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The New European Trade Preferences: Does 'Everything But Arms' (EBA) Help the Poor?

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The EU's offer of tariff- and quota-free access for all exports from the Least Developed Countries (for Everything but Arms) has been welcomed as part of the WTO-led initiative to assist these countries. But it is not without problems. As the Least Developed compete more with other developing countries than with the EU, trade is likely to be diverted from other, sometimes poorer, countries. ('Least Developed' is an official classification, not a neutral measure of poverty.) EBA contradicts and impedes the EU's policies of reciprocity and promotion of regions: it not only creates an alternative trade regime, but seems unilaterally to break existing agreements. The article concludes that the policy was adopted for essentially political, not developmental, motives.

Within months of the ink drying on the new, twenty-year Cotonou Partnership Agreement signed in June 2000 between the 78 African, Caribbean and Pacific (ACP) countries and the European Community (EC), the European Union launched a new regime of special preferences called 'Everything But Arms' (EBA) just for the 49 Least Developed Countries. By its nature, this latter discriminates against other developing countries not designated 'Least Developed' – not just ACP countries like Kenya, Ghana, Zimbabwe, Guyana and Jamaica, but also powerful but poor emerging economies like India, Pakistan and Brazil (but for Pakistan, see below). How did this new brick in the EU's trade preference architecture get fired, and why was there no architectural drawing – let alone blueprint – beforehand? How can the structural imbalances likely to arise from this construction now be addressed?

What the EC proposed

On 20 September 2000, the European Commission issued a press statement, followed some days later by the details in the form of a draft amendment to the Generalised System of Preferences Regulation, proposing that Least Developed Countries[1] have duty- and quota-free access to the EU for all products except arms, with immediate effect (once approved by the Council) for most goods and a three-year phase-in period for bananas, sugar and rice. The only restrictions were the usual ones on rules of origin and provisions against fraud, plus provision for possible suspension in case of 'massive'

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1. This is an official UN designation, not a description, defined periodically through its Economic and Social Committee.

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increases in imports ‘in relation to their usual levels of production and export capacity’. The formal proposal included the statements (required for EC proposals) of the impact on business, with special reference to small and medium-sized enterprises, and of the financial effect; the latter looked only at customs revenue.

Following informal discussions, and extensive lobbying, the final regulation (European Commission, 2001a) extended the three-year phase-in to 2008. The regulation came into effect on 1 March 2001, with bananas to be liberalised from 2002 to January 2006, and rice and sugar from 2006 to 2009. No impact studies had been done before it was announced. After some delay and confusion a study was prepared in early 2001 but was too late to have a role in setting the policies.

The policy context of the proposal

Multilateral

The GATT Enabling Clause of 1979 allowed not only preferences for all developing countries, but additional preferences for the Least Developed Countries, as defined by the UN. Countries are measured against quantitative economic and social criteria, including income, export and production specialisation, and human development indicators. Recommendations are made to the General Assembly every three years for countries to be added to or removed from the list. Changes in status are proposed on the basis of the index but need ratification, and countries resist graduation. Only Botswana has ever ‘graduated’. Some countries are, not surprisingly, keen to get themselves ‘relegated’, for example Senegal in 2001. Under these provisions, the European Generalised System of Preferences has offered better access to Least Developed since 1985. Since 1997 the EU has proposed extending this. The first proposal (presented as a policy objective, not an official document) was for ‘all goods’, but in all official documents until September 2000 it had been phrased as ‘essentially all’, a formulation assumed to exclude sensitive and quota goods (including, but not restricted to, bananas, rice and sugar).

