Assessing the Economic Partnership Agreements (EPAs): a product level approach

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Abstract

With the temporarily suspension of the WTO negotiations, the Economic Partnership Agreements (EPAs) launched by the EU in 2002 and that will come into being in 2008 , becomes the major the major trade challenge for the African, Caribbean and Pacific countries(ACP) which nowadays are the most vulnerable countries in the global trading system.
The negotiations on EPAs define a new stage in the development policy of the EU towards developing countries which is fully compatible with the WTO trading rules, in the sense of article XXIV GATT. However many concerns arise. The first of them is the ability of ACP countries to give preferential access to EU products, entering in a reciprocal preferences system with the EU. Moreover, the calendar is extremely tight and numerous levels of freedom are still to be defined as the modalities of trade liberalization that will fit the WTO rules (scope of coverage, speed).

Our study intends to present a very detailed analysis of the trade-related aspects of EPAs negotiations. We use a dynamic partial equilibrium model at the HS6 level (5,113 hs6 products). The main source of trade data are Comext and BACI, while ad-valorem tariffs and Tariffs-Rate-Quotas are provided by MacMapHS6v2. Thanks to this we can accurately deal with the crucial aspect of sensitive products. Sensitive products selection will be based on different criterions, such as "political sensibility" or "sectors' vulnerability", at the single country level and by group of negotiation. The dynamic aspect of the model will allow different transition periods of EPAs implementation to be taken into account.

Different simulations will be performed in order to assess the impact of both the alternative EPAs negotiations and the "alternative trade agreements" to them, whenever EPAs would not be signed. The consequences of EPA will be assessed through different indicators: exports and imports variation, changes in duties income, current account and also, food balance (including calories indicators).

A discussion will be conducted to compare these PE results to GE analyses conducted on the EPAs.

Key Words:
JEL:

Abbreviations

ACP	African, Caribbean and Pacific Group (Lomé Convention)
ACWL	Advisory Centre on WTO Law
AD	Anti-dumping measures
AFTA	ASEAN Free Trade Area
AGOA	African Growth and Opportunity Act
AMS	Aggregate measurement of support (agriculture)
AoA	Agreement on Agriculture
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATC	Agreement on Textiles and Clothing
ATPA	Andean Trade Preference Act
CACM	Central American Common Market
CAPE	Cellule d'Analyse de Politique Economique
CARICOM	Caribbean Community and Common Market
CARIFORUM	Caribbean Forum of the ACP Countries
CBERA	Caribbean Basin Economic Recovery Act
CBD	Convention on Biological Diversity
CBI	Caribbean Basin Initiative
CBTPA	Caribbean Basin Trade Partnership Act
CEPII	Centre d'Etudes Prospectives et d'informations internationales
CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale
CNL	Competitive Need Limitation
COMESA	Common Market for Eastern and Southern Africa
CTD	Committee on Trade and Development
CU	Custom Union
CVD	Countervailing duty (subsidies)
DDA	Doha Development Agenda
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EBA	Everything But Arms
EC	European Communities
ECDPM	European Centre for Development Policy Management
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EFTA	European Free Trade Association
EPA	Economic Partnership Agreement

EU	European Union (officially European Communities in WTO)
FAC	Food Aid Convention
FAO	Food and Agriculture Organization
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNI	Gross National Income
GSP	Generalized System of Preferences
HS	Harmonized Commodity Description and Coding System
HDI	Human Development Index
ICTSD	International Centre for Trade and Sustainable Development
ID	Import Duties
IF	Integrated Framework
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
ILO	International Labour Organization
IMF	International Monetary Fund
ISIC	International Standard Industrial Classification
ITC	International Trade Centre
ITO	International Trade Organization
LDBC	Lesser Developed Beneficiary Country
LDC	Least Developed Country
MERCOSUR	Southern Common Market
MFA	Multifibre Arrangement (replaced by ATC)
MFN	Most-favoured-nation
MTN	Multilateral trade negotiations
NAMA	Non Agriculture Market Access
NFIDC	Net-Food Importing Developing Country
NGO	Non-governmental organization
NTC	Non-trade concern
OECD	Organization for Economic Co-operation and Development
OPEC	Organization of the Petroleum Exporting Countries
PRSP	Poverty Reduction Strategy Paper
PTA	Preferential Trade Agreements
S&D, SDT	Special and differential treatment (for developing countries)
SAARC	South Asian Association for Regional Cooperation

SADC	Southern African Development Community
SCM	Subsidy and Countervailing Measure
SITC	Standard International Trade Classification
SPS	Sanitary and phytosanitary measures
TBT	Technical barriers to trade
TC	Trade Creation
TD	Trade Diversion
TIM	Trade Integration Mechanism
TMB	Textiles Monitoring Body
TNC	Trade Negotiations Committee
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRAINS	Trade Analysis and Information System
TRIMs	Trade-related investment measures
TRIPS	Trade-related aspects of intellectual property rights
UEMOA	Union Économique et Monétaire Ouest Africaine (West African Economic and Monetary Union (WAEMU))
UN	United Nations
UNCTAD	UN Conference on Trade and Development
UNDAF	UN Development Assistance Framework
UNDP	UN Development Programme
UNEP	UN Environment Programme
UNIDO	United Nations Industrial Development Organisation
USITC	United States International Trade Commission
USTR	United States Trade Representative
VER	Voluntary export restraint
WB	World Bank
WAEMU	West African Economic and Monetary Union
WCO	World Customs Organization
WIDER	World Institute for Development Economic Research
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Content

I. EPAs negotiations and the alternative policy options

I. a) ACP PREFERENCES

I. a).i) History in brief: the Lomé Conventions

The European Union began a cooperation policy with the African, Caribbean and Pacific (ACP) states in 1975[1]. Since then and until 2000 these relations were governed by the regularly updated Lomé Conventions[2]. In this period the convention was based on equal partnership as the cornerstone of the cooperation, thus investing ACP countries of the "ownership" of their own development. It focused on two key elements: a) economic and commercial cooperation, and b) development cooperation; therefore it contained both elements of "aid and trade".

The economic cooperation, realized through a system of trade preferences, ensured that manufactured and agricultural products (not in direct competition with products covered by the common agricultural policy) could enter the European Community without being subject to customs duties or quantitative restrictions, and more important on a non-reciprocal basis, in the sense that ACP states were merely requested to apply the most favoured nation clause to the Union and to refrain from discriminating between countries of the Union. Specific regimes were applied to products of extreme importance for ACP states such as sugar, beef and veal, rum and bananas.

The development cooperation was assured through specific operations in various sectors (the so-called sectoral approach) such as health, education, environment and so on.

However, in the few years before the expiration of the IV Lomè convention, the ACP-EU cooperation was facing pressures on several fields. On the part of the European Union, the relevance covered by ex-colonies ACP states in the past, was largely decreasing over time, and they were not among the EU's priority anymore. On the other side ACP countries felt that the principle of "equal partnership" had been eroded and replaced by "conditionalities", as respect for human

[1] Cooperation between the European Union (at that time Community) and countries in sub-Saharan Africa, the Caribbean and the Pacific (not yet ACP Group) started in 1957 with the signature of the Treaty of Rome and the birth of the European Common Market. From 1963 until 1974 this cooperation was established by the first and the second Yaoundé Conventions between AAMA (Associated African and Malgache Countries) and European Economic Community.

[2] The cooperation was characterized by a long term perspective witnessed by the five years length of Lomé I signed in 1975, Lomé II in 1979, Lomé III in 1984, and the ten-years length of Lomé IV in 1990, designed to end in 2000 with a mid-term review in 1995 implementing the Lomé IVbis convention. For an assessment of the various Lomé conventions see the series of articles published by SIMMONDS , *The Lomé Convention and the New International Economic Order, CMLR*, 1976, pp. 315-334; *The Lomé Convention: Implementation and Renegotiation, CMLR*, 1979, pp. 425-452; *The Second Lomé Convention: The innovative features, CMLR*, 1980, pp. 99-120; *The Third Lomé Convention, CMLR*, 1985, pp. 389-420; and *The Fourth Lomé Convention, CMLR*, 1991, pp. 521-547. See also DAVENPORT, HEWITT and KONING, *Europe's Preferred Partners? The Lomé Convention in World Trade*, 1995, London, Overseas Development Institute.

rights, democratic principles and the rule of law became "essential elements", whose violation could lead to partial or total suspension of development aid[3]. In addition, at the international level the acceptability of this special regime was decreasing, in fact despite preferential access to EU markets, ACP export performance was deteriorating over time and the preferences were not fulfilling developing countries' expectations. This has been attributed to the restricted market access for key products and the result was that ACP countries were more and more characterised by the spreading of poverty and the consequent instability and potential conflict.

Furthermore, with the came into being of the World Trade Organization, the preferential trade regime provided by the Lomé convention was seen increasingly unacceptable as "incompatible" with the new international trade rules. A major expression of these tensions can be found in the dispute over the banana regime.

Therefore all these arguments highlighted the awareness for a deep re-thinking of the development cooperation in general[4] and a reappraisal of the ACP-EU cooperation in particular. Negotiations[5] started in 1998 on the basis a Commission Green paper in 1996[6] and a discussion paper[7].

I. a).ii) The Cotonou Partnership Agreement

The new Cotonou Partnership Agreement was signed between the ACP countries[8] and the European Union, on 23 June 2000 in Cotonou, Benin and was concluded for a twenty-year period from March 2000 to February 2020[9] with a clause for a mid-term review every five years.

