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A Matter of Political Will

How the European Union can maintain market access for African, Caribbean and Pacific countries in the absence of Economic Partnership Agreements

The European Commission has threatened 76 of the world's poorest countries with lower access to the EU market - if they fail to sign new trade deals known as Economic Partnership Agreements (EPAs) by the end of 2007, when their current market access preferences expire. But the threats are not justified: in the event that African, Caribbean, and Pacific (ACP) nations are not ready to sign by the end of the year, the European Union could still continue to provide them with a high level of market access, using the GSP-plus scheme, without breaching World Trade Organisation rules. This level of market access would also be compatible with their developmental needs.

'No EPA and no WTO equals a very serious vacuum'

- Peter Mandelson, European Trade Commissioner

'We should be under no illusion. This is a very real deadline.'

- David O'Sullivan, Director General of DG Trade, European Commission

'We will not rush to conclude negotiations due to the deadline and risk ending up with a bad EPA. That would be disastrous'

- Hans Joachim Keil, Pacific Lead Negotiator

'This is tantamount to blackmail. The EU has committed to ensuring that alternatives to EPAs are discussed, and that no country will be compelled to sign. However, now they are using the looming deadline to force countries into agreements that could be economically devastating.'

- Bibiane Mbaye, ENDA (Environmental Development Action in the Third World)

GSP+¹ would take the pressure off

The 76 African, Caribbean, and Pacific (ACP) countries currently negotiating Economic Partnership Agreements (EPAs)² with the European Union (EU) are under tremendous pressure. The current system of Cotonou Preferences, which provides ACP exporters with preferential access to the EU market, expires at the end of 2007.

The Cotonou Agreement legally requires the EU to leave no ACP country worse off after the expiry of Cotonou Preferences, in ways that are compatible with World Trade Organisation rules.³ But the European Commission (EC) does not appear to be taking the necessary steps to realise these legal assurances. The EC maintains that there is only one means to fulfil its obligation: a free trade agreement or EPA.

If the six negotiating regions do not sign EPAs by the end of December 2007, the EC has declared that it will not continue Cotonou Preferences. Instead, from 1 January 2008 least-developed countries will have to rely on the Everything But Arms (EBA) scheme which provides duty-free, quota-free access. All others would have to rely on the standard Generalised System of Preferences (GSP), which the EU provides to all developing countries. This is not a viable option. The standard GSP provides far lower preferences than Cotonou and could be devastating for export sectors in ACP countries.⁴

But the EC's current EPAs proposals pose a serious threat to ACP economies. The stakes are very high. The EU is the largest trading partner for most ACP countries. As an advanced industrialised economy, it is also one of the most powerful competitors in the world. While it is possible to design an economic relationship that benefits ACP countries, the EC's current proposals threaten to do the opposite.

As the deadline draws close, exporters are becoming alarmed at the prospects of facing high tariffs into the EU market. The EU appears to be 'watching the clock', hoping that as pressure mounts, ACP countries will have no option but to accept their proposals. The EC has refused to accept many constructive offers placed on the table by ACP countries, and has failed to, or delayed in, responding to other requests.

The pressure to conclude EPAs in December, which is likely to be on the EU's terms, would mean the abandonment by the ACP of their development proposals. An EPA signed under such circumstances would be an injustice to the millions of people whose futures depend on these negotiations. ACP and EU leaders have a legal and moral obligation to negotiate an agreement that supports development.

The choice that the EC is offering between an EPA and the standard GSP is a false one. The EC can at the very minimum offer a GSP+ system of preferences. This would provide all ACP countries with a high level of market access for their exports beyond the expiry of Cotonou Preferences, and that ACP countries could well meet the eligibility criteria for GSP+. This would be compatible with World Trade Organisation rules. With sufficient political will the EU could allow all ACP countries to join GSP+ in 2007. The EC and member states should immediately open up such avenues to ACP countries, so that negotiators can rest assured that current trade would not be disrupted after the end of 2007.

African, Caribbean, and Pacific countries request a change of approach, more time, and a transition regime

' In West Africa, we did not do impact studies, so we cannot sign an agreement. No government that is responsible can do that. We can continue to discuss but cannot sign. We cannot be forced to sign an agreement that is against people's interests.'

Mamadou Diop, Senegal's Trade Minister, October 2006

The EPA negotiating process leaves much to be desired.

According to the African Countries' Continental Review of EPA Negotiations, these negotiations are taking place 'behind closed doors' and with an 'alarming lack of transparency'. Above all, fundamental differences between the negotiating parties persist, essentially due to the 'EU's intransigence or non acceptance of the development dimension as the core and heart of the negotiations'. In a strongly worded communiqué, African Trade Ministers asked the 'European Commission in the spirit of partnership to show flexibility and to positively and adequately respond to key concerns of Africa'.⁵

Negotiating challenges are compounded by severe capacity constraints. According to the report, 'there is a clear lack of capacities to prepare and conduct the negotiations, at all levels', as well as a clear lack of capacity 'to implement the agreed EPAs'. The lack of objective information on which to develop negotiating positions is of particular concern to negotiators: 'All the regions have expressed important concerns with regard to the lack of impact analysis in individual sectors or sub-sectors (e.g. agriculture, tourism)'.⁶

In many ACP regions, detailed discussions on content have only just begun, and substantive differences remain between the two parties. Given these constraints, the eight remaining months of 2007 are clearly insufficient to address the many justified concerns of ACP negotiators. Even in order to conclude only the 'trade in goods' sections of an agreement (an 'EPA-light'), numerous complex issues have to be agreed upon by all parties: the EU-Chile Association Agreement is more than 1400 pages long and the majority of the text concerns trade in goods.⁷

The danger of rushing to conclude negotiations to meet the December 2007 deadline is recognised by negotiators in all ACP regions. In a letter to EC Commissioner Mandelson on 21 December 2006, Hans Joachim Keil, the Pacific's lead negotiator and Samoan Associate Minister of Commerce, Industry and Labour described the prospect of concluding the EPA negotiations by the end of 2007 as 'somewhat bleak' and stressed that the Pacific would not 'rush to conclude negotiations due to the deadline and risk ending up with a bad EPA. That would be disastrous'.⁸

ACP countries have requested that the EU guarantees that a 'transitory' regime will be put in place that ensures ACP countries will be left 'no worse off' if an EPA is not signed in 2007. West African negotiators have formally asked for a three-year extension of the negotiating deadline.⁹ The EC continues to argue that signing an EPA is the only way to ensure that ACP exports are not disrupted after 2007.

Economic Partnership Agreements: very high stakes

'In our view, there is a definite contradiction between the narrow focus on trade liberalisation and the EU's argument that EPAs are instruments for development rather than to force open regional markets. One of our concerns is that EPAs must not become instruments of oppression.'

