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Impacts and Challenges of Multilateral and Bilateral Trade Agreements on Africa

Christopher Stevens*

Abstract

Africa must continue to be active in international trade negotiations as it is being squeezed. Policy changes in its markets, dubbed incorrectly as 'liberalisation' by proponents is eroding rapidly the competitive advantage conferred on traditional exports to long standing markets without offering new openings for novel products or markets. This paper analyses the nature of relevant changes in the World Trade Organization (WTO) and the bilateral policies of the Quad (Canada, the EU, Japan and the USA). Among the latter it gives special attention to the Economic Partnership Agreements that sub-Saharan Africa needs to negotiate with the EU and to changes in Europe's Common Agricultural Policy (CAP).

Résumé

L'Afrique doit continuer activement ses négociations commerciales internationales malgré les pressions exercées sur elle. Les changements de politiques sur ses marchés, incorrectement étiquetés de "libéralisation" par leurs promoteurs, érodent rapidement les avantages compétitifs acquis depuis longtemps par les exportations traditionnelles sur les marchés, sans pour autant promouvoir de nouveaux produits ni créer d'ouvertures vers de nouveaux marchés. Cet article analyse la nature des changements intervenus au sein de l'Organisation mondiale du commerce (OMC) et les politiques bilatérales du Quad (Canada, UE, Japon et E.U.). Il se penche notamment sur les Accords de Partenariat Economique que l'Afrique subsaharienne doit négocier avec l'UE et les modifications de la Politique Agricole Commune (PAC) de l'Europe.

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Section 1: Introduction

Africa's trade negotiators have 'punched above their weight' in recent years, and they have needed to do so as patterns of trade are changing fast. Change is under way in relation to the goods that are exported, imported and consumed locally; all with the effect of Africa being squeezed. Its status as a favoured recipient of trade preferences in some markets (but not in others) is being eroded rapidly. Increasingly its terms of access to non-regional markets will be on the same basis as its competitors'.

Consequently, the attention of trade policy makers has shifted from Brussels to Geneva. Yet, as the stalled Doha process attests, the multilateral system is still perceived as insufficiently attuned to Africa's needs. At the same time the region is being asked by some of its traditional trade partners to offer reverse preferences under the guise of free trade agreements (FTAs). These are being presented as supportive of both regional integration and the multilateral system, but it is not certain that the result will help either of these.

A corollary of this new-found instability in the region's global trade relations has been its exposure of the frailty – at all levels – of Africa's capacity to strategise and negotiate. The well-publicised problems faced by overstretched (or non-existent) diplomatic missions in Geneva to cope with the World Trade Organization (WTO) agenda is merely the tip of an iceberg comprising multiple overlapping trade negotiations. As old relationships come under strain and new ones need to be forged, so the demands for a clear line of communication from economic stakeholders through line ministries to trade negotiators become ever more marked. And the gap between the ideal and reality becomes ever more stark.

Despite these disadvantages, African states have been able to engage in a very wide range of negotiations, both within and outside Africa. Trade integration within the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA) and the Union Economique et Monétaire Ouest Africaine (UEMOA) is already under way. Africa has played a prominent role in the WTO. And negotiations for a successor to the current trade regime with the European Union (EU) are under way.

This paper reviews some of the key issues related to the impact of multilateral and bilateral trade agreements on Africa – and the challenges that lie ahead. It is structured as follows. The next section (Section 2) reviews the impact of the General Agreement on Tariffs and Trade (GATT) and the WTO. Section 3 analyzes the impact of trade policies of Canada, the EU, Japan and the United States of America (USA). Issues related to Economic Partnership Agreements (EPAs) are reviewed in Section 4, before the last section (Section 5) provides some conclusions and challenges.

Section 2: Africa in the GATT and WTO

One arena in which Africa has clearly punched above its weight is the Doha Round. The Africa Group submitted almost two-thirds of all the specific submissions to the Committee on Trade and Development (CTD) and over one-third of the proposals on systemic cross-cutting issues in the period to July 2002 (WTO, 2002: Annexes 2 and 3). African countries also played a prominent role at the Cancún Ministerial, as well as in the committee-rich WTO negotiating process.

But, at the same time, the experience emphasised the asymmetry of influence within the WTO. Groups with greater numerical than economic and technical strength have more power to prevent than to mould in cases where other members are not actively sympathetic. As was demonstrated most prominently at Cancún, they can prevent the adoption of proposals to which they object substantially on principle. But, by the same token, they cannot force other countries to accept their own proposals. The only way to move forward positively within the WTO, therefore, is to mould the technical details of proposals as they evolve in order to deal with African concerns – and then only if other members are receptive.

One of the problems for the Africa Group is that, despite the statements made in the Doha Declaration, some key WTO members have been far from receptive to their perceived needs. The unhappy debates around special and differential treatment (SDT) illustrate a wider problem that contributed to the collapse at Cancún and the lack of substantial progress since then. Resolving these difficulties is a challenge not just for Africa but for the entire multilateral system, since the evolution of the WTO as the custodian of trade rules that are relevant to the rapidly evolving realities of international commerce may depend upon it.

2.1 Special and Differential Treatment in the Doha Round

The WTO negotiating process is not one that is designed to throw up automatically development friendly results, and nor does it do so in practice. Negotiations in the General Agreement on Tariffs and Trade (GATT) were typically hard-nosed, with negotiators following very narrow, mercantilist agendas. The evidence from Doha so far is that the mercantilist negotiating ethos has not changed and the commitment to strengthened SDT has not yet been translated into practice (see Box 1).

This has caused concern among many developing countries, not just those in Africa, because the sea change from the GATT to the WTO has made ‘formal SDT’ much more important. Scope for special differentiation applied extensively in the GATT and benefited a very wide range of members. This ‘informal’ SDT was achieved by incorporating into the GATT texts vague phrases that could be interpreted in different ways by different members. This allowed countries with different views of what should be done to sign up to the same set of words, secure in the knowledge that they could apply them in their chosen way once the ink was dry.