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[3] See ARTS, *Integrating Human Rights into Development Cooperation: The Case of the Lomé Convention, The Hague/London/Boston*, 2000, at p. 245 the author points out that notwithstanding in Lomé III human rights provisions had poor substance; it was a big object of discussion in the joint bodies of the convention.

[4] For arguments about the general reform of the European Union development cooperation see SANTISO, *Reforming European Foreign Aid: Development Cooperation as an Element of Foreign Policy, European Foreign Affairs Review*, 2002, pp. 401-422.

[5] About the different negotiation positions of the European Union from one side, and the ACP countries on the other side see MCMAHON, *Negotiations in a Time of Turbolent Transition: The Future of Lomé, Common Market Law Review*, 1999, pp. 599-624. See also ELGSTRÖM, *Lomé and Post-Lomé: Asymmetric Negotiations and the Impact of Norms, European Foreign Affairs Review*, 2000, pp. 175-195. The author argues at p. 176 that the Cotonou agreement is the result of an "asymmetric bargaining game where the internal deliberations of the stronger side, [the European Union], is a major predictor of the outcomes". The author is of the view that on the European side "concepts of partnership and obligations have been weakened, while other norms, stressing liberalism and democratization, have become more influential in the negotiations". Thus the reshaping of the normative basis of the EU policy towards the Third World results in a "stricter conditionality" of the development policy. The author concludes at p. 195 affirming that "the norm-based power of the weak has been replaced by a situation of total power asymmetry, where the normative consensus of the EU leaves little room for concessions".

[6] *Green Paper on relations between the European union and the ACP countries on the eve of the 21st century - challenges and options for a new partnership*, COM(96)570 final 20.11.1996.

[7] *Guidelines for the negotiation of new cooperation agreements with the African, Caribbean and Pacific countries*, COM(97)537 final, 29.10. 1997.

[8] Originally the ACP countries were 77, with the adhesion of Cuba in 2001 they became 78. South Africa formally joined the ACP group in April 1998 (under the WTO it is considered as a developed country). It does not benefit from Lomé trade preferences. It has concluded a separate FTA with the EU, the "Trade, Development and Cooperation Agreement", which is applied provisionally since 1 January 2000, see OJ L 311, 4 December 1999.

The Cotonou Agreement contains ambitious objectives such as poverty eradication and sustainable development, and the gradual integration of the ACP countries into the world economy, to be achieved through political dialogue, development cooperation and closer economic and trade relations[10]. Major changes from the Lomé Conventions are the strengthening of the political dimensions of the partnership, the extension of the partnership to new actors, the preparation of a new WTO compatible trade policy, and more rationalised performance based aid management[11].

The Cotonou Agreement and Conditionality

The strong political foundation of the Cotonou Partnership Agreement, which defines a tight conditionality, can be recognized from the fact that the agreement is underpinned by a set of core values or "essential elements"[12], such as the respect for human rights, the democratic principles and the rule of law, whose violation can lead to the suspension of aid under Article 96 of the Agreement[13]. Good governance is considered to be a "fundamental element"[14] of the Cotonou Agreement. Serious cases of corruption, including acts of bribery leading to such corruption, are grounds to suspend cooperation[15]. It is easily understandable that Article 96 and in a minor way Article 97 are the most controversial provisions of the agreement as they allow for suspension of the cooperation. The first reason of controversy lies in that Article 96 does not specify what action

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[9] *Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part*, signed in Cotonou on 23 June 2000, OJ L 317, 15.12.2000.

[10] See Preamble to the Cotonou Agreement.

[11] See BABARINDE and FABER, *From Lomé to Cotonou: Business as Usual?, European Foreign Affairs Review*, 2004, pp. 27-47. The authors argue that the old model of ACP preferences was no longer tenable and not compatible with the interests and the aspirations of the EU as a serious international actor. The new agreement thus should not be regarded as another Lomé convention as it introduces more reciprocity, more mutual obligations in political and economic terms and more pressure for the liberalization in ACP economies. See also ARTS, *ACP-EU Relations in a New Era: The Cotonou Agreement, Common Market Law Review*, 2003, pp. 95-116. The author points out that the Cotonou Agreement marks a major overhaul of some fundamentals in ACP-EU relations, building upon and elaborating on the new development cooperation articles of the revised EC and EU Treaties.

[12] The term "essential element" is to be understood as an implicit reference to Article 60 Vienna Convention on the Law of Treaties, according to which "the violation of a provision essential to the accomplishment of the object or purpose of the treaty" constitute a material breach that may justify the termination or suspension of the Treaty. See on this point MARTENCZUK, *From Lomé to Cotonou: The ACP-EU Partnership Agreement in a Legal Perspective, European Foreign Affairs Review*, 2000, p. 469.

[13] Article 96 is not a "general suspension clause" applying to all material breaches of the Agreement; rather it is targeted only violations narrowly defined as essential elements.

[14] It has to be reminded that the EU during the negotiations of the Cotonou Agreement had proposed to enlarge the essential elements to include also the aspect of "good governance". However this proposal encountered significant opposition from the ACP side and good governance is considered in the Agreement only a "fundamental" element with the consequence that its breach does not fall under Article 96 but under Article 97 which differs from the former because under Article 97 consultations with the breaching party are required in all cases. Article 97 is the first attempt of the EU to operationalize the notion of good governance in the form of negative conditionality. See on this point MARTENCZUK, *From Lomé to Cotonou, op. cit.*, p. 468-472.

[15] See HILPOLD, *EU Development Cooperation at a Crossroads: The Cotonou Agreement of 23 June 2000 and the Principle of Good Governance, European Foreign Affairs Review*, 2002, pp. 53-72. The author argues that the attempt to consolidate the concept of good governance can be seen as the confirmation of prominent role attributed by the EU to the fight against corruption.

should be taken if no satisfactory resolution can be found during consultations, it merely refers to "appropriate measures", thereby leaving the door open to more or less serious sanctions that can take a wide variety of different forms and be adapted to different situations. "Thus ACP governments often feel that, once Article 96 has been invoked, they will be locked into an inevitable process which they are powerless to oppose"[16].

Towards WTO-compatible arrangements: Economic Partnership Agreements

However the most radical change in the Cotonou Agreement lies in the area of trade cooperation. With the final objective of increasing the integration of the ACP countries in the world economy, the European Union will conclude with them "WTO compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade"[17].

The non-reciprocal trade preferences regime granted under the Lomé convention will undergo a profound transformation, being as it currently is, not compatible with WTO framework and in fact it has been granted a waiver during the Doha Ministerial Conference[18].

The current non reciprocal tariff preferences for ACP countries will be maintained until 31 December 2007[19]. Negotiations for the so-called new Economic Partnership Agreements (hereinafter EPAs) were settled to start in September 2002 and they are planned to end in 2007. These free trade agreements should be WTO-compatible in the sense of article XXIV GATT[20]. During the implementation stage starting in 2008 European Union will still grant unilateral preferences, however the non-reciprocal preferences will have to be phased out progressively and asymmetrically within a period of ten or twelve years.

The development cooperation is however maintained, as EPAs will not just be free trade agreements as they will include as well, provisions for cooperation and support in areas other than

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[16] See MACKIE and ZINCHE, *When Agreement Breaks Down, What Next? The Cotonou Agreements Article 96 Consultation Procedure,* ECDPM Discussion Paper 64D, Maastricht, 2005. See also BRADLEY, *An ACP Perspective and Overview of Article 96 Cases,* ECDPM Discussion Paper 64D, Maastricht, 2005; HAZELZET, *Suspension of Development Cooperation: An Instrument to Promote Human Rights and Democracy?,* ECDPM Discussion Paper 64B, Maastricht, 2005. For an overview of recent cases see MBANGU, *Recent Cases of Article 96 Consultations,* ECDPM Discussion Paper 64C, Maastricht, 2005.

[17] See Cotonou Agreement, Article 36.1. On the compatibility of regional agreements see MARCEAU and REIMAN, *When and How Is a Regional Trade Agreement Compatible with the WTO?, Legal Issues of Economic Integration,* 2001, pp. 297-336. The authors illustrate extensively on the basis of the Appellate Body report in the case *Turkey-Textiles,* the conditions that a regional agreement has to respect to comply with Article XXIV GATT. They furthermore propose solutions to facilitate the monitoring of regional trade agreements.

[18] See MATAMBALYA and WOLF, *The Cotonou Agreement and the Challenger of Making the New EU-ACP Trade Regime WTO Compatible, JWT,* 2001, pp. 123-144. The author points out that in the actual modelling of the EPAs the EU and the ACP states will have to analyse and carefully collate three primary and interrelated considerations, which are: a) liberalizing within the multilateral framework; b) opening up the trade regime for all developing economies; and c) institutionally separating the trade regime from the broader regime of development co-operation.

[19] See Cotonou Agreement, Article 37.1.

trade. ACP countries are invited to sign as groups or individually (thus on a self-selection basis), building on their own regional integration schemes[21].

Not all ACP countries are asked to open their markets to EU products after 2008. The least developed countries[22] are entitled to maintain non-reciprocal preferences granted under the Lomé convention without having to reciprocate.

By contrast, those ACP countries non-LDCs which would decide they are not in a position to enter into EPAs, will have to negotiate alternative trade arrangements which provide a non-reciprocal set of preferences not less generous than Lomé, and which are WTO-compatible as well[23].

ACP Preferences and WTO Compatibility

The issue of the compatibility of trade preferences, granted by the EU to the ACP states, with GATT rules, goes back to the first Lomé Convention. However, analyzing the provisions of the first Lomé convention, the GATT working party could not reach any conclusion about the compatibility of the Lomé provisions with Article XXIV GATT, which requires that, in free trade areas and customs unions, trade preferences are allowed only when duties and other restrictive regulations are eliminated on "substantially all the trade" between the constituent territories.