Billie Miller, Chair of the ACP Ministerial Trade Committee and Minister of Foreign Affairs and Foreign Trade of Barbados, June 2006¹⁰

Under World Trade Organisation rules, ACP countries entering free trade deals with the EU would need to liberalise 'substantially all' of their trade with the EU in a 'reasonable' time period. Within the EPA negotiations, the EC has interpreted this rule to mean that ACP countries must liberalise 80 per cent of their trade with the EU within a period of 10 years, with a possible extension of up to 20 to 25 years for some sensitive products.¹¹

ACP countries are justifiably concerned that such a degree of market opening could have a significant negative impact on rural livelihoods, current and future industries, and government revenue. ACP countries have also expressed concerns that other issues than trade in goods are being pushed in the negotiations, even when they have often repeated that they were not ready to negotiate them if only because of limited capacity. Many fear that new rules on these issues, including services liberalisation, investment, competition, government procurement and intellectual property rights, may favour European investors and suppliers at the expense of ACP counterparts, while taking away ability of governments in the ACP to promote domestic investors and enterprises. The same concerns have motivated a diverse range of stakeholders, including civil society organisations, the private sector and peasant organisations to mount a campaign against EPAs.

The results of impact assessments are sobering. Studies for Kenya's Ministry of Trade, the International Monetary Fund, and the European Commission indicate that Kenya could lose up to 65 per cent of industry, 12 per cent of government revenue, and millions of rural livelihoods (see Box 1). To avoid any negative impact from an EPA, Kenya would need to exclude *more than half* its trade from liberalisation with the EU.¹²

For the Pacific, signing an EPA with the EU would trigger negotiations with Australia and New Zealand who will demand at least as favourable treatment. The prospect of a free trade agreement with the Pacific's two industrialised neighbours led the (then) chief negotiator Senator Kaliopate Tavola of Fiji to assert: 'we will face de-industrialisation and loss of jobs'.¹³

Box 1: Kenya and EPAs: results of impact assessments

Industries

Sixty-five per cent of Kenya's industries are vulnerable to unfair competition with the EU according to analysis carried out for the Kenyan Ministry of Trade.¹⁴ Vulnerable firms include food processing, textiles, and paper and printing. These firms employ more than 100,000 people.

Binding industrial tariffs at zero would also remove the possibility of Kenya following in the footsteps of East Asia and using tariff policy to promote industrial development, thereby impeding Kenya's ability to transform its industrial sector.

Agriculture

Food-crop sectors such as wheat, rice, sugar, dairy, maize, meat and meat products would struggle to compete if they were to be fully opened up to competition with the EU, particularly since many of the EU's exports are heavily subsidised. The impact on rural areas, where the vast majority of poor people live, would be substantial. In the dairy sector more than 625,000 people are directly employed and an estimated 3 million people depend indirectly on the sector.¹⁵

Government revenue

Between 8 per cent and 12 per cent of government revenue could be lost through implementation of an EPA, according to impact assessment studies by the International Monetary Fund and the European Commission.¹⁶ This is higher than the Kenyan government's annual expenditure on health.¹⁷

Standard-GSP not an option for African, Caribbean, and Pacific countries

The EC's offer of standard-GSP to ACP countries if they do not meet the December deadline is not an option. The costs of switching back from Cotonou preferences to standard GSP tariffs would be very high and ACP countries have reason to be concerned.

The EC has done its own calculations of these costs: 'For the West Africa region, for example, more than €1 billion of trade would potentially be lost, as the average tariff to be paid under GSP is in average 20%. 36% of today exports from Ivory Coast (€700 million) would face a tariff of 27% against 0% under Cotonou and EPAs, for Ghana it is 25% of exports (€240 million). For Central Africa, about €360 millions of exports would potentially be lost.' [sic]¹⁸

The high costs of standard GSP tariffs would fall on a few export sectors. In Ghana and Côte d'Ivoire more than two-thirds of the costs of trade disruption under the standard GSP would fall on the horticulture, fish, and wood sectors. In Kenya, a switch to standard GSP tariffs would hit horticulture and fish exporters almost exclusively. In the Pacific, where tuna is one of the region's greatest shared resources, the fledgling canning and processing industry relies on tariff-free access to the EU market. A switch to the much higher tariffs is likely to be devastating, forcing countries such as Papua New Guinea to forego any 'value-adding' and 'rent out' their oceans to foreign fishers, including the EU's vessels.¹⁹

However, precisely because the impact falls on particular sectors, it is easier to find solutions. GSP+ is the obvious route, as it would provide ACP countries with tariff-free

access into the EU for all major export sectors, including horticulture, wood, and fish (see Box 2).

Box 2: GSP+ is a viable option for Kenya's horticulture sector

In Kenya, flower exporters are particularly vulnerable to a switch to standard GSP tariffs. Ninety-eight per cent of their exports are destined for the EU market. Under high standard GSP tariffs, export firms would be forced to close or relocate as they would face higher tariffs than most of their competitors. Colombia, Guatemala, and Ecuador have duty-free access to the EU market under the GSP+ scheme; Tanzania, Zambia, and Ethiopia are eligible for Everything But Arms; and Spain and Italy are EU members. The only competitors with whom Kenya would export on a comparable basis under GSP would be Zimbabwe, China, and India.

The obvious solution for the Kenyan flower sector is for Kenya to join GSP+ scheme, which would provide tariff-free access to the EU market for all horticulture products.²⁰

Least Developed Countries: Not Let Off The Hook

The 39 least-developed countries are not let off the hook either. Although they qualify for the Everything But Arms regime, the EC's failure to provide the other ACP countries with a viable fallback option forces least-developed countries to make a difficult choice. The EC's intransigence is forcing least-developed countries to choose either to renounce regional integration or to accept a reciprocal trade agreement with the EU.

For example, in East Africa if developing countries such as Kenya were to sign a bilateral EPA, least-developed countries like Zambia would be forced to consider leaving the Common Market for Eastern and Southern Africa free trade area. If they stayed within regional blocs, their very membership would expose them to the negative consequences of reciprocal liberalisation under an EPA. If they chose to leave the regional bloc, this would undermine the very benefits of regional integration that they could rely on to improve their productive capacity and export to the EU.

This is a choice that the world's poorest countries should never be forced to make.

The Value Of GSP+: Preventing The Disruption Of Trade

By using the GSP+ the EU could readily provide all ACP countries with good market access for their exports into 2008 at levels very similar to access under the Cotonou Agreement, in ways that are compatible with World Trade Organisation rules.