Box 1: Special and Differential Treatment (SDT): The Doha Promise and Reality

The Doha Declaration accorded SDT a central place in the current round of rule negotiation. It stated that: ...provisions for special and differential treatment are an integral part of the WTO Agreements ... We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. (WTO, 2001). Over 85 proposals were submitted at Doha for changes to existing provisions on SDT, but by December 2002 there was agreement on only five of these. All were of limited scope: one concerned the principle of a monitoring mechanism and three were for measures benefiting least developed states only (Gillson and Rios, 2003: 11).

The innovation of the Uruguay Round to make dispute settlement binding removed this escape route. Possibly in consequence the character of the WTO has changed. Policies that had been in existence for years have been placed in the WTO's dispute settlement spotlight. And the proportion of cases brought by industrial against developing countries has increased: a review of cases brought between 1995 and 2000 found a threefold increase compared with the GATT period in the proportion of cases that were brought by industrialised countries against developing countries (Delich, 2002: 76). A corollary is the vastly more controversial image of the WTO compared with the GATT.

The SDT incorporated into the Uruguay Round texts is unsatisfactory for many members and observers. There are two principal problems: large areas of trade policy are without any legally enforceable SDT; whilst those existing provisions that are legally enforceable are eroding assets. The first is found especially severely in the 'new areas' of trade policy (such as Trade-Related Aspects of Intellectual Property Rights (TRIPs), services, government procurement and competition policy): no effective SDT exists and it is often far from clear what form more robust provisions would take. Enforceable SDT is an eroding asset in the sense that it provides modulation of commitments, the vitality of which will decline directly (if time limited) and indirectly (if it relates to removal of barriers that all members are reducing over time).

These unsatisfactory features of the *status quo* are evident in each of the three main areas of SDT: modulation of commitments, trade preferences and declarations of support. Modulation of commitments is the most substantial of the SDT provisions. The Agreement on Agriculture, for example, requires the industrialised countries to reduce their tariffs by 36 percent over six years, but developing countries have to do so by only 24 percent over ten years and least developed countries do not need to cut their tariffs at all. It normally meets the minimum requirement for effective SDT in that it is 'legally enforceable': a WTO member may use the dispensations granted under SDT in its defence if its trade policies are challenged by another WTO member on the grounds that they do not conform with the Uruguay Round commitments. Hence, for example, if India were challenged on the grounds that it had not reduced its agricultural tariffs by 36 percent, it would have a watertight defence in dispute settlement by pointing to the fact that it is required to liberalise by only 24 percent.

The provision of enhanced market access via trade preferences (mainly by industrialised countries to developing and least developed countries) is justified under the 1979

Enabling Clause. This *allows* industrialised countries to discriminate in favour of developing countries but it does not require them to do so. There are many areas where SDT *could* be provided on market access, but the industrialised countries do not do so; on the contrary, they target their restrictions on developing countries. The misuse of anti dumping actions is a case in point. Far from using the provisions that exist within the WTO sensitively to reduce the disruption to developing country trade, the Organisation for Economic Co-operation and Development (OECD) states are frequently accused of claiming that dumping has occurred when it is simply a case that developing countries are more competitive than domestic suppliers. As in so many cases, the WTO *status quo* provides the industrialised countries that largely drafted it with substantial opportunities for SDT in their own cause, but only limited opportunities in that of the developing states!

The extent to which the provisions on trade preferences meet the requirement of legal enforceability is questionable and has been clarified by the recent dispute of India against the EU (Box 2). The WTO finding in the EU-India dispute opened the possibility that the EU could offer substantial preferences to a recognisable group of countries facing similar objective circumstances. The EU responded with a new Generalised System of Preferences (GSP) approved in June 2005. The main innovation in the new GSP is a special trade regime, to be known as GSP+, that will be available to many developing countries (but not all of the poorest) and provide improved access to the EU (but not as good as is available to the African, Caribbean and Pacific countries (ACP) under Cotonou or to least developed countries under 'Everything but Arms' – EBA). A basic requirement is for a country to ratify and implement effectively 16 core human and labour rights United Nations/International Labour Organization Conventions and at least seven (of 11) conventions related to environment and governance principles. In addition, countries must satisfy 'vulnerability' rules related to the value of their exports. Larger countries and those with a broader spread of exports are more liable to fail the vulnerability test, even though they may be very poor.

Box 2: India versus the European Union

The EU's *generalised* system of preferences actually offers several different regimes. Some beneficiaries are treated more favourably than others. In 2002 India challenged in the WTO an element of this intra-GSP differentiation on the grounds that the anti-narcotics regime violated GATT Article 1.1 (on non-discrimination).¹ The EU's primary defence was that the discrimination was justified by the Enabling Clause. The Appellate Body found in India's favour in 2004, but included in its decision was a potentially important detail. India had argued that in order to claim justification under the Enabling Clause the GSP must offer 'identical' tariff preferences to all beneficiaries. The Appellate Body rejected this argument and asserted the legitimacy of providing different preferences provided that the difference responds 'to a widely-recognized "development, financial [or] trade need"...' (para. 164). The reason it upheld the main substance of the Indian complaint was that the EU's justification for its anti-narcotics regime failed to satisfy this criterion: the beneficiaries did not share a widely-recognised trade need that bound them together as different from all non-beneficiaries: the provision of specially favourable treatment to exports from certain Latin American states.

If it avoids WTO challenge, the GSP+ may alter fundamentally the balance of advantage and disadvantage for sub-Saharan Africa (SSA) of economic partnership agreements (EPAs) with the EU – see below. On the one hand, if uptake of GSP+ is widespread it will seriously erode SSA preferences in the EU. On the other, it provides SSA states with an alternative to EPAs which, for many states, provides equally good market access for current exports.

The third area of SDT, which is wholly unenforceable, comprises the large number of declarations of support for developing countries that litter the Uruguay Round texts. For example, Article 4 of the General Agreement on Trade in Services (GATS) deals with encouraging the increased participation of developing countries in international services trade through ‘negotiated specific commitments’ relating to the strengthening of their domestic services capacity, improvement of their access to distribution channels and liberalisation of market access in sectors and modes of supply of export interest to them. Provisions on the needs of net food importing developing countries are of a similar character. There is no action that an aggrieved developing country can take either inside or outside the WTO to force another member (or an international organisation) to take actions that it believes are consistent with these undertakings.