The EU 1997 proposal was part of a World Trade Organization initiative (initiated by the then Director-General, Renato Ruggiero, formerly a European Commissioner and Italy’s Foreign Minister until January 2002.) Following the Uruguay Round of trade negotiations, analysis indicated that most of the gains to developing countries had gone to the more advanced (in particular the clothing exporters of Asia and some natural resources exporters in Latin America), while some poor countries, including many Least Developed, had actually lost (because of the indirect effect of gains made by others). This led to disillusionment with the trade regime on the part of poor countries and of those concerned with their interests, and therefore to various efforts both to counter the possible economic damage and to demonstrate that the international trading system could offer benefits. A conference in November 1997 on the Least Developed Countries encouraged both developed and the more advanced developing countries to make improved offers to the Least Developed on trade, and also to target technical assistance to improve their export capacity.[2] As with the ‘normal’ GSP, the actual offers were

2. The prospect of the following conference, in 2001, in Brussels, acted as both an incentive and a deadline to some preference-donors.

made unilaterally by individual countries (the EU acting together), not negotiated and not officially notified to or bound by the WTO. The US and Japan made offers with lists of exceptions; some Asian developing countries made offers on specific products.

There was a proposal to include negotiations on this in the draft agenda for the aborted Seattle Round of WTO trade negotiations. For this, the EU insisted on including the word 'essentially' to modify 'all' in order to permit exceptions. After the collapse of negotiations, the new WTO Director-General – Mike Moore – was concerned to keep Least Developed Countries committed to the multilateral system by improving and implementing the proposed concessions, and the EU, as a strong supporter of a new Round, had a clear interest in trying to secure support from all groups of countries for its position. The UK Secretary of State for International Development, Clare Short, issued a new Government White Paper on Globalisation in December 2000 and made the launch of a new trade Round (which she hoped to call a 'Development Round') a prime target of UK policy, explicitly seeking the support of the 'poorest' countries.

EU-ACP relations

At the same time as this revival of interest in preferential arrangements for the Least Developed at multilateral level, the EU was negotiating with the ACP countries to find a successor to the trade provisions of the Lomé Convention. Starting with the Green Paper of 1997, the EU made it clear that it wanted to shift from unilateral concessions to a negotiated agreement. It also wanted to shift back to the reciprocity and reverse preferences of the earlier Yaoundé Conventions. While many ACP countries doubted the economic advantages of this, especially as it required them to 'negotiate' to preserve their current access, in return for giving the EU greater access, it did appear to have one clear advantage: that an agreement would be contractual, requiring both sides to observe it. The EU also indicated very strongly that it supported regional co-operation among the ACP countries to strengthen their trading positions.

During the pre-negotiation phase, studies of the impact of reciprocal trading agreements on the ACP countries noted the possible inconsistency between improved concessional arrangements for the Least Developed and uniform agreements with the members of regional groups. Every potential regional group of ACP countries includes both Least Developed and non-Least Developed countries. While the Least Developed would have gained little under the 1997 proposals (and nothing under EBA) from an additional regional trade agreement with the EU, the others in each region would gain. Both the Least Developed and the others, however, would lose from any splitting of regions by level of development. The EU therefore modified its original proposal (that Least Developed countries in a region would lose their right to special Least Developed access). Thus the Cotonou Agreement needed to include a mention of the plans for the Least Developed: it recognised that the EU intended to grant access for all Least Developed countries for 'essentially all' goods. While neither 'at most' nor 'at least' appeared as a modifier of 'essentially all', it was clear from the previous EU use of the term (in the multilateral negotiations) that the intention was to use this form of words to limit access for some goods.

The proposal to offer 'all' three months later was thus a unilateral change in what had been negotiated. (In WTO terms, it might have been considered a 'nullification or impairment' of an existing agreement, and would therefore have been challengeable.)

The Cotonou Agreement contained provisions for the ACP countries to be consulted through an ACP-EU Ministerial Trade meeting prior to any proposals to change the agreement; there had been no consultations before September 2000, and even the 'consultation' which the EU offered in October 2000 was only a meeting of EU-ACP parliamentary representatives and not of trade policy-makers or even officials.