The GSP+ or 'Special Incentive Arrangement For Sustainable Development And Good Governance' scheme provides preferential access that is substantially higher than GSP for countries implementing certain international standards in human and labour rights, environmental protection, the fight against drugs, and good governance.²¹ Currently, 15 developing countries, mainly in Latin America, are granted preferential access to the EU under this scheme.²²

At present exports from ACP countries into the EU are governed by the Cotonou Preferences and by separate Commodity Protocols for sugar, bananas, beef and veal, and rum. GSP+ would provide a very high level of coverage for ACP exports that

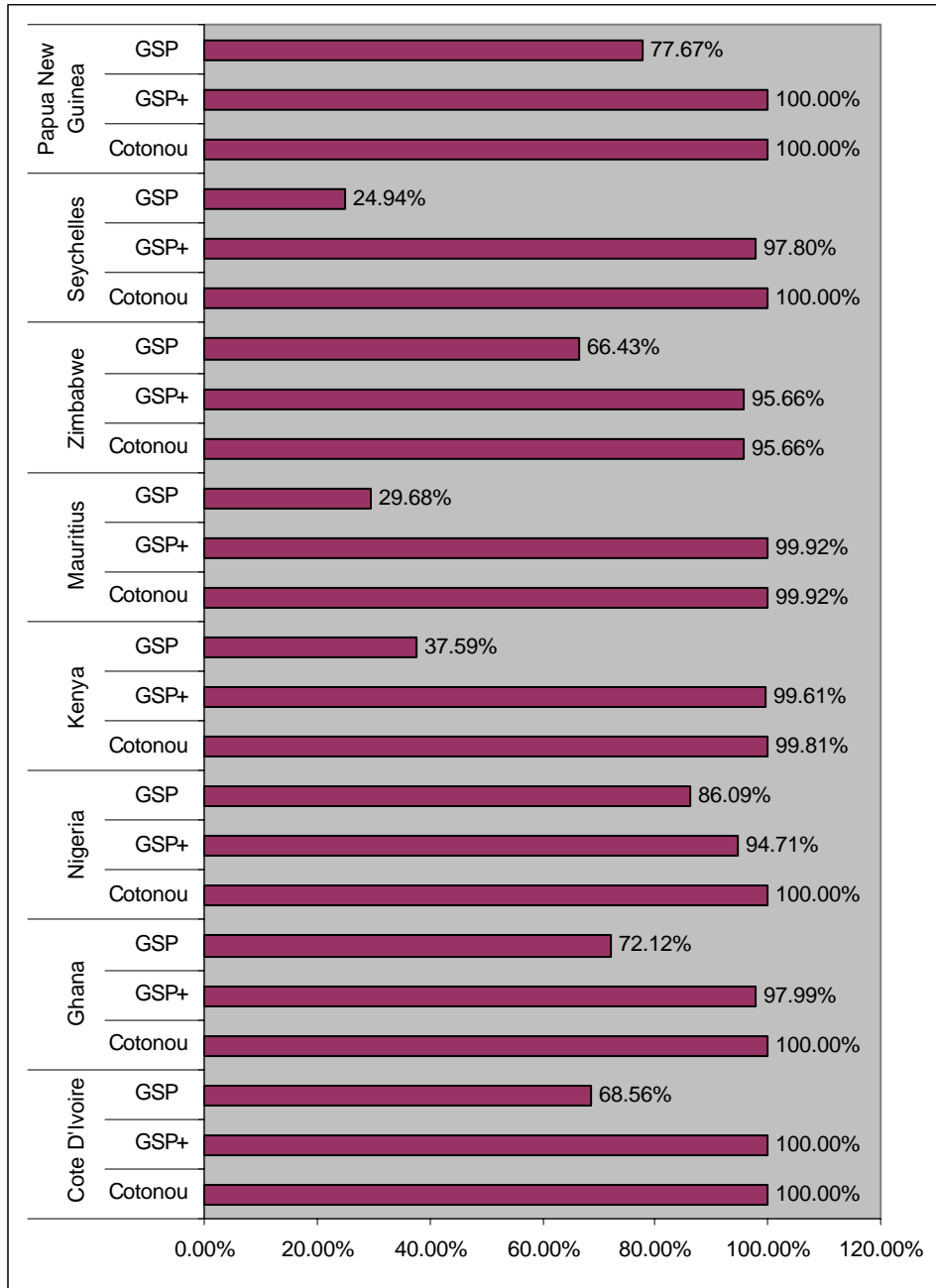
currently utilise Cotonou Preferences. In 88 per cent of the cases where the standard-GSP applies higher tariffs than Cotonou, duty-free access is provided under the GSP+. Indeed, every single ACP export that would face a tariff jump of 20 per cent or more in its *ad valorem* duty under the standard-GSP would receive duty-free treatment under GSP+. In the majority of cases where GSP+ is not duty free, it offers the same level of access as Cotonou.²³

The suitability of GSP+ can only be analysed by looking in detail at individual export products on a country-by-country basis. This study has analysed the coverage of GSP+ in detail for all the developing countries in the Eastern and Southern Africa and Economic Community of West African States negotiating blocs as well as Papua New Guinea – the largest economy in the Pacific region.

Detailed analysis of GSP+ for these countries shows that GSP+ would provide a very high level of coverage for current exports. The GSP+ scheme does not cover sugar and bananas (these are exported under the Commodity Protocols) but for all other current exports from these countries, GSP+ would provide duty-free access to the EU market to a degree that is very similar to Cotonou (see Figure 1). Kenya for example, would have duty-free, quota-free access for 99.6 per cent of current exports (excluding sugar and bananas) under GSP+, compared with only 37.6 per cent under the standard GSP scheme.

Most significantly, the key export sectors of horticulture, fisheries, and wood, which are the sectors of greatest concern to many ACP countries, would have duty-free access into the EU market under GSP+. Admitting ACP countries into GSP+ in 2007 would provide exporters and investors in these key export sectors the certainty they need to continue exports. This would take the excessive and undue time pressure off the EPA negotiations and enable ACP countries to continue negotiations beyond 2007 with zero or negligible interruption of current trade.

Figure 1: Comparison of Cotonou, GSP and GSP+: Value of trade that would receive duty-free access under each regime (based on 2005 exports) – excluding bananas and sugar



Source: Author's calculations based on analysis of top 95 per cent of 2005 exports by value from each country. Tariff and trade flow data from www.MacMap.org and www.TradeMap.org.

Making GSP+ Even More Effective

Admittedly, GSP+ has a number of critical limitations including the scope of coverage and the rules of origin. However, these problems can be addressed with the requisite political will.

Some current exports would receive worse treatment under GSP+ than under Cotonou, facing higher tariffs than at present. For the majority of these products, the tariff increase is very small, but a few products such as fresh oranges, would face an increase in tariffs of about 16 per cent (see Table 1).