A considerable element of the discontent expressed by developing countries in the WTO about the failures of SDT derives from resentment that they were ‘hoodwinked’ into signing the Single Undertaking of the Uruguay Round through promises that were, literally, not worth the paper they were written on. The Doha negotiations need to resolve these problems either by making the SDT provisions enforceable in some sense or by amending current rules (or tailoring future rules) to take account of their non-enforceability.

Existing SDT provisions are not adequate: hence the Doha Declaration commitment to strengthen them and make them more operational. But translating this commitment into operational practice has so far proved to be beyond the grasp of the WTO members, and so there is an impasse. The major problem in dealing with the deficiencies to the *status quo* is not technical but political. To be effective, any development provisions must be actionable within the WTO.

It is possible to identify, even at this early stage in the negotiations, flexibilities that would address major concerns. But, they must necessarily be couched in quite broad terms given the absence of specific texts for new rules. And there is an evident unwillingness on the part of industrialised countries to agree broad, enforceable provisions at this time.

If there is a problem with broad provisions now, how about more tightly drawn ones at a later stage when this becomes feasible because there are draft texts that can be amended? The problem here is likely to be the dynamic of the negotiations if the Doha Round proceeds in the same way as its predecessor, which is likely since it appears to be inherent to the task of negotiating a wide range of complex provisions simultaneously. There can be no agreement until the major WTO members have obtained compromises

with which they can live, and then there is a strong imperative to finalise the deal as quickly as possible before this consensus is disturbed.

The TRIPs Agreement is a standing warning of the danger that arises from not introducing binding SDT at an early stage of negotiations given that once WTO agreements have been signed, whatever imperfections are subsequently discovered, they are virtually impossible to revise. Its developmental appropriateness has been widely questioned not least by the international Commission on Intellectual Property Rights (CIPR), established by the then UK Secretary of State for Development, Clare Short, with a secretariat staffed mainly by officials drawn from the UK Department for International Development. Its report casts doubt both on the desirability of setting fixed deadlines for the introduction by developing countries of international property (IP) laws and on the feasibility of now altering the agreement to remove such deadlines (CIPR, 2002:160- 161).

2.2 The Agreement on Agriculture

Africa's attitude towards multilateral liberalization is necessarily conditioned by the anticipated effects that this will have on its preferential trade regime with the EU, its main market. The relative merits of multilateralism and regionalism have been much debated, and there are clearly both pluses and minuses in shifting fundamentally from the *status quo* to a significantly more liberal world trade regime. The relative attractions depend critically upon the time period considered and the socio-economic actors involved. But this academic discussion is not necessarily directly relevant to the issues that have come before the Doha Round.

The worst-case scenario for Africa is one in which few if any of the identified benefits from multilateral liberal trade accrue to the region (because WTO change is too limited) but key advantages of the current preferential regime are lost. There has been little progress so far on agreeing detailed changes to the Agreement on Agriculture, but the portents such as they are cause concern. It is quite possible that such a worst-case scenario will be played out. This would be the result of changes in the multilateral arena and the preferential one.

Agriculture is the multilateral arena of most interest because the erosion of the key non-agricultural preference, on clothing, has already happened (Box 3). In the case of temperate agriculture, however, robust preferences still exist. But they could be eroded by any combination of change under the following three headings:

- significant multilateral liberalisation to reduce OECD market access barriers to agricultural imports;
- autonomous actions by OECD states that have the effect of reducing the returns to preferential exporters; and
- changes to the preferential trade agreements.

The most fundamental change in the WTO Agreement on Agriculture that could alter Africa's preferences would be substantial liberalisation. Preferences are the other side of

the coin to protectionism. If a country has a liberal trade regime it cannot, by definition, offer preferential access to some suppliers. Only if it restricts imports in some significant way does the possibility arise of reducing these barriers to some extent for favoured trade partners.

Box 3: Preference Erosion on Clothing

The decision in the Uruguay Round to phase out the MFA at the end of 2004 means that Africa has now lost the most substantial element of its preferential regimes on clothing. This is that they were either free from quotas (as with SSA exports to the EU) or that the quotas were much less restrictive than those applied to major competitors (notably the countries of Asia). The tariff preferences that remain are relatively minor compared with the situation on quotas. There are bound to be significant shifts in the global pattern of clothing production as a result. African industries that have depended upon Cotonou, the Euro-Med Agreements and the African Growth and Opportunity Act (AGOA) for their growth will face serious adjustment problems.

OECD market access barriers for agriculture fulfil comfortably the requirement of a pre-existing restriction: no fewer than 19 of the 33 Harmonised System (HS) chapters covered (in whole or in part) by the Agreement on Agriculture face tariff peaks in at least one (and usually two or three) of the Quad states.¹ The evidence so far from Doha is that even a successful conclusion to the Round will leave most of these peaks in place.

The existence of peaks is important because it means that apparently substantial tariff cuts may still leave in place barriers so high as to keep imports at very low levels. How likely is it that the Doha Round will bring down tariff peaks to levels at which substantial imports become viable? This is the issue that has proved so far to be one of the stumbling blocks to progress. The EU among others failed at the July 2005 WTO ministerial to accept a negotiating formula that would remove most very high peaks.

In the absence of substantial liberalisation, will there be big cuts in subsidies? Cotton, the African *cause célèbre* at Cancún, does not feature on the lists of tariff peaks. This is because the principal problem with the Agreement on Agriculture for African cotton producers is not the market access barriers in the Quad but the domestic subsidies of the USA. Almost all of West Africa's cotton exports to the EU in 2002 were 'cotton, neither carded nor combed' (HS 520100).² In the EU, Canada and Japan items in this HS sub-head face zero percent MFN duties, and although they face a tariff of up to 31.4 cents/kg in the USA this is equivalent to only about 10 percent *ad valorem*.

At Cancún there was prominent discussion of the problems faced by West African cotton exporters by US subsidies to American cotton producers, and an Overseas Development Institute (ODI) study has argued that EU subsidies may also be damaging to West and Central Africa because EU cotton production actively competes in third-country markets with cotton production from developing countries (ODI, 2004). Many commentators attributed the perceived inadequacy of the US offer on cotton as a significant factor

¹ Canada, EU, Japan and the USA.