The matter however, was re-examined in 1993 about the compatibility of Lomé IV[24] with Article XXIV[25], although the GATT working party even that time was unable to reach a conclusion[26] and in 1994 the EC and the ACP countries requested a waiver under Article XXV(5) from the obligations of Article I:1.

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[20] See next paragraph.

[21] See Cotonou Agreement, Article 37.5 stating: "Negotiations of the economic partnership agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP".

[22] Least developed countries in the ACP group are according to Annex six of the Cotonou Agreement ACP-LDCs countries are: Angola, Benin, Burkina Faso, Burundi, Republic of Cape Verde, Central African Republic, Chad, Comoro Islands, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Gambia, Guinea, Guinea (Bissau), Guinea (Equatorial), Haïti, Kiribati, Lesotho, Liberia, Malawi, Mali, Mauritania, Madagascar, Mozambique, Niger, Rwanda, Samoa, Sâo Tome and Principe, Sierra Leone, Solomon, Somalia, Sudan, Tanzania, Tuvalu, Togo, Uganda, Vanuatu, Zambia. ACP countries treated with particular regard are also the ACP landlocked countries which are: Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Ethiopia, Lesotho, Malawi, Mali, Niger, Rwanda, Swaziland, Uganda, Zambia, Zimbabwe.

[23] See Cotonou Agreement, Article 37.6.

[24] OJ L 229, 17.08.1991, p. 3.

[25] For the compatibility of the Lomé convention with the provisions of GATT 1947 see BISD, Suppl. 23, p. 46; BISD, Suppl. 29, p. 119; BISD Suppl. 35, p. 321.

[26] The EU argued again, as it had done under Lomé I, that the preferences granted to the ACP countries were fully compatible with Article XXIV invoking in conjunction also Article XXXVI(8) as the preferences were not reciprocal. The other parties argued that Article XXXVI(8) could not be invoked with Article XXIV because article XXXVI(8) only applies to "special treatment of developing countries on a generalised basis".

The waiver from Article I:1 GATT was granted in December 1994[27] until the expiry of Lomé IV on 29 February 2000.

It is important to point out that the waiver was granted only in respect of Article I:1 GATT and not in respect of other GATT provisions. This complexion of the matter is crucial to understand one of the most controversial aspects over preferences granted to ACP countries: the long-standing battle against the banana regime[28].

The WTO Dispute over the EU Bananas Regime

The dispute concerns the European Communities' regime for the importation, distribution and sale of bananas, introduced on 1 July 1993[29]. This system replaced the banana import regimes previously in place in the European Communities, through which the several national import regimes of France, Greece, Italy, Portugal and the United Kingdom restricted imports of bananas by means of various quantitative restrictions and licensing requirements. Spain maintained a *de facto* prohibition on imports of bananas. The regimes of these countries were the subject of GATT dispute settlement proceedings in "*EEC - Bananas I"* in 1992 on the part of some Latin-American countries. The panel report in that dispute, which eventually ruled against the EEC, was not adopted. Subsequently, the EEC established a common market regime for bananas. That regime was also challenged under the GATT in "*EEC - Bananas II"* in 1993; again, however the panel report, ruling against the violation on the part of the EEC of articles I, II and III of GATT 1947, was not adopted.

In 1995 after the came into being of the WTO, the United States together with some Latin-American countries, Ecuador, Guatemala, Honduras and Mexico, challenged the EC banana regime which in 1995 was integrated by the "Framework Agreement on Bananas", with Costa Rica, Colombia, Venezuela and Nicaragua[30]. While the Panel to the dispute found the EC in violations of two aspects of GATT Article XIII[31], nevertheless the Panel concluded that the Lomé Waiver

[27] See GATT BISD, 41th Supplement, p. 26.

[28] For an overview on the battle against the banana regime and the several disputes before the GATT/WTO dispute settlement see BHALA, *The Bananas War*, *McGeorge Law Review,* 2000, pp. 839-971; GRANE and JACKSON, *The Saga Continues: An Update on the Banana Dispute and Its Procedural Offspring, JIEL,* 2001, pp. 581-595; KOMURO, *The EC Banana Regime and Judicial Control, JWT,* 2000, pp. 1-87; SALAS and JACKSON, *Procedural Overview of the WTO EC - Banana Dispute, JIEL*, 2000, pp. 145-166; ADINOLFI, *La Soluzione delle Controversie nell'OMC ed il Contenzioso Euro-Statunitense*, in VENTURINI, *L'Organizzazione Mondiale del Commercio*, (2nd ed.), 2004, pp. 210-226, and see also the authors cited there; LENZERINI, *op. cit.*, pp.182-190.

[29]See Council regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas, OJ L 47, 25.02.1993 pp. 1-11.

[30] See Council Regulation (EC) No 478/95 of 1 March 1995 on additional rules for the application of Council Regulation (EEC) No 404/93 as regards the tariff quota arrangements for imports of bananas into the Community and amending Regulation (EEC) No 1442/93, OJ L 49, 04.03.1995, pp. 13-17.

[31] First, the European Communities had allocated country-specific tariff quota shares to some Members (*e.g.*, ACP countries, Nicaragua and Venezuela) whereas country-specific shares were not allocated to other Members (*e.g.*,

waived the inconsistency found with respect to Article XIII:1, to the extent necessary to permit the European Communities to allocate country-specific shares of its banana tariff quota to specific traditional ACP banana supplying countries, in an amount not exceeding their pre-1991 best-ever exports to the European Communities[32].

However the panel findings were reversed by the Appellate Body which in its report stated that the Lomé Waiver waived only the provisions of Article I:1 GATT and, although Articles I and XIII were both non-discrimination provisions, their relationship was not such that a waiver from the obligations under Article I implied a waiver from the obligation under Article XIII[33].

The European Communities were given a reasonable period of time to implement the DSB's recommendations, however after its expiration, Ecuador and the United States both considered that the European Communities had not properly implemented the DSB's recommendations. As a result, both countries took action against the European Communities. The United States proceeded directly to DSU Article 22, requesting authorization from the DSB to impose trade sanctions which have been established by the arbitrators under Article 22.6 DSU[34]. Ecuador took a different approach, requesting that the matter be referred to the original Panel under DSU Article 21.5[35]. Having the Panel found that the European Communities had not properly implemented the DSB's recommendations, Ecuador requested permission from the DSB to impose trade sanctions, which have been determined by arbitration under DSU Article 22.6[36].

Negotiations on EPA

At the time of the launch of the Doha negotiations, both the banana regime and the whole transitional trade regime that will bring to the formation of the EPAs, were not compatible with WTO rules[37], thus the European Communities requested for the granting of two waivers under Article IX.3 of the WTO Agreement[38].

Guatemala). Second, the FBA countries were given special rights in respect of the reallocation of tariff quota shares that were not given to other Members. See *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/R/USA, 22 May 1997, para. 7.94.

[32] See See *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/R/USA, 22 May 1997, para. 7.110

[33] See *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, 9 September 1997, para. 183.

[34] See *European Communities - Regime for the Importation, Sale and Distribution of Bananas.* Recourse to Arbitration by the European Communities, WT/DS27/ARB, 9 April 1999.

[35] *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, Recourse by Ecuador to Article 21.5 of the DSU, WT/DS27/RW/ECU, 12 April 1999.

[36] *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, Recourse to Arbitration by the European Communities, WT/DS27/ARB/ECU, 24 March 2000.

[37] The banana regime incompatible with Article I and XIII GATT 1994, and the transitional period provided for the EPAs negotiations incompatible with Article XXIV GATT requesting the liberalization on "substantially all trade".

[38] See WTO, *European Communities – The ACP-EC partnership agreement*, doc. WT/MIN(01)/15; and *European Communities – Transitional regime for the Autonomous Tariff Rate Quotas on Imports of Bananas*, doc.

The negotiations of the EPAs are extremely important for the aim of this work as they could define a new way of development cooperation of the EU towards developing countries which is fully compatible with WTO, being it reciprocal[39].

While from one side it is clear that reciprocity and free trade will not be achieved immediately when the EPAs come into being in 2008, but only gradually under Article XXIV(5) GATT 1994 through the "interim agreements" for the establishment of free trade areas "within a reasonable length of time"[40], on the other side several matters remain unclear, such as the meaning of "substantially all the trade" that will be liberalised; or what will happen in the case an EPA is found to be in violation of GATT rules.

About the first issue, as the reports of the WTO Committee on Regional Agreements are not of much help, some scholars sustain that it has to be made a quantitative and qualitative assessment: "the quantitative requirement would be that a high coverage must be achieved by the free trade area of around 90 per cent of current trade and of 90 per cent of the tariff lines in the Harmonised System; the qualitative test would be that no major sector of trade should be excluded"[41]. However under the current negotiations, liberalisation does not seem to be that much[42]. The crucial point is that the EPAs are not a real "exercise of economic integration" as requested by Article XXIV GATT, such as for example two European countries are integrated into the EU, and if EPAs will avoid further liberalization, critics will be even more justified with a final damage to the integrity of Article XXIV as the legal basis of genuine economic integration[43].

WT/MIN(01)/16, both dated 14 November 2001. The general waiver applies until December 2007, while the waiver for the banana regime ends in December 2005 when it will be converted into a tariff-only system.

[39] See HIRSH, *The Logic of North-South Economic Integration. Integration Theories and Legal Mechanisms across the North-South Divide, Legal Issues of Economic Integration*, 2005, pp. 3-23. The author argues that economic integration between developing and developed states is generally desirable and should be promoted by the international community; in fact apart from the positive aspect of integrating better developing economies in the world trading system, it also helps reducing gradually socio-cultural differences and tensions between developing and developed states.