Table 1: Current exports which would receive non-zero tariffs under GSP+

Country	Products that would face non-zero tariffs under GSP+
Kenya	Frozen shrimps (3.6% GSP+ tariff) would face higher tariffs under GSP+ than under Cotonou. In 2005, Kenya's exports of these items accounted for 0.2% of total exports to the EU. Exports of sweetcorn would continue to face tariffs of 9.4€/100 kg/net under GSP+, as they did under Cotonou. In 2005, Kenya's exports accounted for 0.2% of total exports to the EU. All other current exports would enter duty-free (with the exception of bananas and sugar).
Zimbabwe	The only non-sugar export to face a higher tariff under GSP+ compared with Cotonou are fresh sweet oranges (approx. 16% higher). In 2005, Zimbabwe's exports of sweet oranges accounted for 4% of total exports to the EU. All other current exports would enter duty-free (with the exception of bananas and sugar).
Mauritius	Only bran exports would face a higher tariff under GSP+ (49.5%), however a duty-free tariff quota is available under GSP. These exports accounted for 0.08% of exports to the EU in 2005. All other current exports would enter duty-free (with the exception of bananas and sugar).
Seychelles	Only frozen shrimps would face a higher tariff under GSP+ compared with Cotonou (3.6% higher). In 2005, Seychelles' exports of frozen shrimps accounted for 2.2% of total exports to the EU. All other exports would enter duty-free (with the exception of bananas and sugar).
Ghana	Cassava and other tubers, which currently have duty-free access, would face a higher tariff under GSP+ (outside quota US\$114.37/tonne inside quota 6%). Unwrought aluminium would face a 6% higher tariff under GSP+. In 2005, Ghana's exports of these products accounted for 2.0% of total exports to the EU. All other current exports would enter duty-free (with the exception of bananas and sugar).
Cote d'Ivoire	All current exports would enter duty free (with the exception of bananas and sugar).
Nigeria (non-oil exports)	Only hides or skins of goats and sheep would attract a higher tariff under GSP+ (2% higher than Cotonou). In 2005, Nigeria's exports of these products accounted for 5.3% of non-oil exports to the EU. All other current exports would enter duty-free (with the exception of bananas and sugar).
Papua New Guinea	All current exports would enter duty-free (with the exception of bananas and sugar).

Source: Author's calculations based on analysis of top 95 per cent of 2005 exports from each country. Tariff and trade flow data from www.MacMap.org and www.TradeMap.org.

GSP+ could be extended relatively easily to cover these excluded products. The fear has been expressed that extending the GSP+ scheme would also allow non-ACP competitors with similar products to benefit from the same coverage and therefore lead to preference erosion. But in practice, if GSP+ were expanded to cover these products (excluding those exports covered by the Commodity Protocols), preference erosion would occur for only two products: fresh table grapes and skins of sheep or lambs. Since these products are of very limited economic significance to ACP countries, there would be minimal preference erosion resulting from expansion of the GSP+ regime.²⁴

Commodity protocols and the 2007 deadline

GSP+ does not cover ACP exports that use the Commodity Protocols – namely sugar, bananas, beef, veal, and rum. The implications of the 2007 waiver expiry for sugar and bananas, which are exported by countries analysed in this Briefing Note, are examined below.²⁵

Sugar exports are of critical importance to many ACP countries. In the ECOWAS and ESA blocs, sugar is of particular interest to Mauritius as it accounts for 30 per cent of exports to the EU. Sugar exports are governed by the Sugar Protocol, which is technically separate from the Cotonou Agreement. Sugar exports from ACP countries will not be affected by the expiry of Cotonou Preferences at the end of 2007. Under the Sugar Protocol, the EU has committed to purchase ACP sugar at guaranteed prices ‘for an indefinite period.’ The EC is obliged to provide a minimum two years notice to any country for which it wishes to change or withdraw preferential access.²⁶ Sugar exports from ACP countries are being negatively affected by the EU’s ongoing sugar reforms, but this reform will continue, regardless of the expiry of preferences or the result of the EPA negotiations.

Bananas are another product of key importance for ACP countries. In the sample of countries analysed in this Briefing Note, bananas are a significant export only for Côte d’Ivoire, but they are of tremendous significance for the Caribbean, especially in the Windward Islands. Bananas account for 88 per cent of total agricultural exports to the EU for Saint Lucia and 73 per cent for Dominica.²⁷ ACP exports of bananas are covered by the Banana Protocol, under which 14 ACP countries are eligible to receive duty-free preferential access to the EU for 775,000 tons of banana exports.²⁸ Following challenges in the WTO, the EU has a temporary waiver for its Banana Protocol, annexed to the Cotonou Agreement Waiver, but this also expires at the end of 2007 and is currently under challenge.²⁹

Bananas are not covered by the GSP+ regime. Banana exports from least-developed countries will be covered under the Everything But Arms scheme, but the majority of ACP banana-exporting countries are not classified as least developed. Extending the GSP+ scheme to include bananas would result in significant preference erosion as the key competing countries like Ecuador qualify for GSP+.

While GSP+ would not be a solution for ACP banana exporters, an EPA would not be a magic bullet either. Ongoing price reforms in the EU market are already undermining the competitiveness of many ACP exporting countries, including Suriname, Belize, and the Windward Islands. Under an EPA, the EU could grant duty-free, quota-free preferences to ACP exporters, but this will not solve the underlying problems facing the sector as price reforms are set to continue, irrespective of the outcome of EPA

negotiations. The ACP Council of Ministers requested that the EU guarantee a remunerative price for bananas in the EU market. But the EU has made no promises, instead pledging support to ACP exporting countries to diversify exports and to shift their economies away from production of commodities. Supporting banana-exporting ACP countries is a long-term challenge and extends far beyond EPA negotiations.³⁰

These are deep challenges that the EC must provide enlightened leadership to resolve, and not hide behind an EPA as the solution.

Avoiding trade disruption – improving rules of origin

All schemes falling under the GSP, including GSP+ and EBA, have stricter rules of origin than under the Cotonou Agreement. However, analysis of current exports shows that the vast majority would be unaffected by the stricter rules of origin. A few changes to GSP+ rules of origin would ensure that exports to the EU would be unaffected by the expiry of Cotonou Preferences.

The EU uses rules of origin to differentiate between imports and identify those that are eligible to benefit from preferences. Many preferential schemes, including the Cotonou Agreement, have been criticised for overly strict rules of origin that prevent developing countries from using preferences, particularly to upgrade exports.³¹ As a result, preference-receiving countries find themselves trapped, only able to export raw materials, or goods that have undergone very low levels of processing. This is certainly the case for ACP countries, which, despite Cotonou preferences, continue to export mainly unprocessed products to the EU market.