² 100 percent of Chad's, 99 percent of Mali's, 97 percent of Benin's and 88 percent of Burkina Faso's; their exports to the USA are so small as not to figure in the United States International Trade Commission data.

contributing to the stalling of negotiations. The issue had not been resolved at the time of writing.

As substantial net importers of cereals, Africa as a region also has an interest in any rule changes that would tend to increase import costs and, hence, result in a deterioration in their terms of trade. The region has become increasingly dependent upon imports. Contrary to some popular opinion, this is not primarily a result of food aid, which has formed a relatively small (and declining in the last decade covered) share of the total.

A significant part of the foreign exchange used to pay for the imports comes from agricultural exports, which are also affected by WTO rules (especially those on preferences). Hence, any change in either side of the trade equation could affect indirectly the food security of individuals by altering either the total volume of food available in a country or its distribution between different types of food (over which individuals have different entitlements).

Section 3: Africa and the Quad

Given the slow progress of Doha at least in the area of agriculture it seems inevitable that preferential and regional trade agreements with particular trade partners will continue to figure prominently in Africa's trade profile. But change is under way which could alter significantly the gains that the region has traditionally obtained under these agreements.

3.1 The Relative Importance of the Quad

The EU is overwhelmingly Africa's most important market importing almost 50 percent more items than the other three Quad states put together. There are very few items that are imported into one of the other three Quad members and not into the EU. In 2000 the EU imported 1,710 items from Africa to a value of \$1 million or more and of these no fewer than 1,692 were covered by a preference for at least one exporter from the region. The USA, which was the next largest Quad importer, took only 491 items, of which preferences were available for one-half.

The EU has no fewer than eight trade agreements with Africa. All African states are eligible for the GSP. Those south of the Sahara (except South Africa) also benefit from the Cotonou trade regime³ and, in the case of the least developed countries, the 'Everything but Arms' (EBA) regime. In addition, South Africa and most of the North African countries have their own bilateral agreements. In the case of the North African countries, these are of long standing but are in the process of being transformed into reciprocal FTAs, many of the provisions of which are similar. This follows the Barcelona Declaration objective of creating a Euro-Mediterranean free trade area by 2010.

For Japan and Canada, the GSP is the basic building block of their preferential trade regimes with Africa. Both provide special arrangements for least developed countries

³ South Africa is formally a party to the Cotonou Agreement, but is not eligible for the trade regime.

within the GSP framework which offer wider and deeper preferences. In the case of the USA, the GSP is also the building block, but AGOA provides the most favourable treatment within the GSP framework for 125 of the 491 items (26 percent) for which data are available for the USA's imports from Africa.

At the same time a higher proportion of imported products face zero MFN tariffs in countries other than the EU. The proportion ranges from almost two-thirds for Canada to just over a half for Japan and 42 percent for USA; in the EU it is just over one-quarter (although in absolute terms the EU offers a zero MFN on more items than all the other three combined).

The two sets of figures are related. One reason why Canada cannot offer preferences on a large proportion of its imports from Africa is that it levies a zero MFN duty on many. As indicated above, preferences are the obverse of protectionism. This is the underlying reason why liberal-trade economists will normally prefer multilateral liberalisation to preferences. Additionally, there is the political assessment that the vested interests created by preferences may prove to be a 'stumbling block' rather than a 'building block' to multilateralism, to adapt Bhagwati's celebrated aphorism. But in cases such as the present, where multilateral liberalisation is not on offer (because there is no consensus in the WTO), regionalism may be a second-best.

3.2 The Protection–Preference Nexus

Central to the argument on how Africa may be affected by change to its regional agreements is the concept of 'trade policy rents' (Box 4). An important paradox emerges: that Africa's greatest gains from exporting to Europe have been in the products that appear at first glance to be the most heavily protected and to receive the least generous preferences.

Box 4: How Rents are Created

What are termed 'trade policy rents' arise when a market is distorted but certain suppliers of imports receive preferential access. The purpose of the distortion is to enable domestic producers to sell goods that consumers would otherwise prefer to buy from foreign producers (whether because they are cheaper, of a preferred quality or whatever).

One way to do this is to subsidise the domestic producers – but this tends to be politically unpopular because it is visible, and results either in higher taxes or lower government expenditure on other things. Another, less visible and less politically costly way is to rig the domestic market so that consumers have to pay the higher prices at which domestic producers can compete.

One of the fundamental mechanisms to achieve this is to impose protectionist trade barriers that, by squeezing imports, restrict supply and maintain prices at higher levels than would otherwise apply. In some cases, these restrictions (and their price effects) are substantial. The principal intention of these distortions is normally to confer the rents on producers in the distorting state, but there is leakage – often through preferences. All of the OECD countries offer some form of preferential market access to certain developing countries.

Africa's exports fall into three groups in terms of their market characteristics. These are:

1. traditional products (such as beverages) that are exported to a relatively undifferentiated, liberal world market;
2. other traditional exports (such as clothing, beef, sugar, citrus and olive oil) that are exported to markets that are heavily influenced by agricultural protectionism; and
3. non-traditional products (such as horticulture) that are exported to markets characterised to a greater or lesser extent by protectionism.

The reason for differentiating between these groups is that they face very different 'value chains' and price characteristics. The secular decline in the terms of trade for the first category (beverages, etc.) was forecast over half a century ago in the pioneering work of Raúl Prebisch and Hans Singer; forecasts that have been borne out in reality. African exporters are price-takers on a declining world market. Some appear to have 'lost' their comparative advantage to new entrants such as Malaysia (as in the case of West African palm oil production).

The second category would have been expected, on the basis of the Prebisch–Singer analysis, to have suffered a secular decline in their terms of trade, were it not for the fact that OECD governments (and especially the EU) have stepped in with policies to support the prices received by their own farmers and have passed on some of these 'benefits' to some African exporters. Consequently, the relative returns from exporting these products have been much more attractive than for other traditional commodities (Stevens and Kennan, 2001: Figure 7.8).

The third category (non-traditional exports) shares the same characteristic – but the scale of the price boost is less marked than for some category 2 items (such as sugar and beef) and the structure of the value chain through which the final price is distributed is very different. In broad terms, Africa's gains from the non-traditional exports have been less substantial than those from the protected traditionals, but the gains are less vulnerable to policy change in the EU.