Status of proposal

The proposal made in September 2000 was presented and defended as a proposal for formal implementation of an existing policy objective, not a new initiative in an unexplored area. It was reasonable to expect that its consequences, direct and indirect, had been considered before the draft was submitted (in formal terms, that the required impact assessments had been done), and that it would take account of existing policy commitments. Neither of these was the case.

There may be circumstantial explanations for the failure to take official account (through consultations or an impact assessment) of either the interests of all other developing countries or the consequences for the existing commitments under the Cotonou Agreement. The moving of formal responsibility for trade with the ACP countries from the Directorate-General for Development to that for Trade may have reduced appreciation of the development implications of trade measures. The changes in the Commission since 1997, especially following the resignation of the entire Commission in 1999, had brought an apparent reduction in Commission enthusiasm for regional agreements in general and those proposed with the ACP in particular. Securing support for a new WTO Round had become the priority for the Trade DG. These explanations, however, do not remove either the formal obligations under Cotonou or the EU's policy commitment to help all developing countries.

Sugar

The proposals made in 2000 to reform the EU sugar regime had the same timetable as the original version of the Least Developed proposal (in its original three-year form), with no firm plans yet for the post-2003 regime. The quota regime for the ACP countries plus India therefore continues unchanged for at least these three years. Under this, the countries are obliged to offer and the EU is obliged to buy fixed quantities at, broadly speaking, the European price (substantially above the world price). Legally, the Sugar Protocol is not part of the other arrangements with the ACP countries, but an agreement of 'indefinite' duration. Thus, if this is not abrogated, increased sugar imports under the Least Developed proposal could not displace imports under the sugar quota: the EU remains committed to purchase these indefinitely at above market prices, even if the market for these imports is reduced or eliminated by imports at much lower prices from the Least Developed.[3] This could imply high budgetary costs (to subsidise re-exporting or otherwise disposing of the quota sugar). And these would come at a time

3. World sugar (which trades on a residual market because of so many other fixed arrangements like the Sugar Protocol) was trading at 6 cents (US) per pound at this time – well below the costs of production in even the most efficient producer countries.

when the agricultural policy and the budget would already be under pressure from production in the accession countries, especially Poland.

This has caused fears on the part of both sugar quota-holders and sugar producers in the EU that the Protocol may not be as long-lasting as foreseen in previous commitments. These fears are strengthened by the reaction of the EU (and informally of the UK government) to their complaints about the short duration of the transition for sugar under the Least Developed proposals: that the ACP countries with sugar quotas need to adapt to a changing international regime. Expectations about policy are clearly important in determining how investors both in Least Developed and in other countries will respond to the new opportunities. Wrong expectations of the Protocol continuing could lead to preserving capacity that will not be used. Wrong expectations that it will end could lead to underinvestment. Both Least Developed countries and quota-holders need certainty.

Economic effects

The effect of removing trade barriers to one group of countries, leaving others unchanged, is to increase imports from the favoured group: some of these will replace production in the EU (if it is now more efficient to import); others will replace imports from other countries (if the removal of the barrier creates competitive advantage, and except in cases of guaranteed markets). The first, 'trade creation', is a clear benefit to both the EU (lower prices) and the Least Developed (higher income). The second is a benefit to the Least Developed, a cost to the non-Least Developed, and, depending on assumptions about how traders price and whether the other countries pay tariffs or not, a potential cost or benefit to the EU (a cost for sugar if this has to be bought from quota-holders). It is recognised under WTO rules that free trade areas or customs unions among members can damage the trading interests of non-members through trade diversion. Therefore, although FTAs or CUs are permitted, they are required to offer compensation to non-members for any anticipated trade diversion. While the calculations are necessarily arbitrary and subject to error, the provision has been implemented, for example with each enlargement of the EU.

