade negotiations were to be conducted between the EU and separate ACP regions.

On the European side, things are more complex. The EC, which negotiates on behalf of its Member States, faces a double dilemma: (i) by pushing for a *transformation of the Lomé trade regime*, it aims to strike a difficult balance between preserving a special/preferential trade relationship with the ACP and also acting as a “good custodian” of the WTO; (ii) through the *CAP reform*, it seeks to gradually make European agriculture more competitive, while retaining as much protection for European farmers as possible. DGVIII (development) may be *chef de file* for the negotiation with the ACP, but DGI (external relations) and DGVI (agriculture) have substantial roles to play in the future of protocols. It is not clear how sympathetic the EC, as a whole, is to the ACP case.

It seems relatively fair to say that most European *governments* are either hostile in principle or indifferent to protocols. Germany, the Netherlands and the Scandinavians see them as obstacles to free-trade and complain about the artificially high consumer prices (bananas). The UK, who introduced these arrangements in Lomé, and France, the main defender of both the “special” Lomé relationship and the CAP, are in trickier positions. *Lobbies* inside Europe have conflicting interests. Some private firms (e.g. sugar refiners, banana marketing companies, shippers) support the arrangements as they indirectly derive substantial benefits from them. Others complain about higher input prices (e.g. industrial users of sugar). Public opinion is split between sympathy for small ACP farmers (as the growing success of “fair trade” products shows) and the perception that protocols are a relic of the colonial era.

Finally, *outside Europe*, any WTO member may challenge the whole or some parts of each protocol as discriminatory and damaging to its own commercial interests, or for other reasons (i.e. the US do not produce bananas, but they challenged the EU regime). Sympathy for small, poor or vulnerable ACP countries may exist, but it has no legal basis. Unlike LDCs, “vulnerable” or “monocrop” states are not recognised categories that deserve special treatment — and most protocol beneficiaries are non-LDCs.

The protocols in the negotiations

Both the ACP and the EU mandates foresee a review of the protocols during the negotiations, but they seem to mean different things. The ACP mandate proposes that the four protocols be “maintained and enhanced”. It opposes a review of the sugar protocol. For rum, it states that “it will be necessary to achieve a new arrangement by 2000”. The beef protocol should be “improved” and the banana protocol “consolidated”. It also calls for the introduction of a protocol for rice.

The EU, by contrast, is much more ambiguous. Its mandate states that the rum protocol “*will not be renewed*” (though some form of assistance could be provided), but is far less clear on the other arrangements: “*The banana, beef and sugar protocols will be reviewed in the context of the negotiation of [regional] economic partnership agreements*” (REPAs). What does this mean? The EU-ACP negotiators have not yet addressed these questions, but two issues need to be tackled rapidly:

(i) *The waiver.* Protocols expire in February 2000, along with Lomé IV-bis (sugar excepted). Provided it is the EC’s intention to roll them over during the transition period between Lomé-IV bis arrangements and the new

trade regime, a new waiver, including the protocols, must be obtained from the WTO. This should not be taken for granted. The requesting member must clearly announce what WTO-compatible regime it is seeking to establish after the waiver expires. The EC is confident REPAs are the answer, but there is no agreement on this yet. Moreover, whether obtaining a roll-over of the current waiver would be enough to prevent protocols from further WTO challenges remains a matter of debate. Experts have warned that waivers would be subject to more scrutiny in the future, and they can be challenged by any WTO member that considers its commercial interests to be damaged.

(ii) *The post-Lomé IV bis trade arrangements.* For eventual REPA signatories, even if they are allowed to exclude protocol products from the agreement, the real question is whether there will still be guaranteed volumes or prices for their exports of these products within REPAs, or any other transition mechanism. So far, vagueness prevails. For non-signatories, the question is all the more acute since the terms of reference of the 1998 feasibility studies commissioned by the EC – although not reflecting an official position – envisaged that protocols would be maintained for ACP countries signing a REPA and discontinued for those opting out. Obviously, the EC is keen that the ACP signs up to the *principle* of preferential (regional) agreements by 2000, and protocols are a key argument. However, in the absence of details on future arrangements, it is logical to assume that protocols will be phased out over the 10-12 year transition period for the implementation of REPAs. It is clear that countries transferred into the GSP would lose all the benefits from protocols. Finally, should the ACP propose alternative trade arrangements, they would probably require long transition periods and adequate, more detailed support measures by sector.

Which way forward?

Protocols are a promise the ACP could not refuse, but which Europe can no longer hold. 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 for both of them to establish a positive agenda, with concrete transition plans for each sector. However, nine months before Lomé-IV bis expires, uncertainty prevails. This is already damaging for the ACP: investors in producing countries have been reported to put planned activities on the hold.

The future of protocols, and the speed at which the benefits they provide to the ACP will decrease, depend largely on the outcome of reforms and trade deals made outside the EU-ACP negotiations (CAP, Millenium Round), as the fate of the rum protocol showed. The banana saga has also revealed how vulnerable non-MFN arrangements are to challenges under the WTO. But these are hardly predictable, since the behaviour of potential challengers is largely politically-driven and WTO rules are subject to a great deal of interpretation. In the face of such challenges, the next few months of negotiations — before Lomé IV-bis expires and the Millenium Round is launched — may well be the final “calm before the storm”, where there is still time to pro-actively define transition regimes. However, each party seems dangerously undetermined as to the way forward, let alone close to an agreement.

Acronyms

ACP	Africa, Caribbean, Pacific
CAP	Common Agricultural Policy
EC	European Commission
EU	European Union
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GSP	Generalised System of Preferences
LDC	Least-Developed Country
REPA	Regional Economic Partnership Agreement
WTO	World Trade Organisation

The European Centre for Development Policy Management (ECDPM) is an independent foundation that aims to improve international cooperation between Europe and countries in Africa, the Caribbean, and the Pacific. It does this through capacity building for policy management, the promotion of policy dialogue between ACP countries and Europe, and through the provision of information and facilities for knowledge exchange.

Lomé Negotiating Briefs are designed to provide information on key issues relating to the current EU-ACP negotiations. On 18 May 1999, ECDPM and the Caribbean Council for Europe (CCE) organised a seminar in Brussels on the future of the Lomé commodity protocols, with financial support from the Swedish Ministry of Foreign Affairs. ACP and EU experts, representatives of governments and international organisations participated in their personal capacities; their views did not need reflect the formal positions of any party. This Brief is based on these discussions and draws from ECDPM Discussion Paper No. 5 by Adam Dunlop. It was prepared by Henri-Bernard Solignac Lecomte. Adam Dunlop and Carl Greenidge provided useful comments. For further information contact Kathleen Van Hove (kvh@ecdpm.org).