[40] The Understanding on Article XXIV has clarified that the "reasonable length of time" should only exceed ten years in exceptional case, which would have to be justified.

[41] See on this point HUBER, *The Past, Present and Future ACP-EC Trade Regime And the WTO, EJIL*, 2000, p. 429. See also PEARSON, *Negotiating the Trade and Development Dimension of EPAs – A Way Forward*, TRADE NEGOTIATIONS INSIGHTS, May-June 2005, Vol.4, No.3, p. 2. The author argues that most ACP negotiating groups are a combination of developing countries and LDCs and "as there has never been a free trade area negotiated between a developed country and a group of predominantly LDCs, there is a strong argument to agree the definition of "substantially all trade" [in GATT Article XXIVV] to be significantly lower than a 90% average". See also BOOS, *Beetween Scylla and Charybdis: The Changing Nature of U.S. and Eu Development Policy and Its Effects on the Least Developed Countries of Sub-Saharan Africa, Tulane Journal of International and Comparative Law*, 2003, pp. 181-217. The author argues that since sub-Saharan African countries (which are the most disadvantaged among ACP countries) are not in a position to benefit from liberalizes trade, trade agreements with these countries should provide for differentiated reciprocity, rather than strict reciprocity.

[42] See STEVENS and KENNAN, *EU-ACP Partnership Agreement: The Effects of Reciprocity*, Briefing Paper. Institute of Development Studies, Brighton, 2005. Available at http://www.ids.ac.uk/ids/global/pdfs/CSEPARECBP2.pdf.

[43] See STEVENS, *The GSP: A solution to the problem of Cotonou and EPAs?*, TRADE NEGOTIATIONS INSIGHTS, July-August 2005, Vol.4, No.4, p. 4.

For the second issue, it has to be pointed out that, from one side, if the EPA is found to be incompatible with WTO provisions, as for instance not respecting the terms of Article XXIV GATT, the EU will have to withdraw the EPA to not breach its obligations within the WTO Agreements, and from the other side being the EPA an international agreement with a third party (the ACP group in question), it will breach its obligations with the ACP states. It has been suggested that a "WTO-compatibility clause" should be added in the EPA, "which could provide that in the case the WTO finds a violation of WTO rules, either the EPA will automatically be terminated or, if possible, the joint body which will be established by each EPA is authorised to adapt the EPA provisions in such a way that they become compatible with the WTO provisions as interpreted by the WTO bodies"[44].

For ACP-LDCs the EC had committed to allow at the latest in 2005 to extend duty free access to its market of essentially all products from all LDCs, those countries in fact enjoy preferences under the Everything But Arms initiative, as part of the GSP scheme.

The main problem arises with the non-LDCs ACP countries which are not in a position to enter an EPA, and for which it will need to be provided by 2008 "alternative trade arrangements". The content of this term is very vague and it gets more vague if one thinks that these "alternative trade arrangements" will have to compromise with two somehow opposite requirements of Article 37(6) of the Cotonou Agreement, the compatibility with WTO rules and the equivalence with the situation of the ACP states under Lomé IV.

The main option that it can be foreseen is to include those ACP countries in the Generalised System of Preferences. However if from one side, this would be fully WTO compatible as the GSP is justified under the Enabling Clause, on the other side, it will not grant to the ACP the same preferences they had under Lomé IV, as the GSP provides for a less favourable treatment. The granting of the same level of preferences could only be achieved within the GSP by enhancing the existent GSP preferences to the level of Lomé IV only for those ACP states; however this is not consistent with the Enabling Clause which does not allow the granting of increased special preferences justified by geographical differentiation.

Another route could be to apply for another waiver, allowing for the discrimination in favour of some ACP countries, however the EC is fully aware that if from one side, waivers have been the most usual vehicle to justify preferences not compatible with the GATT/WTO rules, from the other side they are costly, in that countries that feel they will be economically hurt by better preferences provided to their competitors, will need to be compensated to silence their opposition, e.g. the tariff-free quota for tuna granted to Thailand, Indonesia and Philippines in occasion of the Cotonou

[44] See HUBER, *op. cit., EJIL,* 2000, pp. 427- 438.

waiver in 2001[45]. However the recent dispute about EC-preferences could give other options. This aspect is treated below.

The Dispute EU-India over the Drugs Arrangements: The Future of Conditionalities in Trade Preferences

The Panel Report

In 2002 the WTO Dispute Settlement Body upon India's request[46], established a panel[47] to examine the legality of the drugs special incentive arrangements of the European Union[48].

India maintained the inconsistency of the EU's drugs arrangements with Article I:1 of the GATT 1994, and also the inconsistency with the requirements set out in the Enabling clause[49], as the drugs preferences in question were granted to Pakistan and not to India. Thus India claimed that the drugs arrangements were "discriminatory" as the benefits granted by the European Union were available only to certain "specified" developing countries[50].

This was the first panel examining the GSP legality ever established[51] and the significance of the implications of the dispute is also witnessed by the large number of developing countries that requested to be third parties in the dispute[52].

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[45] See UNCTAD, *Development on Key Issues in the Doha Work Programme in Relation to ACP States, Meeting of ACP Ministers Responsible for Trade, Brussels, 31 July and 1 August 2003*, Report by the UNCTAD Secretariat, doc. UNCTAD/DITC/TNDC/MISC/2003/3.

[46] India was determined to file its complaint after EU added Pakistan to list of eligible countries for the "drug special incentive arrangements"; in this way Pakistan could enjoy of an additional margin for its textile products in obvious competition with Indian textiles. India pointed out that Pakistan's entry to the special incentive scheme had affected US$250 million of Indian textile exports, which face on the contrary a higher tariff. See BRIDGES WEEKLY TRADE DIGEST, *WTO Appellate Body: Differentiation possible under Preference Schemes*, 22 April 2004, vol. 8, n.14, p. 5.

[47] See *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, Request for the Establishment of a Panel by India*, WT/DS246/4, 9 December 2002.

[48] The so-called "drug arrangements" above described, under the EC Council Regulation No. 2501/2001, OJ, Series, No. 346, 31.12.2001.

[49] In the initial request for the establishment of the panel India maintained also the inconsistency of the special incentive arrangements on labour and environment with the Enabling Clause; the complaint about these arrangements was later withdrawn by India, keeping only its complaint about the drug arrangements.

[50] Article 10 of the EC Council Regulation established in fact that the benefits under the drug arrangements applied only to twelve countries specified in the article, which are: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Pakistan, Panama, Peru and Venezuela. On the other side the other special incentive arrangements protecting labour and environment, did not provided a list of beneficiary countries but provided only that the benefits under those schemes should be made available "exclusively to those countries which are determined by the European Communities to comply with certain labour and environmental policy standards".

[51] In fact since the establishment of the special incentive arrangements by the European Union, concerns about their legality and their relation with the Enabling Clause were raised by several countries. However all of them have been translated in proper disputes being resolved in the consultation process. See WTO, *European Communities – Generalised System of Preferences – Request for Consultations by Thailand*, WT/DS242/1, 12 December 2001; then other countries joined the consultations, they are Costa Rica (WT/DS242/2), Guatemala (WT/DS242/3), Nicaragua (WT/DS242/4), Honduras (WT/DS242/5), and Colombia (WT/DS242/6). Another consultation was requested by Brazil expressing concerns about its coffee exports which were menaced by the EU drugs arrangements, see WTO, *European Communities – Measures Affecting Differential and Favourable Treatment of Coffee –Request for Consultations by Brazil* (WT/DS154/1), 11 December 1998, see also WTO, *Measures Affecting Soluble Coffee – Request for Consultations by Brazil*, (WT/DS209/1) 19 October 2000.

The Panel Report issued on 1 December 2003[53] concluded from one side that India had successfully demonstrated that the EC's Arrangements were inconsistent with Article I:1 of GATT 1994, and that from the other side EC had failed to demonstrate that they were justified under the Enabling Clause.

With regard to the burden of proof, as it has been anticipated in the first chapter of this work[54], the Appellate Body in its report upheld the Panel's findings that the Enabling Clause is an "exception" to GATT Article I:1, but modifying the Panel's findings on burden of proof, established that it is incumbent upon the complaining party to raise the Enabling Clause in making its complaint of inconsistency with Article I:1. It is nevertheless the defending party that bears the burden of proving that the measures at issue satisfy the conditions of the Enabling Clause, in order to justify those measures under that Clause[55].

It is interesting to note that this ruling of the Appellate Body about the burden of proof has been daringly interpreted as a sort of "reverse" special and differential treatment for the developed countries granting preferences. In fact "there are other complex provisions in the GATT that developing countries must defend without the benefit of having their defence identified", thus the attribution of the burden of proof to preference-granting countries can be seen as an honest attempt by the Appellate Body to encourage grantors to use the "non-obligatory" Enabling Clause[56].

The matter of great significance is however to be found in the fact that the Panel interpreted the word "non-discriminatory" in the Enabling Clause to mean that identical tariff preferences under GSP schemes are to provided to all developing countries without differentiation, except for the *a priori* limitations[57].

However the legal reasoning that has brought the Panel to this conclusion had been largely criticised much before the Appellate Body reversed it[58].

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[52] Third parties status has been recognised to Bolivia, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mauritius, Nicaragua, Pakistan, Panama, Paraguay, Peru, Venezuela. Also the United States has requested to be granted the third party status.

[53] See *European Communities – Conditions for the Granting of Preferences to Developing Countries.* Report of the Panel, WT/DS246/R, 1 December 2003.