Box 3: Rules of origin under Cotonou and GSP+ compared

Cumulation

Cotonou provides for 'full cumulation' across the ACP but the GSP regimes (which include EBA and GSP+) only allows for 'bilateral cumulation' between the EU and the recipient country. Under Cotonou exporters can use materials from within their region, or from other ACP countries, in any item exported to the EU. Under the GSP+ and EBA schemes they would face greater restrictions on the level of processing that inputs would have to undergo in order to qualify for preferential treatment. For some regional groupings, the GSP regimes make exceptions for 'regional cumulation', relaxing rules for inputs from neighbouring countries. At present there are only three regional groups benefiting from regional cumulation, none of which include ACP countries.³² However, ACP countries could apply for an exception.

Minimum tolerance

The minimum tolerance rule under GSP+ is 10 per cent, which is lower than the Cotonou level of 15 per cent. The tightening of this rule would have a similar impact on exporters, as it lowers the amount of inputs that they can use from third-party countries without significantly processing them for export.

Source: Adapted from 'Integrating the Least Developed Countries into the World Trading System: The Current Impact of EU Preferences under Everything But Arms', Paul Breton, World Bank, 2003.

The most significant differences between Cotonou and GSP+ / EBA rules of origin pertain to value-addition requirements. Precisely because ACP countries' current preferences have discouraged them from adding value to exports, almost no ACP

exporter has ever used the current rules on 'cumulation' and 'minimum tolerance' under the Cotonou Agreement to export to the EU.

Product-specific rules of origin are also stricter under GSP+ and EBA than under Cotonou, notably for fish and textiles. Initial analysis of fish exports from Senegal, where fish exports account for 70 per cent of exports to the EU, and the Pacific, suggests that a switch to EBA and GSP+ rules of origin would not significantly affect the majority of current fish exports.³³ However, a case-by-case analysis of ACP exporting companies is required and some amendments may need to be made to ensure that current exports are not interrupted.

Table 2: Comparison of the rules of origin for fish exports under the EBA/GSP+ and Cotonou

Rule or Procedure	GSP (including standard GSP, GSP+, and EBA)	Cotonou
Origination	The fish must be 'wholly obtained'. This applies if is caught <i>anywhere</i> by ' <u>qualifying vessels</u> '. If caught in ' <u>territorial waters</u> ' (12 mile zone) origin is automatic, regardless of which vessel caught it.	Same as GSP
Qualifying Vessels	Vessel must be <u>registered</u> (or recorded) in and <u>flagged</u> by recipient or EC country. At least 50% <u>ownership</u> of vessel by nationals of recipient or EC country, <i>or</i> the company has headquarters in that country with Chair of board and majority of board members as nationals and at least 50% of company capital is held within recipient state or EC. Fulfil <u>crew requirements</u> .	Vessel must be <u>registered</u> (or recorded) in and <u>flagged</u> by an EC, ACP or OCT ³⁴ country. At least 50% <u>ownership</u> of vessel by nationals of EC, ACP and/ or OCT, <i>or</i> the company has headquarters in an EC, ACP and/ or OCT country, the Chair of the board and majority of board members are nationals of and at least 50% of company capital is held in one of those countries. Fulfil <u>crew requirements</u> .
Crew Requirements	At least 75% of crew (inclusive of Master and officers) are nationals of recipient country or EC.	At least 50% of crew (inclusive of Master and officers) are nationals of EC, ACP and/ or OCT.
Leased or Chartered Vessels	Not specific.	Same crew requirements. <u>EC fleets</u> must have been offered opportunity to fish in the country's EEZ, but did not accept. Also, must be accepted by ACP-EC Customs Committee, including proof that the applicant State has full nautical and commercial <u>management capacity</u> .
Transformation Into canned tuna	Fish must be 'wholly obtained'.	Fish must be 'wholly obtained'.
Derogation	LDCs may apply for temporary derogation from ROO and subject to quantity limits.	1) Automatic annual derogation set at 8,000mt for canned tuna and 2,000mt for tuna loins. 2) Specific derogations can be applied for.

Sources: Cotonou Agreement, Annex 5 and 17; EC July 2005; interviews with ACP and EC officials. Liam Campling, Elizabeth Havice and Vina Ram-Bidesi (forthcoming 2007) 'Pacific Island Countries, The Global Tuna Industry and the International Trade Regime - A Guidebook', Honiara: FFA.

Making GSP+ a reality

When asked about GSP+, the EC is dismissive, stating that 'non-LDCs could qualify for GSP+ from 1st January 2009 at the earliest - if they ratify the relevant international conventions.'³⁵ The EC gives the impression that this process of qualification is onerous. This is stretching the truth (see Box 4).

Box 4: GSP+ eligibility criteria

To be eligible for GSP+ a country must meet two criteria:

Economic criteria

(i) Be a 'vulnerable' country defined in terms of economic diversification and smallness. Specifically, it must be a country: (a) that is not classified by the World Bank as a high-income country during three consecutive years, and whose top five exports to the EU under GSP represent more than 75 per cent in value of its total GSP-covered exports; and (b) whose GSP-covered exports to the EU represent less than 1 per cent in value of total EU imports under GSP.

Governance criteria

(ii) Must show a commitment to human and labour rights, and environmental and governance principles measured by a country's ratification and effective application of 27 international conventions. Specifically, a country must have: (a) ratified and effectively implemented the 16 core conventions on human and labour rights; and seven (out of 11) of the conventions related to good governance and the protection of the environment; (b) committed to ratifying and effectively implementing the international conventions which they have not yet ratified, whereby all 27 conventions are ratified by 31 December 2008; (c) given an undertaking to maintain the ratification of the conventions and their implementing legislation and measures, and accepts regular monitoring and review of its implementation in accordance with the implementation provisions of the convention it has ratified.

Source: Chapter 1, Article 9 of European Council Regulation (EC) No. 980/2005 (covering period 1 January 2006 to 31 December 2008), 27 June 2005 applying a scheme of generalised tariff preferences.

To qualify for GSP+, countries must meet 'economic' and 'governance' criteria. According to Stevens and Kennan (2005) all ACP countries meet the economic criteria of 'vulnerability'. In terms of the governance criteria, analysis of the ESA, ECOWAS, and Pacific countries conducted for this report shows that these countries have ratified almost all of the required international conventions (see Table 3). For example, to be fully compliant, Seychelles, Nigeria, and Côte d'Ivoire only need to ratify one convention whilst Kenya and Mauritius would have to ratify three conventions.

