



Cotonou Infokit

From Lomé to Cotonou

Trade preferences granted by the European Union to ACP countries are an essential pillar of their cooperation, first under the Lomé Conventions, and now under the Cotonou Agreement. They also represent the most ambitious North-South trade agreement to date. However, after 25 years without significant changes, the EU used the renegotiations of their cooperation agreement with the ACP, which took place between 1998-2000, as a unique opportunity to profoundly transform the EU-ACP trade regime. The existing trade preferences have only been temporarily extended under the Cotonou Agreement (until 2008).

In 1975, the EU granted a preferential trade regime to ACP nations within the framework of cooperation agreements. Trade preferences, commodity protocols and instruments of trade cooperation were part of the four successive Lomé Conventions (1975-2000).

Under the Cotonou Agreement signed in June 2000, preferences were extended for eight further years (until the beginning of 2008). The regime will continue to benefit all countries of sub-Saharan Africa (except South Africa), as well as most independent developing countries in the Pacific and the Caribbean. South Africa, a signatory since 1998 of the EU-ACP cooperation agreements, has never benefited from the trade provisions. It signed a reciprocal free trade agreement with the EU in 1999.

For a long time, these preferences were the most generous European trade arrangement with third countries. The original aim was to promote and diversify ACP countries' exports, so as to favour their growth and development. However, as the EU lowered or abolished its trade barriers within a multilateral framework (GATT then WTO) or granted preferences to an increasing number of new privileged trade

partners in Eastern Europe, the Maghreb, Mexico etc., ACP preferences have lost their relative value.

Tariff and Non-Tariff Preferences

These preferences grant an advantage to ACP products imported into Europe in relation to competing products from other countries. The 'preferential margin' is the difference between the tariffs paid on the latter and those tariffs (often at zero) paid by importers of ACP products on their entry into the single European market (tariff preferences). The preferences also take the form of exemptions from non-tariff restrictions such as import quotas (non-tariff preferences). Under a safeguard clause - seldom used so far - the EU can re-impose restrictions when imports from ACP countries threaten their domestic producers.

These preferences are not reciprocal. This means that ACP countries are not obliged to offer special access to EU products in their own markets, and are able to restrict their entry by taxing them.

Manufactured and processed products from ACP countries are exempted from customs duties, as well as from certain restrictions (non-tariff barriers) on their entry into the single European market. To benefit from these preferences, ACP countries must conform to rules of origin, which set out the degree of processing required within ACP countries: "Non originating" raw materials cannot represent more than 15% of the ex-works price of the finished product. Moreover, simple assembly in an ACP country of components from non-ACP countries is not sufficient to constitute a product of ACP origin. The objective of these rules is to ensure that imported

products from ACP beneficiary countries really originate from them, and not from a non-beneficiary country which would thus illegally benefit from ACP preferences. The rules of origin authorise ACP countries to 'cumulate' the value added in other ACP countries, in the EU and in certain non-ACP neighbouring countries in the calculation of the originating component (which must be equivalent to at least 85% of the total value of the product). The Cotonou Agreement also allows a limited degree of cumulation with South Africa.

Preferences for *agricultural products* are less generous, since they are sometimes limited (by quotas, 'ceilings', seasonal restrictions for fruit and vegetables, and simple exclusion of a limited number of products). There are two types:

Tropical products which do not compete with European products (coffee, cocoa etc.) enter duty free. Several ACP countries have successfully developed exports of non-traditional products (cut flowers, tropical plants etc.) which benefit from a sizeable preferential margin. In most cases however, this margin is narrow due to the very low or non-existent customs duties under the Most Favoured Nation regime (MFN, the non-preferential rates applied to imports from WTO members).

Temperate products are exempted from certain restrictions applied as part of the EU's Common Agricultural Policy (CAP), consisting of high import duties, levies, quotas and subsidies. These exemptions affect about one-quarter of agricultural imports and take the form of exemption or reduction of customs duties. ACP exporters thus have an advantage over other exporters to the EU, but remain at a disadvantage in relation to EU domestic producers.

The Commodity Protocols

Four agricultural products were the subject of protocols annexed to the Lomé Convention. For certain 'selected and traditional suppliers' from the ACP countries, they gave free access to specific quantities of bananas and rum, and limited the distorting effect of the CAP on ACP exports of sugar and beef and veal. They even extended certain CAP benefits to ACP producers (such as high prices based on prices paid to European producers). However, the benefits of these protocols have diminished due to phenomena external to EU-ACP negotiations:

The 1996 US-EU agreement on spirits involved the de facto disappearance of the Rum protocol. The ACP producers, however, have received the assurance that aid would be provided to support their efforts to strengthen their competitiveness;

Non-ACP WTO members, who considered the provisions on bananas to be discriminatory, attacked the EU banana regime. Since a ruling of the WTO arbitration panel

supported their views, the banana protocol is being revised. The complex system of granting import licences could be transformed into a simple tariff preference, which probably would no longer suffice to protect ACP exports from the competition of Latin American products on the EU market;

The CAP reform has started to reduce intervention prices paid to beneficiaries of the beef and veal protocol. In addition, the agricultural negotiations in the WTO could erode the advantages the protocols offer in terms of tariff reductions;

The sugar protocol has been maintained, but the progressive lowering of the level of support to export prices is irreversible and the regime itself could be under threat.