There is no similar requirement when preferences are granted or changed. The original concept was that preferences were offered by all developed countries (although implemented on an individual basis) for all developing countries. Therefore any diversion would be from other developed, and these had agreed to bear any costs for the benefit of developing countries. When differentiation for the Least Developed was introduced, the implicit assumption was that it was harmless to offer them higher preferences because they would be unable to increase their exports very much, and therefore that any diversion would be negligible. The question of whether it was right for individual developed countries to be able to decide to impose diversion on some developing countries for the benefit of a different class of developing country was not considered. At the time, developing country participation in trade negotiations was very limited. A potentially large diversion in 'sensitive' products at a time when developing countries are increasingly active in trade negotiations (Page, 2001b) could not escape opposition, and did not.

Effects on the Least Developed

How quick and effective will the response be to the new opportunities? If the success of lobbying to delay implementation before the EBA was introduced leads to uncertainty or pessimism about whether it will be finally implemented, and particularly if the implicit threats to restrict surges in imports are activated, then the failure of the Least Developed to take advantage of their opportunities will be a self-fulfilling prophecy. This anti-surge provision could, of course, prevent any Least Developed country from making effective use of the new access to increase its export and production capacity, and could be inconsistent with the recognition in the proposal of the need for assistance to the Least Developed to improve their capacity to export. It appears to be intended to avoid damage to EU producer interests, not to prevent damage either to EU budgetary costs or to the exports of existing suppliers to the EU.

Previous experience suggests that some countries can increase some exports very strongly. Bangladesh, exempted as Least Developed from controls on clothing and textiles by the EU (but not by other developed countries, so its experience is a very close parallel with the current proposal), saw an increase in the share of clothing in its exports from 0.01% in 1977 to 51% in 1991. It was able to increase its exports partly because both producers and purchasers with experience in the restricted countries encouraged the development of the Bangladeshi industry. The increase did not, therefore, rely on the country's existing production or exporting capacity.

Some sugar producers in quota countries are already involved in investing in capacity in Least Developed Countries (for example, Mauritius in Mozambique), so that the links to markets can be quickly established. If the Least Developed are able to obtain a price higher than the world price (even if lower than that on quota sugar), then they will have the incentive to import supplies for domestic consumption and export their total production to the EU.[4] The greater the uncertainty over the future of the Sugar Protocol, the greater the incentive for purchasers and investors to move into the Least Developed Countries. The size of the effect (and its distribution between the Least Developed Countries and outside investors and purchasers) cannot be calculated simply by looking at existing sales (as is done in the financial impact assessment in the Commission proposal). It is a basic error of analysis to assume that the level of a restricted import will not rise when the restriction is removed. It is necessary to look at the natural conditions, including transport and other infrastructure for trading, and at the potential to change these.

Effect on other ACP and other developing countries

Until the potential for shifting trade to the Least Developed Countries has been

4. The argument sometimes used that consideration of food security would prevent this is unlikely to hold: sugar is not normally considered a staple food commodity and producers from non-Least Developed countries will be able to offer a complete service of supplying the local market and obtaining good prices for exports. There could be transitional obstacles (different technical standards for sugar for consumption and for export, for example). Some Least Developed Countries are confident that they could increase output sufficiently (i.e. by at least 200%) to gain even if the price paid fell to the world level; others would find this difficult or impossible.

assessed, it is not possible to assess fully the effect on other ACP countries.[5] But, particularly in Africa, there are many cases of neighbouring countries (Malawi and Zambia with Zimbabwe; Uganda and Tanzania with Kenya) where the exports of the Least Developed are likely to compete directly with those of the other ACP. For those products where there are still some restrictions on ACP exporters (including sugar, but also some other Common Agricultural Policy products, horticultural products, etc.), the Least Developed may gain immediately.