The EU is scheduled to review the membership of the current GSP+ scheme in 2008, for implementation on 1 January 2009. However, given the extraordinary circumstances of the expiry of Cotonou, if ACP countries wish to apply for GSP+, it would simply require the EU member states to issue a directive to the European Commission to expedite the process for ACP countries to ensure that eligible countries could join the GSP+ scheme in 2007 for entry on 1 January 2008.

Table 3: Extent to which countries analysed meet GSP+ governance criteria

	East and Southern Africa				West Africa			Pacific
	K	Z	M	S	G	N	C	P
PART A – Core Human and Labour Rights UN/ILO Conventions								
1. International Covenant on Civil and Political Rights								X
2. International Covenant on Economic, Social and Cultural Rights								X
3. International Convention on the Elimination of All Forms of Racial Discrimination								
4. Convention on the Elimination of All Forms of Discrimination Against Women			S					
5. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	X							X
6. Convention on the Rights of the Child								
7. Convention on the Prevention and Punishment of the Crime of Genocide	X		X			X		
8. Convention concerning Minimum Age for Admission to Employment (No 138)							X	
9. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No 182)								
10. Convention concerning the Abolition of Forced Labour (No 105)								
11. Convention concerning Forced or Compulsory Labour (No 29)								
12. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value (No 100)								
13. Convention concerning Discrimination in Respect of Employment and Occupation (No 111)								
14. Convention concerning Freedom of Association and Protection of the Right to Organise (No 87)	X							
15. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No 98)								
16. International Convention on the Suppression and Punishment of the Crime of Apartheid	S		X		X			X
PART B – Conventions Related To The Environment And Governance	K	Z	M	S	G	N	C	P
17. Montreal Protocol on Substances that Deplete the Ozone Layer								
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal		X						
19. Stockholm Convention on Persistent Organic Pollutants		S		S				
20. Convention on International Trade in Endangered Species of Wild Fauna and Flora								
21. Convention on Biological Diversity								
22. Cartagena Protocol on Biosafety					X			
23. Kyoto Protocol to the United Nations Framework Convention on Climate Change		X			X			
24. United Nations Single Convention on Narcotic Drugs (1961)								
25. United Nations Convention on Psychotropic Substances (1971)								
26. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)								X
27. United Nations Convention against Corruption					S		S	S

Sources³⁶ Notes: x – indicates that the convention has not yet been signed or ratified; s – indicates that the convention has been signed but not ratified. Countries: K – Kenya, M – Mauritius, S – Seychelles, Z – Zimbabwe, N – Nigeria, C – Côte d'Ivoire, G – Ghana, P – Papua New Guinea

It is possible that ACP countries could join the GSP+ scheme pending their ratification of the outstanding international conventions, following the precedent set for the initial GSP+ qualifying countries. The GSP+ scheme was initially designed to replace a previous preferential scheme (anti-narcotics crops). When GSP+ was introduced, in order that GSP+ treatment could be immediately applied to their exports and trade would not be interrupted, the beneficiaries of the previous regimes were deemed to automatically fulfil all of the governance conditions, pending detailed country-by-country scrutiny in due course.³⁷

The bigger picture: reforming EU rules of origin and ongoing World Trade Organisation talks

There are other reasons why a 2007 deadline is not appropriate. To make an informed decision on EPAs, ACP negotiators need to know the outcome of the EC's ongoing rules of origin review and the Doha Round of multilateral talks.

Rules of origin need to support ACP countries to move up the value chain. Without simple and development-friendly rules of origin, *that are substantially better than under Cotonou*, any preferences that the EU provides through EPAs, EBA, or GSP+ will be undermined. In the Pacific, under the Cotonou rules of origin, tuna canneries are unable to make the most of the region's greatest natural resource, as they are not able to source enough 'originating' fish. Even fish caught within a country's 200-mile economic zone is not deemed originating unless caught by an EU or ACP vessel. Although the intention of this may have been to encourage ACP involvement in fishing, the effect has been to limit market access for the Pacific's canned tuna, and thereby hinder the development of the economies of scale needed to compete with canners from countries such as Thailand.³⁸

Pete C. Celso, Managing Director of RD Tuna Canners, a company that employs 3,500 people in Papua New Guinea, stressed that the failure to address the issue of rules of origin, either under an EPA or GSP+, 'means...that all our expansion plans will be put on hold...and it can detrimentally affect our (and others) operations, and possibly result in the closure of the processing facilities. This will be sad as the Pacific will be left with no other choice but to remain a supplier of raw materials...Ironic indeed as the Pacific countries have a strong chance to be competitive using their own resources'.³⁹

The EC has promised to 'improve and simplify' the rules of origin that it applies to all preferential agreements (including unilateral systems such as the EBA and GSP+ and reciprocal agreements such as EPAs). However, its current proposals for value-added rules of origin fall far short and could dramatically undermine the value of duty-free market access for ACP countries - whether provided under an EBA, GSP+, or EPA scheme. Value-added rules of origin would place a high administrative burden on the private sector, hampering the export ability of small and medium-sized firms that dominate ACP economies. High value-added thresholds would also constrain the industrialisation of poor, small, or geographically isolated countries where possibilities for local sourcing are limited.⁴⁰

In the EPA negotiations, the Pacific and Eastern and Southern Africa blocs have rejected the value-added proposal in favour of a simple 'change in tariff heading' as the basis for rules of origin. This would mean that once raw inputs are transformed into processed ones (such as raw fish to canned fish) in an ACP country, they would be

deemed to have originated in that country. This system would have the advantages of being both simple and flexible. The EC has strongly resisted proposals from ACP countries, advocating the temporary continuation of the Cotonou rules of origin and a switch to the new value-added system once established. Until the EU makes a decision on the rules of origin that will apply in preferential agreements, ACP negotiators find themselves negotiating in the dark regarding the real value of their market access to the EU.

Delays in trade negotiations at the World Trade Organisation also have important ramifications for EPAs. When the Cotonou agreement was signed it was assumed that the Doha Round, including amendments to rules governing regional trade agreements, would be completed before EPA negotiations were concluded. Because of the suspension of World Trade Organisation talks, ACP negotiators are forced to work with the old rules that both parties have agreed should be changed.

Until the Doha Round is completed, ACP countries will not know the precise value of preferences they could gain from EPAs. Through the multilateral talks, the EU is likely to substantially lower its Most Favoured Nation tariffs and this would greatly erode the margin of preference ACP countries would receive under EPAs. For instance, current EU proposals at the World Trade Organisation for manufactured goods could lead to a reduction of the EU's standard tariff on tinned tuna from 24 per cent to around 7 per cent, which would severely erode the margin of preference that duty-free access into the EU would provide ACP exporters, threatening the survival of the sector.