[54] See in particular paragraph 2.1.2 of the first chapter.

[55] WTO, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries,* Appellate Body report, WT/DS246/AB/R, paras. 123-125.

[56] See MATHIS, *Benign Discrimination and the General System of Preferences (GSP), WTO –Report of the Appellate Body, 7 April 2004, European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries. WT/DS246/AB/R, Legal Issues of Economic Integration,* 2004, p. 300.

[57] See *European Communities – Conditions for the Granting of Preferences to Developing Countries.* Report of the Panel, WT/DS246/R, 1 December 2003, paras. 151-153. To reach this conclusion the panel has based its legal reasoning on the UNCTAD document entitled "*Agreed Conclusion of the Special Committee on Preferences"*, and has derived from the detailed description of the GSP in this document as it is essentially incorporated into the Enabling Clause through the description of the GSP in the 1971 GSP Decision. Thus according to the Panel in order to be justified under the Enabling Clause, a GSP scheme should conform to these Agreed Conclusions.

[58] See HOWSE, *The Death of GSP? The Panel ruling in the India-EC dispute over preferences for drug enforcement,* BRIDGES, No. 1 January 2004, pp. 7-9. See also for a more extensive explanation HOWSE, *India's WTO Challenge to*

Before analysing the appellate body rulings, it is important to point out the implications on the multilateral trading system that would have happened if the conclusion of the Panel were not reversed on appeal[59].

Soon after the panel's ruling in fact both the European Union and the United States pointed out that if the panel's findings were uphold in appeal, this could have brought to the withdrawal of preferential schemes for the fight against drug and other preferential treatment as well[60].

Even the ministries of the Andean Community expressed concerns about the likely withdrawal of the preferences related to the drug arrangements[61].

Furthermore, even thought in the short run the Panel's findings could have affected the beneficiaries of the European drug arrangements and the beneficiaries of the Andean Trade Preference Act and the Caribbean Basin Initiative, in the long term the implications of the panel's ruling would have been much broader. In fact this could have made all conditionalities attached to the GSP schemes illegal, and last the obligation to extend any GSP benefits to all developing countries would have lead developed countries not to grant any preferential treatment under the Enabling Clause[62].

The Appellate Body Ruling

Drug Enforcement Conditions in the European Community Generalised System of Preferences: A Little Known Case with Major Repercussions for "Political" Conditionality in US Trade Policy, Chicago Journal of International Law, 2003, pp. 385-405. The author is of the view that non-discrimination is an objective that ought to inform GSP schemes, but not a legal condition for their operation consistent with the GATT. Furthermore the author recalls a statement by Professor George Abi-Saab in a report to the UN General Assembly in 1984, in which he stated that the notion of GSP as "non-discriminatory" had not crystallised or been generally accepted as international law, see *Analytical Study* in United Nations, *Report of the Secretary-General on the Progressive Development of the Principle and Norms of International Law Relating to the New International Economic Order, UN* Doc. No. A/39/504, P. 78.

[59] See HOWSE, *Back to Court After Shrimp/Turtle? Almost but not Quite Yet: India's Short Lived Challenge to Labor and Environmental Exceptions in the European Union's Generalized System of Preferences, American University International Law Review,* 2003, pp. 1333-1381. The author interestingly illustrates four scenarios that could have happened, according to which conclusions the Appellate Body would have reached. The first scenario is: "The EU preferences Upheld Under the Enabling Clause"; the second is: "EU Preferences Upheld Under the Enabling Clause and Under Article XX GATT"; the third is: "EU Preferences Upheld Under Only Article XX GATT"; the fourth is: "EU preferences Fail the Enabling Clause but Upheld Under Article XX GATT". The author describes the last scenario as being the one producing the most dynamic effect in the current negotiations within the WTO, because this would have sent a signal that the individual elements of the members' GSP schemes would have been subject to meaningful or even strict scrutiny of the WTO DSB and this would have made GSP schemes less attractive to preferences grantors.

[60] See *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries. Third Party Submission of the United States*, WT/DS246, 30 April 2003. Available at http://www.ustr.gov/enforcement/2004-02-19-eudevelopingappeal-3rdoral.pdf. United States grant a preferential treatment for the fight against drug through the Andean Trade Preference Act and the Caribbean Basin Initiative. The United States affirmed that if the conclusions of the panel were confirmed on appeal this would have created enormous negative effects to the trade preferences schemes.

[61] See *Special Declaration of the Andean Community Foreign Ministers on the application of the graduation mechanism to the European Union's Special Support System for the Control of Drug Production and Trafficking (Drug-related GSP),* Quito, 15 January 2003. Available at www.comunidadandina.org/ingles/document/dec15-1-03.htm

[62] See ICTSD, BRIDGES WEEKLY TRADE DIGEST, *EU Trade Preferences: A Dispute with Vast Systemic Implications,* 2003, No. 8, p. 6.

However the EU appealed the panel's findings and, with its report issued on 7 April 2004[63], the Appellate Body whereas maintaining the inconsistency of the drug arrangements with the Enabling Clause, although on the basis of a different legal reasoning, on the other side it reversed some panel's rulings and affirmed that a Member is allowed to grant preferences to a group of developing countries without extending the same treatment to all other developing countries, with the respect of some specifications (illustrated below).

In particular the Appellate Body rejected the previous Panel's holding that the term "non-discriminatory" in the Enabling Clause requires that identical tariff preferences under GSP schemes are to be provided to all developing countries without differentiation.

First of all the Appellate Body by comparing the English with the French and Spanish texts of the Enabling Clause has established that "only preferential tariff treatment that is in conformity with the description generalised, non-reciprocal, and non-discriminatory treatment can be justified under paragraph 2(a)"[64]. Thus the Appellate Body has recognized that non-discrimination is a *hard law* requirement of the Enabling Clause[65].

The Appellate Body then disagreed with the panel's view and concluded that the word "non-discriminatory" does not prohibit developed countries from granting different tariffs to products originating from different GSP beneficiaries, provided that such differential tariff treatment meets the remaining conditions in the Enabling Clause. However, the Appellate Body made clear that in granting such differential tariff treatment, preference granting countries are required by virtue of the term "non-discriminatory" to ensure that identical treatment is available to all "similarly-situated" GSP beneficiaries that have the same "development, financial and trade needs" that the more favourable treatment in question is intended to address[66].

Thus there are four things that a donor country must now show in order to defend under the provisions of the Enabling Clause, a GSP programme that provides different levels of preferences to different developing countries:

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[63] WTO, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries.* Appellate Body Report, WT/DS246/AB/R, 7 April 2004.

[64] WTO, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries.* Appellate Body Report, WT/DS246/AB/R, 7 April 2004, paras. 142-145.

[65] See HOWSE, *Appellate Body Ruling Saves the GSP, at Least for Now*, BRIDGES Monthly Review, No. 4 April 2004, pp. 5-6. The author even criticizing the Appellate Body's approach in just comparing the different version of the Enabling Clause and not investigation furthermore the state practice and the object and purpose of the Enabling Clause, as Article 31, 32 of the Vienna Convention specifies, he is sympathetic with the conclusion of the Appellate Body as politically correct. At p. 5 in fact he states: "…to deny obligatory force to the notion of non-discrimination in the Enabling Clause in an explicit judicial ruling would be a provocation to developing countries at a very difficult time in the history of their relationship to the multilateral trading system".

[66] WTO, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries.* Appellate Body Report, WT/DS246/AB/R, 7 April 2004, para. 165.

a) that the different countries are not similarly situated, in other words that the countries receiving greater preferences have special development needs;
b) that tariff preferences are an effective means of addressing those special needs;
c) that all developing countries who have those special needs are offered the greater preferences; and
d) that any conditions imposed on the eligible countries be objective transparent and non-discriminatory[67].

With regard to the drug arrangements the Appellate Body find them not be justified under paragraph 2(a) of the Enabling Clause because they are limited to a "closed list" of twelve beneficiaries and "provide no mechanism under which additional beneficiaries may be added to the list of beneficiaries". Thus they do not provide any objective criteria that if met would allow for other developing countries "similarly affected by drug problems" to be included in the list of the beneficiaries[68].

It is important to highlight however that if from one side the Appellate Body found the drug arrangements violating the conditions put by the Enabling Clause[69], on the other side, as will be specified in the paragraph below, the special incentive arrangements for labour rights and environment, are found to be based on detailed substantive and procedural criteria and thus have been found by many scholars as a benchmark for the correct formulation of preference scheme under the Enabling Clause.

Thus the favourable conclusion that can be derived about the "special incentive arrangements on environment and labour" has determined the then EU Trade Commissioner Pascal Lamy to affirm:

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[67] See HOWSE, *Appellate Body Ruling Saves the GSP*, *op. cit.*, pp. 5-6.

[68] WTO, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries.* Appellate Body Report, WT/DS246/AB/R, 7 April 2004, paras. 181-183. It is worth noting that even before the matter was put before the Appellate Body, the likely incompatibility of the drug arrangements had been already stressed by part of the doctrine. See BAGWELL, MAVROIDIS, STAIGER, *The Boundaries of the WTO: It's a Question of Market Access, AJIL*, 2002, pp. 71-72. See also PICONE-LIGUSTRO, *Diritto dell'Organizzazione Mondiale del Commercio*, 2002, p. 464.