In general terms, the protection–preference nexus makes sourcing imports from some suppliers more attractive than from others, but who gains what depends upon the power distribution within a value chain. It may accrue to any combination of the producers, processors or shippers in the preferred countries, or the buyers in the importing country.

The balance between them is affected by both the overall scale of the rent and the architecture of the rules that create it. Rents are most substantial in product markets (such as beef and rice) that face protectionism so severe that it restricts sharply the possibility of importing from non-preferred sources. At the other end of the scale are items for which protection is so modest as to render any preferences of limited commercial value. In the middle are commodity groups like horticulture where EU tariffs are moderately high but the advantage of a preference is available to a large number of countries (Dolan, Humphrey and Harris-Pascal, 1999).

3.3 The Effect of the Agreement Architecture

For the recipient the existence of a preference is better *ceteris paribus* than its non-existence, and a deep cut in protection is better than a shallow cut, but the matter does not end here. There are features of a preference agreement that can enhance or retard its development impact in addition to the simple matters of breadth (number of items covered) and depth (reduction in protection). And these can change.

Who gains this rent within the value chain depends upon the bargaining power of the various elements – retailers, importers, shippers, exporters or producers – which depends in turn partly upon their inherent characteristics and partly upon the architecture of the preference agreement. There exists a host of ways in which the rules and procedures of a preference agreement can bias the result in favour of one party or another.

For example, if (as is normally the case) it is importers who are legally liable for penalties for tax evasion should a good be shown *ex post* not to have been eligible for a preference, then the preferential tariff may not even be claimed. A review of EU importers indicates that this is a very real concern (Cerrex, 2002). In such cases, the potential tax cut will not translate into any actual tax cut at all.

A change in agreement architecture can affect the distribution of gains. A comparison between sugar exported under the EU–ACP Sugar Protocol and under EBA illustrates how the effect of the protection–preference nexus on any given group of producers or countries will depend on many features of the regime’s architecture. Under the EU’s EBA initiative it has since March 2001 imported duty free from all least developed countries any product except arms or bananas sugar and rice for which implementation has been partially deferred until 2006 for bananas and 2009 for the others. During this transition period the tariff is being reduced progressively and there are duty-free quotas for sugar and rice that are set at levels comfortably above past flows.

Under the EU-ACP Sugar Protocol each beneficiary has a fixed quota and is guaranteed a price related to those in Europe. When EBA is fully implemented there will be no quantitative limits on the sugar that least developed African countries are able to export, but neither is there any built-in protection on price. For this reason, the least developed sugar-exporting countries have so far agreed to what is effectively a market-sharing agreement with the non-least developed ACP Sugar Protocol beneficiaries. Whether or not this arrangement will survive full EBA liberalisation of sugar in 2009 and the proposed EU price cuts remains to be seen!

3.4 Europe’s Common Agricultural Policy (CAP)

Relief (full or partial) from the CAP’s protectionism is currently one of the most commercially valuable African trade preferences, and its relative importance will grow as other preferences are eroded. But autonomous change to the CAP may erode these preferences more rapidly than seems likely under the Doha Round.

It is important not to confuse ‘CAP change’ with ‘liberalisation’ which, in the normal sense, means changing the government rules, taxes and subsidies that stop high-cost domestic producers losing market share to lower-cost imports. It implies that the global location of production will change over time, with lower-cost producers increasing output and higher-cost producers declining. CAP change, by contrast, aims to sustain European production but to reshuffle the subsidies and taxes to make them less costly to the European budget and more easily defensible in the WTO. They will have very limited effects on the EU’s overall agricultural trade since they will neither decrease production below domestic consumption nor increase market access. But they could erode developing country preferences.

The key to CAP reform as set out in the EU’s *Agenda 2000* reforms and its mid-2002 proposals on the preference for beef and rice (EC, 2002) is to let market prices fall but to offset this for European farmers through income supports. The most substantial change for Africa will be felt in the sugar sector especially following the new EU proposals for its regime following an adverse verdict of the WTO Appellate Body in April 2005. The complaint, brought by Australia, Brazil and Thailand, was that Europe’s subsidised sugar exports exceeded its Uruguay Round limits. To reduce exports the EU proposes to cut the price for sugar (to which SSA exports are linked) by 39% in two annual instalments (beginning 2006/7) to €319.5 per ton. The impact of these cuts on European farmers will be substantially offset: each EU member state will have funding equivalent to 60% of the estimated revenue loss that its sugar industry will suffer as a result of the price cuts in order to assist producers to leave and to offset the effects on those that remain.

But SSA exporters will receive no such compensation; their producers will feel the full force of the cuts. In 2003 the Commission calculated that the severe effects that would follow from a slightly larger price cut (in two stages to €290 per tonne). It forecast that exports to the EU would cease after the first instalment from the Democratic Republic of the Congo, and Madagascar (plus Jamaica); after the second only Zimbabwe, Zambia, Sudan, Ethiopia and Mozambique would continue exporting to the EU, and the amounts supplied would be relatively small at around 0.2 million tonnes (EC, 2003). Under the new proposal the 2009/10 the price for raw sugar will be, higher than in the estimate but not by much.

A related point is that the process of reform could progressively relax the constraints on EU exports of sugar-based value-added foodstuffs imposed as a result of WTO disciplines on export refunds for these products (CTA, 2004). This could result in an expansion in exports of simple value-added foods to developing countries that are non-subsidised in WTO terms but nonetheless have benefited from direct farm payments.

Section 4: Economic Partnership Agreements (EPAs)

The basic arguments over the *pros* and *cons* of EPAs date back to 1997 (Box 5) and ‘negotiations’ have been underway since 2002. Regional talks have formally commenced with four groups of SSA states in West Africa, Central Africa, Eastern and Southern

Africa, and ‘SADC minus’. But, at the time of writing, none had reached the stage of detailed proposals.

Box 5: The Origins of EPAs

The European Commission’s arguments for and against a change to the EU–ACP trade regime were set out in a Green Paper to which the ACP (and also civil society and research organisations) subsequently responded (EC, 1997). They included the points that a new regime should do more to foster the integration of ACP states into the world economy and should be more easily defensible in the WTO. It was not possible to agree such a new regime from the outset of the Cotonou Agreement. Instead Cotonou extends the Lomé trade regime, but with the proviso that negotiations must commence this year for a successor regime that will come into effect in 2007. It is the scope of this post-2007 trade agreement that is the subject of the negotiations that began formally in September 2002.