In Latin America and the Caribbean, where the Latin American countries actively opposed the EU's post-Single European Market banana licensing arrangements and won a lengthy trade dispute in the WTO, while the Caribbean countries have been growing sugar since colonial times, with some of the Eastern Caribbean Windward Islands shifting out of sugar into bananas in the 1950s on the advice of the UK, only Haiti is classified as Least Developed. Thus the Central and South American countries face further discrimination, and a poor country like Guyana, with a low per capita income but a strong education system and so one notch up from least developed status, suffers loss of preference in areas such as sugar and rice in which it has recently made major investments. (See Box for some broader indications of the effect on Caribbean countries.)

After 2008, if the non-Least Developed do not sign an agreement which renews their access to the EU under the Cotonou Agreement, the Least Developed will gain on all products on which developing countries still pay tariffs. They will gain on these immediately compared with non-ACP, non-Least Developed countries. The gains in sugar may represent trade creation and an increase in efficiency (although the convoluted nature of the sugar market will make it impossible to be certain, and make it unlikely that EU consumers or quota-holders will benefit from the increase in efficiency). Where the gains come because the competitors of the Least Developed face restrictions, there will be trade diversion, and loss of tariff revenue without a corresponding gain in efficiency in the EU.

Calculating the impact

It is a truism to say that it is difficult to forecast the future. But both governments and investors have to act on the basis of expectations about the consequences of their actions, and where these are diffuse (many products and trade regimes, affecting many countries, at different times, in different directions), it is useful to project in a systematic way. Even if large areas of uncertainty remain, the direction of effects, and in some cases their likely magnitude, can be specified, and where there seem to be either serious risks or large uncertainties, monitoring can be put in place to check the effects as the policy proceeds. It is for this reason that many governments establish procedures (which are recognised to be imperfect) for requiring 'impact assessments' of any policy proposal, at a minimum of the likely financial implications and the effects on identified

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5. Stevens and Kennan (2001) have attempted this, however, concluding that EBA is consistent with the Cotonou Agreement and that neither the scale of the potential boost to Least Developed exports nor the increased competition for other developing countries is likely to be large. We disagree. They also conclude that ACP suppliers of sugar are 'the most likely casualties'. True for some, but others – see Mauritius and Mozambique above – will actually benefit.

Box: Effects on the Caribbean

Sugar is probably barely viable long-term without the Sugar Protocol. Caribbean countries could live with the gradual decrease in European prices but not with competition from Asian Least Developed Countries. This will force St Kitts, Trinidad and Tobago and Jamaica out of sugar. St Kitts will lose all production and is likely to become like Antigua but without the mass tourism, financial services industry or airline hub.

Trinidad and Tobago and Barbados will probably benefit from abandoning sugar in the long run and will further diversify their economies. In Jamaica the risk of social unrest and political instability is acute. Unlike Belize and Guyana, where there are prospects (and existing investments) to modernise the sugar industry and make it viable regionally, Jamaica cannot really produce cane sugar for the world market economically, given its costs. Even in Guyana, where the Indo-Guyanese community supply the labour and depend on sugar and rice exports, the proposal does not leave enough time to adjust (see *Financial Times*, 2001; *Guyana Chronicle*, 2001).

On rice, Guyana is becoming more efficient and can compete with Vietnam for regional if not world markets. But if the Asian Least Developed get effective preference, it will fail to break into the world market and may not hold the regional market. (Guyanese rice is produced behind sea-dykes, requiring massive initial and continuing maintenance investments.)

Rum is quite detached from the sugar issue (except historically) because the Caribbean industry (fragmented between the islands and Guyana, mostly with old plant) imports the molasses rather than using unreliable local sources. Because of the original EU protectionism in Lomé I to help French Overseas Départements, which produce a different 'agricultural' rum product, they took the route of bulk rum exports, while the only successful cases (Cuba, then Bermuda/Bahamas) went for brands. Barbados now has a little branding in Diageo's 'Malibu' but it is mainly too little too late.