World Trade Organisation rules governing regional trade negotiations (GATT Article XXIV) are under review. ACP countries have requested that special and differential treatment be formally incorporated into GATT Article XXIV. This would result in more lenient rules on the degree of tariff liberalisation required of developing countries when, such as in EPAs, they enter into free trade negotiations with developed countries. The European Commission should show commitment to development by placing its political weight behind the ACP proposals on Article XXIV reform.

Conclusions

The European Commission is placing undue pressure on ACP countries to conclude EPA negotiations in 2007. The EC is using the threat of lower market access to force the hand of ACP negotiators, which would represent a breach of the EU's obligations under the Cotonou Agreement.

The European Commission's sombre scenario needs to be replaced by a more balanced one. With sufficient political will, the EC and EU member states could use the GSP+ scheme of preferences to provide all ACP countries with a high level of market access for their exports beyond the expiry of Cotonou Preferences, in ways that are compatible with WTO rules.

The EC and member states should immediately open up such avenues to ACP countries, so that negotiators can rest assured that current trade will not be disrupted after the end of 2007.

In particular:

- The EU should allow all ACP countries which are not least-developed countries to join GSP+ in 2007. This would ensure that the vast majority of current ACP exports would continue to have duty-free access into the EU after the expiry of Cotonou Preferences in the event that the EU does not extend current preferences.
- In order to meet the Cotonou Article 37(6) requirement that no country shall be worse off, the EU should improve GSP+ by extending the tariff coverage to specific exports of interest to ACP countries which are not least-developed countries and by making product-specific amendments to GSP+/EBA rules of origin.
- The EU and ACP should separate discussions on the future of the Commodity Protocols from the current EPA negotiations as they each have their own dynamic, and seek long-term measures to support ACP countries that are highly dependent on commodity exports.
- The EU and ACP should open-mindedly look for a new trade arrangement that best serves development in the ACP countries, allowing enough time for thorough and objective evaluation of the different options, also allowing for the completion of the Doha Round, and clarity on the EU's plans for rules of origin.

Notes

¹ The GSP+ or 'Special Incentive Arrangement For Sustainable Development And Good Governance' scheme provides preferential access that is substantially higher than GSP for countries implementing certain international standards in human and labour rights, environmental protection, the fight against drugs, and good governance. Currently, 15 developing countries, mainly in Latin America, are granted preferential access to the EU under this scheme

² Six EPAs are being negotiated in regional groupings: a Pacific group (known as Pacific ACP or PACP), a Caribbean group (Cariforum), a West African group (ECOWAS), a Central African group (CEMAC), a Southern African group (SADC) and an Eastern and Southern African (ESA) group (ESA).

³ Commonwealth Secretariat, 'Opinion on the General Preferential Regime Applicable to Imports of Goods Originating in ACP Non-LDC Failing the Conclusion and Entry into Force of EPAs by 1 January 2008', March 2007

⁴ In World Trade Organisation terminology, trade agreements negotiated between developed and (groups of) developing countries are classified as 'regional trade agreements'. To be compatible with World Trade Organisation rules, such agreements are necessarily 'free trade agreements' as they entail the liberalisation of 'substantially all trade' between the parties in a 'reasonable period of time'. See GATT Article XXIV. The Generalised System of Preferences or 'standard-GSP' is provided by the EU to all developing countries. It provides a number of products with preferential access to the EU but its coverages is significantly lower than under the Cotonou Agreement. For the European Commission's position on Generalised System of Preferences see 'Economic Partnership Agreement: Questions and Answers', European Commission, 6 March 2007.

⁵ 'EPA Negotiations: African Countries Continental Review', African Trade Policy Centre, UNECA 19 February 2007 and 'Addis Ababa Ministerial Declaration on Economic Partnership Agreement Negotiations', Conference of the Ministers of Trade of the African Union, 15–17 January 2007, Addis Ababa, http://www.uneca.org/eca_resources/news/2007/EPA_Addis_Ababa_Ministerial_Declaration.pdf. The Ministerial Declaration was endorsed by the African Union Heads of State and Government, meeting in Addis Ababa, 29-30 January, <http://www.africa-union.org/root/AU/Conferences/Past/2007/January/summit/doc/Decisions%20and%20Declarations%20-%208th%20Ordinary%20Session%20of%20the%20Assembly.pdf>, p.45.

⁶ 'EPA Negotiations: African Countries Continental Review', African Trade Policy Centre, UNECA, 19 February 2007.

⁷ See Chile–EU Association Agreement text: http://europa.eu.int/eurlex/pri/en/oj/dat/2002/l_352/l_35220021230en00031439.pdf. Last checked by author 13 April 2007.

⁸ Letter from Hans Joachim Keil, Minister of Trade of Samoa, to Peter Mandelson, Commissioner for Trade of the European Commission, 21 December 2006.

⁹ Letter from the President of the ACP Council of Ministers to the European Commission, 15 December 2006; Declaration by West Africa Ministerial Monitoring Committee, November 2006.

¹⁰ Billie Miller, Chair of the ACP Ministerial Trade Committee and Minister of Foreign Affairs and Foreign Trade of Barbados, JPA Vienna, June 2006.

¹¹ The EU has stated consistently in GATT/World Trade Organisation committees that it believes that the Article XXIV requirement that an FTA must cover 'substantially all' trade can be fulfilled if both parties reduce to zero tariffs on products that account for 90 per cent on average of the current trade between them. It has also indicated that it believes this average figure can be achieved asymmetrically, with the EU liberalising on more than 90 per cent and its

partner on less. See 'Preparing For Economic Partnership Agreements: Trade Analysis Handbook', Christopher Stevens and Jane Kennan, June 2005. The EU has recently indicated that it may accept an implementation period of 20–25 years for some sensitive products. See 'Six ACP regions will do all they can to conclude EPA negotiations by 31 December 2007 but don't ask for the impossible', Agence Europe, Brussels, 1 March.

¹² Author's estimation based on: 'Assessment of the Potential Impact of Economic Partnership Agreements (EPAs) on the Kenyan Economy, on behalf of Kenyan Ministry of Trade and Industry', Kenya Institute for Public Policy Research and Analysis (KIPPRA), September 2005.

¹³ Kaliopate Tavola, Fiji's Minister of Foreign Affairs and Trade, speaking at South Centre conference 'The Development Challenge of EPAs', cited in 'Leading ministers of ACP states criticize EPA process, content', Martin Khor, Brussels, 14 October 2006. Available at <http://www.twinside.org.sg/title2/twninfo473.htm>. Last checked by author 13 April 2007.

¹⁴ 'Assessment of the Potential Impact of Economic Partnership Agreements (EPAs) on the Kenyan Economy, on behalf of Kenyan Ministry of Trade and Industry', Kenya Institute for Public Policy Research and Analysis (KIPPRA), September 2005.