4.1 The WTO Rules on Free Trade Agreements (FTAs)

A key element of the EU case is that EPAs are more supportive of the multilateral trade system than is the non-reciprocal Cotonou Agreement, and that they can be justified under Article XXIV. This is the WTO provision that allows members to discriminate in favour of some trade partners (and, hence, against others) provided that they are creating a customs union or free trade agreement (FTA). Because they would involve reciprocal tariff cuts, the EU claims that EPAs would pass the Article XXIV test.

But what, exactly, are the requirements of Article XXIV? The formal requirements for an agreement to be treated as an FTA are fairly straightforward, but practice is not so clear-cut. This is because Article XXIV is vague — by design rather than by accident, because members have been unwilling to restrict themselves through a more precise formulation. One salient requirement of Article XXIV is that the FTA must be completed ‘within a reasonable length of time’ (defined in the WTO as a period that ‘should exceed ten years only in exceptional cases’). Another is that ‘duties and other restrictive regulations of commerce ... are eliminated on substantially all the trade between the constituent territories’ (GATT, 1947: Part 3, Article XXIV, paragraphs 5(c) and 8(b); WTO, 1995: 32).

There is a similar difference between the formal requirement for legitimising any proposed regime (clear cut) and practice (murky). The formal hurdle for approving an agreement as in conformity with Article XXIV is high. The agreement must have the universal support of members because of the WTO practice of requiring a consensus for all decisions. But in the past a failure to achieve a consensus has not proved to be a barrier to those countries wishing to create an FTA.

The first step is for the parties to the agreement to notify the WTO following signature of an FTA. Such notification will be followed by the referral of the FTA to the WTO Committee on Regional Trade Agreements (CRTA) for consideration. Membership of the CRTA is open to any country that feels it to be in its interests to belong. In theory the CRTA will produce a report on the compliance, or otherwise, of the FTA with Article

XXIV for adoption by consensus of the WTO membership. But practice is a lot less clear-cut (Box 6).

Box 6: The work of the CRTA

The CRTA has a large backlog of work and, since it operates by consensus, has reached very few ‘decisions’ on whether or not agreements conform. Of the 25 regional trade agreements that had been notified to GATT/WTO and were still in force at 5 May 2003:

- for six the CRTA’s factual examination had not started;
 - 14 were in the factual examination stage;
 - in two cases the factual examination had been concluded; and
- in three cases there were on-going consultations on the draft report.

There is no reason to expect a change in practice anytime soon. The CRTA’s backlog of agreements is growing. On past form, it is unlikely to give a straightforward approval or disapproval of any agreement – not least because of the need for consensus. Parties to an agreement are unlikely to acquiesce in an unfavourable verdict, but those who face discrimination (or would do so in an analogous agreement between other countries) will not wish to see the precedent of a favourable report.

But this does not mean that countries can sign up to anything and just call it an FTA. In the absence of clear guidance from the Committee, it would still be open to any aggrieved WTO member to file a complaint under the dispute settlement mechanism. This could pass to a quasi-judicial body the task of defining such terms as ‘substantially all’ trade. In other words, approval or disapproval of an EPA is likely to happen by default. *Unless* a WTO member challenges it on the grounds that it does not comply with Article XXIV, WTO compatibility will never be tested.

It follows that the EU’s insistence on the need for WTO conformity as a *raison d’être* for EPAs could come back to haunt it. The WTO conformity, or otherwise, of the EPA approach (and its operation and interpretation of the Article XXIV requirements – see below) could be determined in the coming years through a dispute. It might be a dispute over an existing agreement (such as the Trade, Development and Co-operation Agreement (TDCA) with South Africa), or over an EPA following its introduction, or even over an agreement that does not involve the EU and Africa at all. But whatever the proximate cause of a dispute that defines the meaning of terms in Article XXIV, it would henceforth apply to all.

4.2 Reciprocity

Most of the discussion on the successor to the Cotonou trade regime has focused so far on the perceived costs to the ACP arising from reciprocity in the proposed new EPAs. Under Lomé and Cotonou the ACP were required merely to treat the EU no less favourably than any other industrialised trade partner. In complete contrast, the new EPAs will offer duty-free access for ‘substantially all’ EU exports to the ACP.

There are two reasons why the reciprocity debate has taken centre stage, to the virtual exclusion so far of the other vital issues. They are that:

- the ACP liberalisation required for reciprocity is bound to have adjustment and fiscal costs for these states in the form of increased competition for domestic producers and lower trade taxes for governments;
- there is not much else to debate since neither the EU nor the ACP have been able so far to put forward in any detail other specific innovations for an EPA.

As with CAP change (noted above) it is very important not to fall into the trap of equating automatically a new policy like EPAs with ‘trade liberalisation’ as it is normally understood in economic textbooks. EPAs will result in textbook change only if the price of imports into ACP members falls and this reduction is passed on to users (who need not be the final consumers). If an imported good that competes with a domestic good becomes cheaper to the consumer, they will switch purchases; if it becomes cheaper to the retailer/wholesaler then they are more likely to stock it. In either case, imports of the good increase and domestic production goes down.

There are at least four reasons why EPAs alone might not produce this effect:

1. if there is no cut in tariff rates;
2. if the exporter appropriates the tariff cut by charging a higher price;
3. if the importer appropriates the tariff cut and on-sells at the same price; and
4. if EPAs are overtaken by other trade liberalisation.

The first point arises because EPAs will not liberalise all trade, only ‘substantially all’. Some goods will not need to be subject to any tariff reduction. Points 2–4 are interlinked. Tariff cuts towards one trade partner will not necessarily result in any price falls. Competitive markets need to be created – they don’t necessarily ‘just happen’. Take the case of a piece of industrial equipment that can be imported from either the EU or, say, Japan for the same price, and which faces a 25 percent tariff. If the tariff is cut to zero percent under the EPA, the EU exporters *could* try to gain market share from Japan. But they might also prefer to increase their prices by 25 percent, which would have no effect on the price paid by the customer or on the volume of sales, but would result in greater profits. They are more likely to choose the second option if the chance of increasing sales volume is small (perhaps because Japan could cut prices too). The same arithmetic will be done by importers. If domestic trade is not competitive they need not pass on any price cut. A tariff cut is more likely to result in a fall in domestic prices if it applies to many potential sources of imports, and/or if there is a competitive domestic market.