[69] Some scholars believe that given the weak arguments in favour of conditionality under the applicable WTO law made by the European Union (and by the United States as third party to the dispute), it is not a surprise the outcome that the drug arrangements have been found to be inconsistent with the Enabling Clause. See HOWSE, *India's WTO Challenge to Drug Enforcement Conditions in the European Community Generalised System of Preferences: A Little Known Case with Major Repercussions for "Political" Conditionality in US Trade Policy, Chicago Journal of International Law*, 2003, p. 404. In fact, the author believes that if the European Union really wanted to make a stronger argument to win the dispute, it could have maintained that the concept of "non-discrimination" in the Enabling did not have the sort of strong legal effect that India had attributed to it but that it was just an *aspirational* objective. Instead at p. 401 the author argues that the EU presented a weak and tendentious argument to defend its preferences as "non-discriminatory", since the extra margin of preferences granted to those developing countries, merely compensate for the drug enforcement burden that other developing countries, without drug enforcement challenges, do not have to bear; thus this additional margin provided was just a compensation towards these developing countries with particular concern on drugs and in this case exactly the differentiated treatment produced equality between developing countries. According to the author however the weak argument presented by the EU in defence of its preference schemes had the aim to make it more difficult for the United States to attach different kinds of political conditions to its own GSP, conditions related to communist countries and the war on terrorism, matters on which EU and US have completely different views.

"Today's decision makes it clear that we can continue, to give trade preferences to developing countries according to their particular situation and needs, provided this is done in an objective, non-discriminatory and transparent manner. This is certainly good news for many developing countries whose preferential access to the EU was being put at risk by India's WTO challenge"[70].

This statement may sound inconsistent with the one of the Indian ministries and press about the fact that India won the dispute against the European Union as the drugs arrangements were found to be inconsistent with the Enabling Clause[71].

An explanation for this may be found in the fact that the Appellate Body ruling has two sides, like in a coin, and while India has won a battle, it has lost the war[72].

Future Implications of the Appellate Body Rulings on GSP Conditionality

Trade preferences have always been conceived by developed countries as an instrument not only to foster economic development of the beneficiary countries, but also as instrument to promote political objectives.

The unilaterality and voluntariness of the GSP system, in the sense that developed countries are absolutely free in the decision to adopt a GSP scheme or not, the uncertainty about what constitute and how to measure the objective criteria, on whose basis to measure the development, financial and trade needs of developing, creates a tension because the GSP is perceived and then used not only as an instrument for the development cooperation in a traditional sense but also as an instrument to promote those social values that characterize the preference-granting countries, which

[70] See COMMISSION PRESS RELEAS, *WTO India–GSP: WTO confirms differentiation among developing countries is possible.* IP/04/476, 7 April 2004. However one may argue why the EU is granting preferential margin only to developing countries with drug problems to compensate them for their particular situations and needs. In fact "drug enforcement challenges are just one kind of burden out of many that a particular group of developing countries may have to bear. If the EC is willing to compensate for this kind of burden, it is not true that the EC discriminates when it fails to provide an extra margin of preferences for those developing countries that, for example, have a particularly severe AIDS problem, or complicated issues of ethnic and religious diversity, or have suffered from climate disaster?. See HOWSE, *India's WTO Challenge, op. cit.*, p. 400.

[71] See RAMACHANDRAN, *India wins WTO case against EU, THE HINDU*, 8 April 2004; DAILY TIMES PAKISTAN, *WTO judges back ruling against EU anti-drug plan*, 30 June 2004.

[72] See MEHTA, *Winning The Battle, But Losing The War, THE FINANCIAL EXPRESS*, 1 May 2004. The authors argues that like in the case Shrimp-Turtle, this case creates a certain degree of ambiguity on who is the winner and who the loser of the dispute. In fact the Shrimp-turtle case was decided in favour of developing countries but a closer scrutiny showed that on substantive matters it favoured the United States; the Appellate Body did not rule against the use of turtle-excluder devices but it only stated that the application of the measures at issue by the United States was arbitrary and transfer of technology was discriminatory. Likewise in the dispute initiated by India, the Appellate Body found the drug arrangements inconsistent with the Enabling clause because they were not based on an objective criteria to allow other countries similarly situated, to benefit of the same preferences, but the Appellate Body on the other side recognised that certain objective distinctions were present in the system of conditionalities provided by the special incentive arrangements for labour and environment. Therefore some authors have concluded, by implication, that those conditional systems of preferences are fully consistent with the Enabling Clause.

are not always shared by beneficiary countries and are rather seen as imposition of the developed countries and as a hidden kind of neo-colonialism[73].

Conditionalities attached to trade preferences schemes are used to punish or award beneficiary countries and they are increasingly becoming the source of trade tensions not only between developing countries and their preference-giving countries but also among developing countries, and it has been argued that these special trade preferences could be increasingly used to dissuade beneficiary countries to pursue the case of their interest in the WTO DSU[74].

However, developing countries have a strong interest in the maintenance of the GSP[75], being it the last instrument allowing a "preferential" and more important "non-reciprocal" treatment for developing countries. In fact due to the general reformulation of the special and differential treatment within the WTO, the path is more and more toward "reciprocal" agreements.

Thus in the present situation with most GSP schemes frequently used to advance policy objectives and filled with conditionalities, the relevance of the Appellate body ruling is manifest.

The Appellate Body's ruling may have important implications for the future GSP regimes, as well as for other "preference-based systems" like EPA[76], and finally on the multilateral negotiations.

In fact, according to the findings of the Appellate Body, "preference-granting countries, through their GSP programmes, can offer higher preference margins to a specific group of developing countries in exchange for concessions in other areas of the multilateral negotiations; that is, preferences may function as bargaining leverage. In practice, the political impact of such approach may fragment coalitions among developing countries, thereby weakening their bargaining power in relation to the most developed nations"[77].

An important consequence for the future of trade preferences derives from the fact that some scholars have derived from the Appellate Body rulings, even though the Appellate Body has not explicitly ruled on that issue, that the special incentive schemes on labour and environment are based on detailed substantive and procedural criteria and thus they are fully consistent with the Enabling Clause. Some scholars believe that in this way the Appellate Body has given judicial approval to systems of positive conditionality, therefore amplifying the scope of adding more

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[73] MARTINEZ, *I Sistemi di Preferenze Generalizzate, la Normativa Comunitaria e il Diritto dell'OMC, Il Diritto dell'Unione Europea*, p. 290.

[74] See HORN af RANTZIEN, INAMA, MAVROIDIS, *What Should Developing Countries be Requesting in the Doha Round with Regard to the WTO Dispute Settlement Understanding?*, 2003, doc. UNCTAD/ ITCD/TSB/2003/7.

[75] See UNCTAD, *Market Access: Developments since the Uruguay Round, Implications, Opportunities and Challenger, in Particular for the Developing Countries and Least Developed among Them, in the Context of Globalization and Liberalization*, 1998, pp. 39-40, UN Doc No E/1998/55. Available at http://www.unctad.org/en/docs/e1998d55.en.pdf where it is stated that, [in spite of selectivity and conditionalities attached to the schemes], the GSP remains a valuable tool for promoting developing-country exports.

[76] See next paragraph.

[77] See BREDA DOS SANTOS, FARIAS and CUNHA, *Generalized System of Preferences in General Agreement on Tariffs and Trade/World Trade Organization: History and Current Issues, JWT*, 2005, p. 660.

conditions to the existing list of positive conditionalities and "it has imparted the momentum to the possibility of bringing in non-trade issues into the WTO"[78]. However, for the sake of clarity it has to be said that, admitting that a donor country is allowed to grant a preferential treatment to a beneficiary country, this is a quite different matter compared to admitting that a donor country is allowed to put conditions for the access to the GSP treatment.

This case has brought back the discussion about the non-trade concerns such as labour, environment, human rights which have often been debated in trade negotiations and in several disputes. In fact, the discussion between developed countries, trying to bring these issues within the WTO, and developing countries opposing the linkage between trade and non-trade concerns on the basis that the WTO is a trade body and thus not the right forum to discuss non-trade issues, is a dated one.

The issue of the "non-trade concerns" had already been debated in the Shrimp-Turtle case, where the Appellate body held that unilateral trade measures to protect the global environment are not unjustifiable under the GATT, provided that they do not lead to arbitrary or unjustifiable discrimination between countries where the same conditions prevail. Therefore, a country can restrict or deny market access to another country on the ground that it has not complied with the domestic environmental policies of the importing country, provided that other conditions of the GATT are satisfied[79].

In the dispute brought by India, the Appellate Body moved even forward and its approach has evolved from the position took in the case Tuna-dolphin[80], where in the debate between environment and trade, the balance was resolved towards the latter.

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[78] See MEHTA, *Assertive Jurisprudence on Non-Trade Issues*, THE FINANCIAL EXPRESS, 11 June 2004. Available at http://www.financialexpress.com/fe_full_story.php?content_id=61125. See also SANNA, *Diritti dei Lavoratori e Disciplina del Commercio nel Diritto Internazionale,* Milano, 2004, p. 261. The author in fact notes: "Se come ha sostenuto l'Organo d'Appello, sono ammissibili trattamenti differenziati tra i paesi in via di sviluppo purchè sussista un 'development need', cui il paese concedente risponda 'positively', … , permettendo l'accesso al sistema dei paesi che presentino identiche necessità di sviluppo, si può ragionevolmente dedurre che il regime speciale sui diritti dei lavoratori rappresenti una misura legittima. Esso infatti non solo appare adeguato all'esigenza di sviluppo sociale dei paesi in via di sviluppo, migliorando la qualità di vita dei lavoratori, ma per le modalità della sua ideazione consente a qualunque paese beneficiario del SPG di accedervi su richiesta, previa dimostrazione del rispetto dei diritti fondamentali dei lavoratori".