¹⁵ 'Assessment of the Potential Impact of Economic Partnership Agreements (EPAs) on the Kenyan Economy, on behalf of Kenyan Ministry of Trade and Industry', Kenya Institute for Public Policy Research and Analysis (KIPPRA), September 2005.

¹⁶ 'COMESA and SADC: Prospects and Challenges for Regional Trade Integration', P. Khandelwal, WP/04/227, International Monetary Fund, 2004 and 'Qualified Preliminary EU-ACP SIA of the EPAs: Phase One (Final Draft)', PriceWaterhouseCoopers, February 2004.

¹⁷ Author's calculations based on Government of Kenya budget expenditure 2000–2.

¹⁸ 'Economic Partnership Agreement: Questions and Answers', European Commission, 6 March 2007.

¹⁹ Authors' own calculations for Ghana and Côte d'Ivoire based on <http://www.trademap.org> data. Analysis on Kenya from interviews with Kenyan Ministry of Trade officials and exporters of horticulture and fish, Nairobi, Kenya, November 2006.

²⁰ Analysis of Kenya's horticulture from interview with official from Homegrown, Nairobi, Kenya, November 2006. Flower exporters are already relocating from Kenya to Ethiopia. See 'Flower Companies Threaten To Move To Ethiopia As Workers and Council Protest', *The Nation*, 2 April 2007. A switch to GSP tariffs is likely to escalate this relocation as Ethiopia qualifies for EBA tariffs.

²¹ European Council Regulation (EC) No. 980/2005 (covering period 1 January 2006 to 31 December 2008), 27 June 2005 applying a scheme of generalised tariff preferences.

²² Countries eligible for GSP-plus as of 1 July 2005 include: Bolivia, Colombia, Ecuador, Peru, Venezuela, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Moldova, Georgia, Mongolia, and Sri Lanka.

²³ 'The Costs to the ACP of Exporting to the EU under the GSP', Overseas Development Institute, March 2007.

²⁴ 'GSP Reform: A Longer-Term Strategy (With Special Reference To The ACP)', C. Stevens and J. Kennan, report prepared for the Department for International Development, Institute Of Development Studies, February 2005.

²⁵ Since none of the eight countries analysed in this Briefing Note export beef, veal, or rum, the implications of the 2007 deadline have not been examined.

²⁶ Article 10 of the Sugar Protocol stipulates that it may be denounced by the Community with respect to each ACP State subject to two years' notice. However, in a Declaration annexed to the Protocol the Community formally declares that Article 10 is for juridical security and does not represent for the Community any qualification or limitation of the principle enunciated in Article 1(1), viz. the undertaking to purchase sugar for an indefinite period. See <http://www.acpsugar.org/Sugar%20Protocol.html>. Last checked by author 13 April 2007.

²⁷ 'Workshop Background Brief No 2: Agriculture', Pricewaterhouse Coopers and ECDPM, July 2006.

²⁸ The original 12 'traditional' ACP banana-exporting countries were: Ivory Coast, Cameroon, St Lucia, Jamaica, Belize, St Vincent and the Grenadines, Dominica, Suriname, Grenada, Somalia, Cape Verde and Madagascar. The last three African countries all ceased to export bananas to the EU during the 1990s. More recently the Dominican Republic joined the ACP and Ghana started exporting bananas for the first time. Both were regarded by the EU as 'non-traditional' banana exporters until 2001, but this distinction was abolished in the reform of 2001. For more details on ACP-EU banana trade see <http://www.bananalink.org.uk>. Last checked by author 13 April 2007.

²⁹ In March 2007 Ecuador secured a WTO panel investigation challenging the EU's current banana preferences. See 'WTO probes EU-Ecuador banana dispute', *Financial Times*, 20 March 2007.

³⁰ See Resolutions of the 79th ACP Council Of Ministers, May 2004 and 'Caribbean Sugar and Bananas: The EU Remains Engaged', statement by Amos Tincani, Head of EC Delegation, Barbados and Eastern Caribbean, 27 July 2006.

³¹ 'Integrating the Least Developed Countries into the World Trading System: The Current Impact of EU Preferences under Everything But Arms', Paul Breton, World Bank, 2003.

³² The three regional groupings benefiting from regional cumulation are as follows. Group I: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Thailand, Vietnam, Singapore (though Singapore is excluded from GSP, it continues to participate to cumulation of this group). Group II: Costa Rica, Honduras, Guatemala, Nicaragua, Panama, El Salvador, Bolivia, Columbia, Ecuador, Peru, Venezuela. Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.

³³ In-depth interviews were conducted by the author with fish exporters in Senegal. An immediate switch to EBA preferences would have negligible impact on current exports. In the Pacific it is very difficult to say with certainty, as factors such as differing crewing requirements make a case-by-case investigation necessary. A further complicating factor is the use of 'derogation'. Cotonou allows ACP producers to ignore the rules of origin for a set amount of fish, but this automatic derogation is not available under GSP+ or the EBA. However, there is the facility for least-developed countries to apply for 'specific' derogation under the EBA, so it may be possible for the EU to extend this to the GSP+ until a long-term solution to the rules of origin problem can be found.

³⁴ Overseas countries and territories of the European Communities.

³⁵ European Commission Staff Working Paper, 'EU-ACP Economic Partnership Agreements: Overview of Negotiations and Key Issues', February 2007.

³⁶ Compiled from the following sources: UNDP (2006) Human Development Report 2006, Statistics, UNDP, New York and web resources including: http://www.unodc.org/unodc/en/treaty_adherence.html; <http://untreaty.un.org/English/treaty.asp>; <http://www.basel.int/ratif/frsetmain.php>; <http://www.cites.org>; <http://www.ohchr.org/english/countries/ratification/1.htm>; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>; <http://maindb.unfccc.int/public/country.pl?country=KE>.

³⁷ 'The costs to the ACP of Exporting to the EU under the GSP', Chris Stevens, ODI, March 2007.

³⁸ Liam Campling, Elizabeth Havice and Vina Ram-Bidesi (forthcoming 2007) 'Pacific Island Countries, The Global Tuna Industry and the International Trade Regime - A Guidebook', Honiara: FFA.

³⁹ Personal correspondence between Nick Braxton (Oxfam) and Pete C. Celso, Executive-Vice President and Managing Director, RD Tuna Cannery Ltd, Madang, Papua New Guinea, 10 April 2007.

⁴⁰ For the EC's latest proposals on rules of origin see 'Draft Convention On Rules Of Origin For The Purpose Of Economic Partnership Agreements', European Commission, Brussels, 27 March 2007. On some of the challenges of the value-added approach see Landell Mills (2005) 'Capacity Building In Support Of Preparation Of Economic Partnership Agreement Project 110 All ACP – Rules Of Origin'.

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