The more general the liberalisation the harder it becomes to sustain the restrictive business practices that allow exporters or importers to make enhanced profits (at the expense of government revenue). Multilateral liberalisation through the WTO would be the most general – and the most likely to result in both the gains and the adjustment costs associated with market opening. A regional agreement with *only* the EU would be much narrower. A set of regional agreements (with other African and non-African states) would fall in between these two extremes. So the ultimate impact of an EPA is likely to be affected heavily by Africa’s negotiations with trade partners other than the EU.

Whilst it is not yet possible to provide a definitive assessment of ‘benefits’ or ‘costs’ of EPAs (let alone an economic analysis of their effect on Africa’s economies), there is a

clear and urgent need for a set of ‘what if’ analyses. These would identify the potential product exemptions from EPAs of different memberships.

In case a challenge is made, it is important that the requirements of Article XXIV be taken seriously in structuring any EPAs. But, of course, these requirements could change either in the Doha Round or as a result of dispute settlement. The ACP Guidelines state that the ACP should champion such change by preparing and submitting concrete proposals within Doha (ACP Group, 2002: para. 16).

At present it is difficult to be sure what all this means for the structure of EPAs but some guidance is available from the EU–South Africa TDCA. This not only makes clear what the EU interprets Article XXIV to require, but it is also possible that, between now and 2007, it could be subject to a WTO challenge and so provide a test case for the interpretation of Article XXIV (Box 7).

Box 7: The Trade, Development and Co-operation Agreement (TDCA) and Article XXIV

In the TDCA the EU has stated that it believes 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 percent 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 percent and its partner on less. In the specific case of the EU–South Africa TDCA, South Africa has liberalised on products accounting for 86 percent of its imports from the EU while Europe has liberalised on 94 percent. The agreement also indicates that the EU believes the Article XXIV requirement that liberalisation occur ‘within a reasonable period of time’ can be achieved through a transitional period of up to 12 years.

4.3 Africa’s Offensive Interests

Although ACP interests have been heavily focused on the implications of reciprocity, the negotiations need to address several other very important issues. These all centre on the fact that the existing trade regime is eroding fast and needs to be revived. Since the EU’s mandate contains no specific proposals for improving its import regime, and merely offers to respond to ACP requests in certain areas, it is important that the ACP take the initiative to articulate their demands. This will require research.

The ACP Guidelines specifically refer to the need to assess the impact of CAP reform. In addition, the ACP’s demands for treatment of its agricultural exports under EPAs need to take account of (and seek to influence) the EU’s positions in the WTO. It seems very likely that the current negotiations on the Agreement on Agriculture will not result in a substantially liberal EU import regime for products covered by the CAP. Hence, the possibility will continue to exist for significant ACP preferences. The task for the negotiations will be to ensure that this potential is realised.

Given that the EU has proposed, in its mandate, to remove all quantitative restrictions, a high priority for initial research is on those products currently subject to tariff-rate quotas

(TRQs). These include sugar, beef and rice. An early study should be to identify the implications for ACP exporters of the removal of any quantitative restrictions on their exports to the EU in order to help articulate a negotiating position that serves all ACP interests.

The two key changes needed on goods cover market access on agriculture and rules of origin. A proposal was made in the initial draft Commission mandate to extend EBA coverage to all ACP states but dropped following intra-Commission wrangling. It needs to be revived (and included in the Euro–Med Agreements with North Africa). Not only would it represent the removal of all existing barriers to African exports, but it would defuse the incipient tension within African regional agreements between least developed countries and the others.

On the rules of origin, the experience with AGOA and its liberal rules on the use of imported inputs to clothing for the lesser-developed countries provides convincing evidence that the Cotonou rules are unrealistic. There is a need for more liberal rules on cumulation and the reduction in the level of processing required.

4.4 An Economic Partnership Agreement on Services

Perhaps the most intriguing area for Africa is the proposal that EPAs include a services component. SSA must decide whether to embrace this enthusiastically as an opportunity to obtain better conditions for its services exports, or defensively as a challenge to domestic providers. But in either case all states will need to understand better what might be involved. International trade in services is riven with barriers. Whereas barriers to international trade in goods have fallen substantially over the past 50 years, services trade is still subject to a wide range of laws and other regulations. The barriers that these create are often complex, indirect and opaque – and may be quite invisible until someone tries to export.

4.4.a Precedents

There are a few precedents on what might be in a services accord, but they point in different directions. For example, in the EU–South Africa TDCA the provisions are largely of a formal kind. They introduce the possibility of negotiations taking place on services but include no specific provisions. Similarly, while they allude to the need to make any provisions compatible with WTO requirements, they only talk about the need to offer substantial liberalisation.

The EC–Bulgaria Agreement⁴ provides universal sectoral coverage for services but establishes that this will be ‘gradual’ in the case of some activities. But the accord may not be a true precedent as it is a European Association Agreement. Bulgaria has adopted a transitional period arrangement of ten years maximum, divided into two five-year stages.

The EU–Mexico Agreement follows the South African precedent of an initial accord that provides only a broad framework establishing that the two parties would endeavour to

⁴ WT/REG1/S/C/N55 currently under factual examination.

negotiate a services agreement, but it has gone further in subsequently filling in the details.⁵ This task was passed to the EU-Mexico Joint Council established under the agreement. The Council decided on 27 February 2001 an initial set of provisions in the area of services.⁶ There are two important features to note about this 2001 decision. The first is that it is very restricted in terms of specific coverage. But the second is that it sets a timetable for adding further detail. Since the timetable expires well before the conclusion of the EPA negotiations, Africa needs to monitor subsequent agreements to determine more clearly the extent to which the EU is willing to liberalise.

The EU–Chile Association Agreement of 26 April 2002 goes much further than either the initial or the revised Mexico accord. It provides extensive schedules, similar in format to GATS ones, detailing the treatment that each side will accord to the other. The schedules, which run to many pages of very tightly worded text, give the impression that they bear very close similarity to the EU’s position in the GATS.