Bangladesh is already exporting bulk rum and eating into that world (and EU) market. Ever since the 1996/7 zero for zero white spirits deal, on which the ACP were again not consulted, the EU has recognised that it damaged the Caribbean ACP. These producers are now making common cause with the French to extract a few extra subsidies from the European Commission. This can be done, though not in the sort of proportions which would be required for sugar.

Yet Guyana, for example, possesses potential sugar brands such as Demerara (and speciality sugars within them) which have never been exploited. EU money might be better spent on marketing, design, market research, and strategy to turn commodities into products which feed off the rest of the Caribbean's unique selling points such as tourism, entertainment and youth, than on producer subsidies (see Hewitt, 2001).

vulnerable groups (the poor, small business, the environment).

In the UK, of course, these also apply for domestic implementation of European measures. The EU and UK provisions do not include a requirement to consider the impact on developing countries, and the WTO does not require it for preferential agreements, but it was precisely because it was recognised that liberalisation to other countries by the EU had already affected the ACP countries and might do so in the future that provision for consultation after assessment was included in the Cotonou Agreement. The difficulties of assessing effects and consulting those affected may seem large, but are no greater than those for any regional arrangements (they will be required when the accession countries join the EU) or than the assessments done for the proposed regional partnerships with the ACP countries in 1998-9. That the Commission agreed to undertake studies in early 2001 indicates that it did not consider them impossible. As the proposal of the policy to favour Least Developed was made in 1997, there is no economic reason why it was impossible to take the time to do the studies before September 2000 or to defer the September announcement until studies could be done. This timing corresponds more closely to the need for support for a WTO Round.

The impact assessments on finance and business which were included with the proposal implicitly make forecasts about the impact on the Least Developed: effectively very small, except for some unquantified words about the 'dynamic, long-term effect on spurring trade on new products for the LLDCs'. The effects on other countries will therefore be correspondingly small. Later assessments, made to assess the effect on the EU's agriculture, also assumed small effects, but there have been no systematic, country-by-country assessments. Giving an explicit assessment of the effects on Least Developed and other countries would require spelling out the assumptions that must have been made. If the analysis of the impact on the Least Developed was not carried out with sufficient care, then the assessment of the financial and business effects, which is legally required, must be deficient.

Poverty effects

The justifications for giving special preferences for the Least Developed Countries (over and above those for other developing countries) are that their needs for special treatment to gain access to markets are greater, and their greater poverty means that any 'costs' (in trade bargaining terms) to developed countries of preferences should be concentrated on them. Both arguments need examination because the current definition of Least Developed Countries is not designed as a direct measure of either poverty or trade disadvantage.

The UN definition excludes countries with a population above 75 million (except Bangladesh which was already included when this limit was imposed) and has three components; income per capita, human resources,[6] and economic vulnerability.[7] A Least Developed Country must be below the cut-off points on all three, or on income plus one of the others plus special factors. The income level, at US$900, ensures that all Least

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6. Including indicators for nourishment, education, and mortality.
7. Including indicators of export concentration, industrial development, instability of exports and production and population size.

Developed Countries are poor, but the population limit and the economic and human resource components exclude some poor countries (notably India, Pakistan, and Kenya) from the classification. Countries which meet the standard of a low share of advanced products in their exports are often the least likely to face trade barriers, while the UN index naturally does not distinguish between specialisation in primary products vulnerable to EU protection for CAP goods and specialisation in tropical agriculture or minerals, which are largely free of barriers. Offering special access to the Least Developed therefore not only excludes some countries which a poverty-focused policy would want to target, but may damage them if they suffer from trade diversion to Least Developed competitors.

The main losers from the somewhat arbitrary choice of the Least Developed Country designation are – apart from the 'one notch up' countries like Guyana and Kenya – big poor developing countries, most notably India, Pakistan and Indonesia. But Pakistan was immediately offered special EU (and other) preferences (see *Le Monde*, 2001) and debt relief, as soon as the war on Afghanistan started, and has now been added to the Latin American drug producers which receive additional, 'super GSP' treatment, while Indonesia, an OPEC member, benefits from its own brand of donor Realpolitik. This leaves India as by far the main loser in the new architecture of EU preferences. This is a perverse result from the standpoint of development policy. Not only does India have the largest number of poor people in the world; it is also the leading recipient of UK (and in some years even of EU) aid.