The Other Trade-Related Provisions

Part of the financial and technical aid of the Lomé Convention was devoted to the promotion of ACP-EU trade, as well as to strengthening production and export capacities of ACP countries. Under the Cotonou Agreement, certain of these instruments have disappeared. The STABEX facility (to stabilise the export earnings of certain raw materials) and SYSMIN (financing of the mining sector) have been merged into the European Development Fund (EDF). Others have been carried over and reformed, such as the Centre for Development of Industry (now the Centre for the Development of Enterprise). New financial instruments, finally, combine support of the private sector with trade promotion (EBAS, etc.). (see infokit 16)

A Disappointing Result ...

In the 25 years between the signature of Lomé I and the expiration of Lomé IV, the share of ACP exports in European markets has fallen by half, from nearly 8% to about 3%. The main beneficiaries are other developing countries such as South East Asia which enjoy a level of preferential access to the EU (the Generalised System of Preferences) that is less favourable than under Lomé.

Successful experiences of the use of preferences are in fact limited to some sectors and some countries. While it was hoped that they would stimulate exports and boost growth, the incapacity of ACP economies to produce more, better and a greater diversity of products has in fact prevented them from taking advantage of this privileged access. This is the so-called 'supply constraints' argument in which the preferential margin (the difference between levels of customs duties) is only one element of competitiveness.

The argument follows that other elements - such as production costs, product quality, exporters' capacity to adapt to changes in world demand, etc - count even more

than preferential access. These are all areas where ACP countries confront enormous structural obstacles (low rates of saving, poor infrastructures, etc.) and where they are further handicapped by unsuitable economic policies, which often penalise the transfer of innovative technology, production and export. These elements have seriously contributed to delaying ACP's progress in comparison with Asia. Preferential margins can give a 'helping hand' to exports - as in the case of Mauritius - but they cannot compensate for a lack of basic competitiveness in ACP economies.

... An Irreversible Erosion ...

Even supposing that ACP countries were to succeed in improving considerably the performance of their economies, it is now very late to hope to reverse the trend of preference erosion. The value of preferences - the preferential margin - is irreversibly eroded under the impact of two phenomena:

The EU is progressively lowering its trade barriers within the GATT framework, in favour of all WTO members or a specific group (e.g. the EBA project providing free access to the EU market for LDCs). It is also multiplying its preferential agreements with certain third countries (Eastern Europe, Turkey, Maghreb and Middle East, South Africa, etc.). The protocols are equally affected by factors over which the ACP have no control.

The type of preferences granted are getting rather 'dated': Tariff and quantitative restrictions are no longer the only instruments of European protection. Other obstacles, such as veterinary and quality standards, anti-dumping measures or the distortions caused by national legislation, play an increasing role against which preferences inherited from Lomé are useless.

However, there are certain sectors - textiles, clothing, and fisheries - where trade preferences will still be useful to ACP exporters for some time to come. The same is the case for the protocols on sugar and beef and veal, which bring diminishing but still tangible benefits.

... and A Challenged Legitimacy

Not the disappointing results, but the incompatibility with WTO rules is the key argument put forward by the EU to justify the termination of non-reciprocal preferences. Preferences infringe the principle of non-discrimination established by Article I of GATT. This is the cornerstone of the international trading system whereby all preferences granted to one member must automatically be extended to all others. Exceptions are certainly foreseen to this principle, which permit the conclusion of discriminatory agreements under the following reservations:

Either that they be reciprocal, in the case of free trade agreements which seal the project for political integration between WTO members (Article XXIV of GATT),

or they are granted by a developed country to all developing countries - or to a recognised sub-group, the only one being the least developed countries - without discrimination between the latter (the so-called 'enabling clause' permitting special and differential treatment of developing countries).

However, preferences inherited from Lomé are not eligible as exceptions. On the one hand, the regime is non-reciprocal, thus it is not a free trade agreement. On the other hand it is discriminatory, since it is more generous towards the ACP than it is towards other developing countries. For these reasons, the EU had asked other WTO members for a waiver of Article I for Lomé IV-bis (1995-2000) which was granted. However, WTO members require concessions in exchange for granting a waiver. Safeguarding ACP trade interests thus has a price for Europe, which it is not prepared to pay for much longer. Consequently, the EU announced during the post-Lomé negotiations that it would only ask for one more supplementary derogation, on a provisional basis, while waiting to put in place a regime fully compatible with WTO rules. The ACP and EU agreed at Cotonou in June 2000, on a new trade regime namely the concept of the Economic Partnership Agreements. (see infokit 14)

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 (ACP). 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.

Designed for policy makers and practitioners in ACP and EU countries, the Cotonou Infokit brings together, in a readable form, information on the implementation of the new Cotonou Partnership Agreement. For further information on the infokit, please contact Kathleen Van Hove (kvh@ecdpm.org).

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