[79] It has to be pointed out that in occasion of the US implementation of the ruling, the Appellate Body specified that its conclusion was not just an observation but had legal significance, thus the AB wanted its ruling to be a guide for future disputes. See HOWSE, *The Appellate Body Rulings in the Shrimp-Turtle Case: A New Legal Baseline for the Trade and Environment Debate, Columbia Journal of Environmental Law,* 2002, pp. 491-508.

[80] See GATT Dispute Panel Report on *Mexican Complaint Concerning United States – Restrictions on Imports of Tuna,* DS21/R – 39S/155, 1991, 3 September 1991, (hereinafter Tuna-Dolphin). For an overview of the evolution of the jurisprudence of the Appellate Body from the case Tuna-Dolphin to the Shrimp-Turtle case see HOWSE, *Back to Court After Shrimp/Turtle? Almost but not Quite Yet: India's Short Lived Challenge to Labor and Environmental Exceptions in the European Union's Generalized System of Preferences, American University International Law Review,* 2003, pp. 1333-1381. The author affirms that "before Shrimp-Turtle, conventional wisdom had it that the framework of Article XX could not justify the trade embargoes targeted at other countries' environmental and labour policies; on the other hand, … , conditions relating to environmental and labour policies could be placed on voluntary and non-binding preferences granted to developing countries under the GSP without violating GATT provisions".

It has been asserted that "in the short run the AB ruling appears as a brilliant compromise, sensitive to what was at stake in the GSP controversy, … , [t]he Appellate Body has left itself considerable room to evaluate any future challenge to a particular aspect of a GSP scheme on the basis of the facts, and the values and interests that are at stake in that future case"[81].

However, there are also dissenting opinions in respect of the Appellate Body ruling in that it is felt that the Appellate Body "should [not] be operating on such a strong constructionist level in the absence of a more functional legislative mechanism to operate as a balance". It has been stated that "Members do have to take responsibility for the evolution of these regimes by the process of negotiation and refinement themselves. If they fail to evolve the text to meet new conditions, it may not necessarily be the task of the Appellate Body to do it for them"[82].

Some believe that the ruling has a crucial political outcome in the context of the Special and Differential Treatment debate in the Doha Round; in fact developed countries are arguing that there should be differential approach to developing, for instance India and Brazil will be treated less favourably than, say, Bangladesh and Benin[83].

Implications of the Dispute on EPA Negotiations

The Appellate Body's ruling could create opportunities in the EPA negotiations for those non-LCDs ACP countries which are not in a position to enter in an EPA. In fact by finding that preference givers under the GSP can differentiate among beneficiaries, provided such preferences are based on objective and transparent criteria and are made available to all similarly situated developing countries, the Appellate Body may allow the "justification" of special preferences for ACP countries not in a position to negotiate EPAs.

This is made even clearer after the creation of the new GSP scheme of the European Union. The new GSP scheme, as above explained, is made up of a general scheme available to all developing countries and two special incentive arrangements: a) the so-called "GSP plus" which provides

[81] See HOWSE, *Appellate Body Ruling Saves the GSP; at Least for Now,* ICTSD BRIDGES MONTHLY REVIEW, April 20004, no.4, p. 6. The author is of the view that the Appellate Body ruling constitute a fair balance between the issue at stake, however he asserts that the balance will not break only if developing countries "self restrain" their challenges to the GSP programmes.

[82] See MATHIS, *op. cit., LIEI,* 2004, p. 301. See also DI TURI, *Il sistema di preferenze generalizzate della Comunità Europea dopo la controversia con l'India sul regime speciale in tema di droga, Rivista di Diritto Internazionale,* 2005, pp. 721-737. The author points out at p. 737 that: "L'ammissibilità in linea generale da parte dell'Appellate Body di preferenze aggiuntive a categorie specifiche di PVS purchè accomunati dalle medesime esigenze di sviluppo individuabili secondo precisi criteri è effettuata, a ben vedere, forzando la lettera e anche lo spirito della 'enabling clause', che stabilisce che i Paesi economicamente svantaggiati si differenzino esclusivamente in base al livello di sviluppo e che quindi, l'unica distinzione ammissibile sia tra 'developing countries' e 'least developed countries'. Ammettere come fa l'Organo d'Appello, che i PVS possano individuarsi *anche* in base al fatto di essere 'similarly situated', significa ignorare (non si sa quanto deliberatamente) le condizioni storiche e culturali in cui è maturata la consapevolezza, da parte dei Paesi industrializzati della necessità di tenere in debito conto le esigenze dei PVS percepite dalle parti contraenti del GATT in modo unitario".

improved market access (not however as good as that available under Cotonou) to "vulnerable" countries upon the respect of a number of international conventions; and b) the special scheme for least developed countries (EBA).

Therefore if the differentiation among developing countries provided by the "GSP plus" is proven to be compatible with the WTO rules, extending it with a "GSP-plus-plus" (which would contain the same level of trade preference currently provided by the Cotonou Agreement), to cover the ACP countries not ready to enter in EPA negotiations, it could resolve the problem the EU has with these countries.

Studies demonstrate that enlarging the product coverage of the potential "GSP-plus-plus" to a similar coverage that ACP countries benefit under Cotonou, could be feasible both for the EU and the ACP countries. The EU will have to bear only a modest extension, as at present only one-tenth of ACP exports are not yet covered by the GSP-plus; from the side of the ACP countries due to the extension of the coverage, they will have to face the competitors for those products which were previously excluded under GSP-plus, but they would not incur substantial preference erosion since some competitors will be excluded from the "GSP plus-plus" or they already enjoy duty-free access to the EU. Major problems will be in the sugar, rum and bananas sectors[84].

However, the unsatisfactory aspect for the ACP countries is that while the preferences provided under the Cotonou Agreement derive obviously from a negotiated agreement, the preferences granted under the "GSP plus-plus" will be unilateral, thus subject to withdrawal at any time. This could be overcome, for example in the current Doha negotiations, by requesting that the GSP tariffs are bound into the WTO. Another aspect of extreme relevance is that this enhanced GSP scheme could face challenges within the WTO from other developing countries.

It has to be pointed out that the extension of the preferences to the "GSP-plus-plus" is, from a multilateral point of view, much desirable, in fact by offering duty-free access to many developing countries, the EU would liberalize substantially and quickly; on the contrary under the EPAs there would be only limited tariffs cuts from the EU and slow and partial liberalisation by small ACP states[85].

The Doha development Round is having however a direct impact on the EPA negotiations, and although in principle EPAs negotiations and the Doha Round pursue the common objective of the sustainable development, they imply different ways to achieve the same purpose. Therefore, it is

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[83] See MEHTA, *Winning The Battle, But Losing The War, THE FINANCIAL EXPRESS*, 1 May 2004.

[84] See STEVENS and KENNAN, *GSP Reform; a longer-term strategy (with a special reference to the ACP)*, report prepared for the UK Department for International Development Studies, Brighton, 2005. Available at http://www.ids.ac.uk/ids/global/pdfs/CS_GSPrs05.pdf

[85] STEVENS, *The GSP: A Solution to the Problem of Cotonou and EPAs?*, TRADE NEGOTIATIONS INSIGHTS, July-August 2005, Vol.4, No.4, p. 5.

important that ACP countries monitor the likely outcome of the Doha negotiations, and for those market access matters and trade-related issues which are not sufficiently addressed there, could be offered opportunities in the EPAs negotiations. To this end, the ACP should identify trade-related issues which could be covered by EPAs and which would be influenced by the WTO negotiations, and in which way[86].

IV. The Model and Data

Quantitative studies of the impact of trade liberalizations can be performed in either a general equilibrium framework or a partial one. General equilibrium models are surely more appropriate to try to assess the overall trade and welfare effects of such agreements. However they required social accounting matrix with comprehensive information on each economy involved and their results will be driven by the quality of these data.

Since these data are not available, such a choice could not be made for a ACP-wide analysis. Moreover, due to the high product specialization of numerous ACP countries, using a CGE describing the whole economy at an aggregated level (even at the GTAP level) will miss the point. Last but not least, working at the product level is crucial from the point of view of policy relevance with the problematic of sensitive products selection. For these reasons, we have decided to use a partial equilibrium approach. .

IV a) The Model

The quantitative study of the impact of EPAs is then performed using a dynamic partial equilibrium model, expressly built for this purpose.

The model, which is based on usual assumptions[87] of partial equilibrium analysis has been designed to allow for a very detailed evaluation of the impact of trade and budget effects of the ongoing EPA negotiations.

Regional income, supposed to be fixed, is allocated among different hs6-products (5,113 HS6 products) using a system of nested CES functions (the demand nesting is showed in **Erreur ! Source du renvoi introuvable.**).

[86] SANOUSSI BILAL, *On the Compatibility of Doha and Cotonou*, TRADE NEGOTIATIONS INSIGHT, 2002, Vol.1, No.4, p. 3

[87] Some of them are quite suitable to the situation, such as the fixed exchange rate assumption due to the existence of the CFA franc zone.

More precisely, at the first stage consumers have to arbitrate between two main categories: agricultural-agro industry and other industrial products. Here we assume a complementarily between them.
Secondly the total demand for each macro category is allocated among different groupings. The agricultural-agro industry is split between vegetal, animal products and agro-food industry. While for the second Macro-group we considered five classes: primary, metal, textile, electro- mechanics and other industry.

Thirdly, the total demand for each category is allocated among different sectors (GTAP nomenclature).
Then we pass from the GTAP nomenclature to the HS6 level. As far as consumption choices within each hs6 category are concerned, we make use of a nested Armington "assumption" (Armington, 1969):

1) We distinguish between two quality ranges, defined on a geographical basis: goods produced in a developing economy are assumed to belong to a different quality range than those produced in a developed one.
2) Within the same quality zone consumers chose between domestic and imported goods. For the latter we are further assuming that imported goods from different countries are considered to be imperfect substitutes in use.
3) For different quality products we directly differentiate according to their geographical origin.