Systemic effects

The EBA initiative shares one of the purposes of the WTO initiatives for Least Developed countries, namely, to counter their dissatisfaction with the multilateral system. There is a risk, however, that it will increase the dissatisfaction of other developing countries, including the most powerful – India, Brazil, even Nigeria – either because they consider the discrimination in favour of Least Developed 'unfair': they also are poor or feel that they suffer some other serious disadvantage (island, landlocked, overpopulated, vulnerable to natural disasters, etc.), or because it appears to go against an existing agreement, the Cotonou Partnership Agreement, and therefore to weaken the rule of law in the international system.

One of the few advantages of the Uruguay Round perceived for all developing countries was the strengthening of international rules and the mechanisms for enforcing them. A predictable and enforceable international system is most important for the weakest countries (just as the rule of law within countries supposedly protects the weak). Thus even the Least Developed Countries have an interest in preserving correct procedures. It will be more difficult for the EU to negotiate with the non-Least Developed countries in the eight years of the Cotonou negotiations if they feel that the June 2000 agreement has already been violated, and it may be more difficult to get their support in the WTO.

On a practical negotiating level, the developing countries which have been treated as leaders both by other developing countries and by the developed are all non-Least Developed, for example India, South Africa, Brazil, Egypt, and, for the smaller countries, Mauritius. These were included in the 'Green Room' procedures in Seattle; they have mobilised support for continuing negotiations since then, and they led in

Doha. If they believe that the EBA initiative is economically damaging (trade diversion) and fails to respect existing agreements, negotiating with the emerging country leaders of tomorrow will be more difficult.

Questions to be answered

If the EBA initiative is expected to have important developmental effects on the Least Developed Countries, both they and other developing countries need clear analysis of what these will be. Even if the EU does not accept that other developing countries have a legitimate interest in the policy, such an assessment is essential. Without this, business and consumers in Europe, who have the legal right to such analysis, cannot have *a credible assessment of impact.*

Such an analysis will require *assumptions or forecasts of other EU policy*. If all trade barriers are expected to fall within a period of 10 years (sometimes argued by the Trade Directorate-General), then any preferences may give only a temporary advantage: a new producer has compensation for the costs of setting up, but an uncompetitive one does not have a long-term advantage. This implies one pattern of reactions in both Least Developed and other developing countries. If barriers are assumed to be long-term, this implies different reactions. Does including sugar in the initiative indicate that the European market for sugar and all CAP products will be completely uncontrolled after 2003, or even after 2008, or will there be the current system plus Least Developed exports? The assessment of the effects on the EU's agricultural sector (EC, 2000) assumed that any increase in imports would lead to a cut in EU production. Is this a politically realistic outcome for the Common Agricultural Policy?

In the context of both the multilateral trade regime and the bilateral relations of the EU with the ACP countries, it is now necessary to clarify what types of special treatment for developing countries can be treated as purely concessional: a benefit to the recipient with 'essentially' no costs except to the donor (aid, at one extreme, but also benefits given equally to all developing countries); and those types that affect other countries, whether directly, through significant trade diversion, or indirectly, by damaging confidence in the predictability of international rules. Non-Least Developed countries also have legitimate trading interests and risk being alienated by actual or perceived diversion of preferences to the Least Developed.

In the context of EU-ACP negotiations, regardless of the legal advice to the Commission on the exact obligations of the Cotonou Agreement, the Commission needs to reconsider its interpretation of what measures require consultation, and to accept that most observers interpret consultation as meaning *ex-ante* consultation, not *ex-post*.

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