The choice of substitution elasticities (the one between qualities) smaller to the Armington elasticity (between domestic and imported goods) implies that goods that do not belong to the same quality range are less substitutable than goods from the same quality range. This means for instance that, within a given sector, goods from EU compete more directly with goods from a developed country, than with goods from any developing one.
It is worth noting how the system of geographical substitution, above described, is appropriate to capture trade creation (TC) and trade diversion (TD) effects.

At the supply side we make use of the infinite supply elasticity hypothesis, which in short means constant price. This latter assumption, frequently used in models of international trade, seems appropriate in the case of the European Union, while it is a concern for smaller ACP nations with

constrained production capacities. For this reason results related to their exports growth have to be interpreted as long run potential impacts.

Figure 1

IV b.) Data

Even setting our analysis in a partial equilibrium framework, our model requires very detailed data which unfortunately is not always available. So we have to do some key assumptions also in the case of data.

To include domestic production in our model we obtained highly disaggregated data compiled by the FAO for agricultural products. We use this data to calibrate the initial share between local and imported hs6 products. Whenever data at this level is not available or inaccurate, as it is the case for the industrial sectors, we determine this proportion from GTAP 6.2 database and we make the assumption that the same share holds at the most disaggregated level.

As can be seen from the previous section, the study requires estimates on a number of key parameter such as import demand elasticities and substitution elasticities (see Appendix II for the value of elasticities). Import demand elasticities at the six-digit level, for many countries, are available from estimations by the World Bank (Nicita et al., 2006). Other reliable estimates are only those by GTAP 6.2 database, at GTAP sectoral level.

Then a specific calibration procedure is applied to jointly determine the other substitution elasticities used in the model in order to maintain coherence between the initial levels of consumption, the Armington elasticities at the GTAP level and the demand elasticities for HS6 products.

For trade data, we make use of a number of sources in order to fill missing information, notably concerning African countries' trade. Specifically we employ COMEXT (source Eurostat) for the EU-ACP relations and BACI[88] (CEPII database, which is a harmonized trade database based on UN-COMTRADE) for all the other importers. Many weaknesses remain on intra- African trade flows and will bring a lot of uncertainty on any exercises focusing on intra-african trade relations (e;g; a deepest regional integration process). Moreover, to reduce as much as possible the annual volatility on trade data we calibrate the model using a mean based on three years (2002-2004).

Tariff data for the year 2004, on the other hand, is fully accessible. Tariffs are obtained form MAcMApHS6v2.01 (CEPII), which is comprehensive information system at the tariff line level using, among others, the Harmonized System of product classification. Both the ad valorem and

[88] Authors thank Dieudonné Sondjo (CEPII) and Houssein Boumellassa (CEPII) for their contribution in constructing the full trade sets of data necessary for the study

Tariffs-Rate-Quotas are considered. Finally, tariffs for the new EU GSP scheme, which has been implemented in 2005, are provided by the EU-Commission (TARIC database).

V. Sensitive products and exclusions

Sensitive products selection is applied at the HS6 level, considering two alternative criteria:
For the EPAs, two criterion of sensitivity have been used alternatively:
The first one gives a priority to the agricultural products (678 products following the WTO negotiations), these goods are placed on the top of the list. Then others tariff lines are ranked by descending order following a tariff revenue loss criteria ("theoretical revenue loss" computed as trade time facial protection rate).
The second does not include the agricultural priority approach. Only tariff revenue loss impact is considered.

The selection is done at the country level.However, as presumably the sensitive products list will be, in fine, defined at the negotiation group level, the aggregation procedure to determine the ultimate list assumes a very important rilevance. (see box)

In the paper we adopt a "round table" approach, as we consider it the the most reasonable solution to capture an unweighted bargaining game between countries.
Inside an ACP region in each round of negotiation, each country gives his most important product to be included in the exclusion list at eac The regional negotiation process lasts until the previous constraint on the scope of exclusion are met.

Possible way to aggregate the sensitive products list:

1. Borda's rule. The Borda count is a single winner election method in which voters rank candidates in order of preference. The Borda count determines the winner of an election by giving each candidate a certain number of points corresponding to the position in which he or she is ranked by each voter. Once all votes have been counted the candidate with the most points is the winner. Because it sometimes elects broadly acceptable candidates, rather than those preferred by the majority, the Borda count is often described as a consensus-based electoral system, rather than a majoritarian one.
2. Aggregating sensitivity of the different products sensitivity using country's GDP as weigth to represent the strength of different partners inside a sub-region.
3. Computing directly sensitive products at the sub-regional level.

4. It is important to remember that in the case that for the EPAs, sensitive products list will be country specific. Inside a Custom Union consistency will have to be enforced.

The proposed criterion has the main advantage to be theoretically grounded. However, in his current version, it has two possible limits that may be enhanced:

1. In the way, that it is currently implemented, the trade impact is computed through an ex-ante assessment using simplified iso-elastic demand functions. However, including an endogeneous selection of the sensitive products inside the PE model can be investigated but will bring numerous difficulties. For this reason, we keep this solution just as an "open" option.
2. Since, the selection criterion does not emphasize specifically the role of agricultural products and since the trade flows (and the tariffs revenue) are more concentrated in manufacturing goods, a strong bias in favour of selecting manufacturing goods as sensitive will appears. However, we know that in order to protect the poorest rural areas or to limit import dependence on food, governments will be more bias on favour on agricultural products. To mimic this behaviour, we have to think about two potential solutions: overweighting the sensitive criteria for agricultural products, or insuring that, for example, 20% of the trade of manufacturing goods will be considered as sensitive on one hand, and the same proportion for agricultural goods.

VI. Liberalization scenarios

After describing the model and data used, we turn now to the trade liberalization scenarios.
We performed a number of simulations (see Table 2), in order to assess not olny the impact of the different trade policies, but also the relevance of different criteria when chosing sensitive products.

A first set of simulations, which are our central scenarious, consider a positive outcome of EPAs negotiations. Three relavant benchmarks, whenever ACP countries would decide they are not in position to enter into EPAs, are then considered in the other set of simulations.

Under each simulation , we assume that all ACP regions manage to achieve a perfect custom union by 2017. This means that no tariffs are applied between members and a common external tariff is defined as the trade weighted average of the initial tariffs within each zone.

Another important aspect that we include in all simulations is the end of special regime applied to products of extreme importance for ACP states, such as sugar and bananas, as stated int the Special Arrangements for Least Developed Countries under the EBA initiative adopted by the EC in 2001[89].

VI. a) Central scenarios: signing EPAs

As a start, we assume that tariffs will be eliminated within a period of up to 12 years for the most part, although a few-import sensitive goods, as explained in the previous section, are likely to be excluded from the agreement.

More precisely we suppose that a successful conclusion of the EPA implies that the EU will liberalise all its imports from all ACP while the ACP will remove 90% of bilateral trade with the EU[90], up to 20% of the number of tariff lines (102 products of the HS6 Rev. 1 nomenclature).

On both side the agreement is implemented linearly, during a period of 12 years in the case of the EU, and 20 years on the ACP side[91].

[89] EBA was adopted for the first time in 2001, when the European Commission adopted a proposal for a revision of the EC scheme, which put forwards a number of different arrangements, including the "Everything But Arms" initiative for LDCs. It is the result of several initiatives undertaken by the EU after the Singapore Ministerial Declaration when developed countries committed themselves to improve market access for Least developed countries, and in fact an important characteristic of the EBA regime is that, while it is adopted within the framework of the GSP which is unilateral and thus subject to revision and withdrawal, the EBA regime is not time limited. The EU decision on 26 February 2001 to adopt the Everything but Arms initiative, according duty-free and quota-free market access for all goods (except arms) from LDCs, was effective from 5 March 2001. A transition period for the full liberalisation of sugar, rice and bananas to be phased in between 2002 and 2009 was agreed too under which: duties on bananas would be reduced by 20% annually starting on 1 January 2002 and eliminated at the latest on 1 January 2006; duties on rice would be reduced by 20% on 1 September 2006, by 50% on 1 September 2007 and by 80% on 1 September 2008 and eliminated at the latest by 1 September 2009; and duties on sugar would be reduced by 20% on 1 July 2006, by 50% on 1 July 2007 and by 80% on 1 July 2008 and eliminated at the latest by 1 July 2009. In the interim, the EU would offer immediate market access, through the creation of duty-free quotas for sugar and rice, based initially on the best figures for LDC exports during the 1990s, plus 15%. These would increase by 15% each year during the interim period. The EC would monitor imports of rice, bananas and sugar carefully and apply safeguard measures if necessary to prevent surges.

[90] Exports plus imports

We performed the same simulations twice, once considering what we called exclusion I list, then considering exclusin II list, to check the signifance of the different selection criteria for sensitive products.

VI. b) Relevant alternative scenarios

In order to consider the impact of alternative trade agreements, whenever ACP countries would decide they are not in position to enter into EPAs, three counterfactuals are considered and used as benchmark.

1. Standard GSP (including sugar protocol) for non-LDC ACP countries, and EBA for LDC ACP
2. GSP plus (including sugar protocol) for non-LDC ACP countries, and EBA for LDC ACP
3. Standard GSP, plus a a possible Doha outcome

VII. Results

VIII. Conclusions

[91] By definition, and since there is no dynamic accumulation affects in the partial equilibrium model, this leads to a smoothing impact in the tariff revenue for ACP countries.

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Appendices