4.4.b What might be in a services EPA?

In the absence of any clear precedent one can only speculate on what might – or should be – in any services EPA. To be useful it would need to remove barriers to trade that would not otherwise be lifted and where removal is desirable from a development perspective. Both the barriers and the effects of their removal are unclear.

Behind-the-border measures are of the essence to the restriction of services trade. Indeed, it may not be the service that crosses a border at all. It may be the customer who crosses the border (as with tourism) or the supplier (on-site auditing or computer services). Moreover, the impact of any regulation on the commercial viability of trade will depend on the specifics of the services activity. Immigration and visa problems may be merely tiresome for one firm (that does most business over the web or phone) but ruinous for another (for which frequent close contact with the client is essential).

Whether or not a regulation is constraining may depend on the way a service is delivered. For example, if an airline wishes to sell paper tickets it may be advantageous to set up a travel shop in its market. This will require it to conform to all the host government’s requirements for setting up, staffing and marketing a business, and will probably require the movement of people across borders and, hence, immigration controls. If, by contrast, electronic tickets are sold over the web none of this need necessarily be required; instead there may be other regulations.

Insurance, too, can be sold either through a shop or over the web. Governments may have prudential regulations applying to the validity in their domestic market of policies purchased from a non-resident supplier over the web. *Selling* over the web may not be a problem, but no one will *buy* the policies because they are not valid in the export market due to government rules.

⁵ Official Journal of the European Communities, L276, 28 October 2000 (pp 45–61).

⁶ Official Journal of the European Communities, L70, 12 March 2001 (pp 7–50).

Given the heterogeneity of services trade (and trade restrictions) it is vital to specify precisely what is to be traded and how. Only then can the most constraining trade restrictions be identified. An increase in exports of *goods* will affect directly how many imports can be obtained: the wages paid to those who produce the goods will increase domestic purchasing power and the foreign exchange received by the local exporting firm will finance imports.

Services exports under Modes 1 and 2 (cross-border and consumption abroad) have similar effects. Work is undertaken in the exporting state and the foreign exchange accrues to local firms (even though, as with goods, a part may also be held abroad by them or accrue to foreign associates).

But the situation with Modes 3 and 4 (establishment abroad and presence of natural persons) is different. The extreme case is provided by the individual migrant worker: s/he works, consumes and saves abroad; unless and until a part of their savings is repatriated (and/or the person returns with new skills), there is no direct economic gain to the 'exporting country'; rather, there is a loss of human resources. The contrast is less stark with Modes 3 and 4 undertaken by employees of home-based companies, but the direct economic gains for the home state will still be smaller than for goods.

The primary gains to the exporting country under Modes 3 and 4 are indirect. If an African firm sets up an office in UK employing mainly British individuals it will contribute little directly to employment in its home country or, except to the extent it repatriates its profits, to foreign exchange receipts. But it may contribute indirectly – for example by increasing 'follow-on' orders for goods and services produced in its home country, by enhancing the skills of citizens who are employed abroad, or by making the firm (including its domestic operations) more globally competitive.

The important negotiating point is that Modes 3 and 4 are often a means to an end (increased exports of goods and of services under Modes 1 and 2) rather than a national economic objective in their own right. This may affect a government's negotiating strategy and lead to a paradox. Restrictions on Modes 3 and 4 exports may be more obvious and severe than those on Modes 1 and 2. Hence there is 'more to negotiate about'. Yet the national gains from reducing Mode 3 and 4 restrictions may be less obvious.

Section 5: Conclusions and Challenges

The world of trade policy is changing fast in ways that affect profoundly Africa's competitive position. One task is to assess which changes are inevitable and begin the process of adjustment – which may be substantial and require change over a long period in many economic and institutional areas. Another is to influence the policy debate wherever possible in order to channel change along less destructive routes. This Working Paper has concentrated on providing evidence of the changes and suggestions for the second task, but this is not intended to reduce the urgency and necessity of the first.

One important conclusion is that Africa should challenge the economic justifications given by proponents of the most damaging changes. These are often justified on the grounds that they are a step towards liberalisation which will, over time, enhance global welfare, and that Africa needs to ‘stop living in the past and accept change’. In fact, neither CAP reform nor EPAs are clear exercises in liberalisation: they will certainly produce adjustment costs for Africa but there is little reason to expect, on the basis of what is known now, that they will result directly in any global welfare gains.

Nor it is true, as the proponents of such changes like to claim, that ‘trade preferences have had their day’. What *is true* is that many existing preferences are eroding fast. But plenty of scope exists to replace them with new preferences because one of the two objective requirements exists: there are areas of goods and services trade in which the OECD states are still heavily protectionist. What appears to be missing is the second requirement: a political willingness on the part of some OECD states to offer more liberal access to Africa in these areas. Even for LDCs apparently liberal access like EBA is hedged with restrictive rules of origin.

So it is possible for Africa to make its case forcefully without appearing to reject consensus views on the desirability of a liberal world trade regime. This is a banner under which it can continue to play an active role in the evolution of international trade policy. But it faces two sets of challenges.

The first challenge is well understood – the problem is in dealing with it. It is that such negotiations place huge demands on a society. It is often remarked that the negotiating teams of the larger OECD countries are huge compared with those of African states. But it is worth remembering that the disparity in size also reflects a difference in composition. The OECD delegations include representatives of producer and consumer interests. It is their task to identify the commercial implications of proposed rules and, in turn, to make drafting suggestions for the rules which would have commercial implications that they favour. And the whole delegation operates within an environment in which civil society organisations assess and lobby in order to produce country positions that reflect the interests of socio-economic groups other than producers.

To this extent the oft-cited problem that many African delegations in Geneva (let alone Brussels, Washington and Tokyo) are understaffed slightly misses the point. Or, rather, it is merely the tip of the iceberg. Of even greater importance is the absence of an integrated mechanism that links trade negotiators with producer and consumer groups within a country that can identify society’s offensive and defensive interests in any set of negotiations. Without this, the Geneva delegations, however well staffed, are operating in something of a vacuum.

The second challenge is less frequently recognised. It is that the market always has a tendency to outpace the regulators, and this disparity may well be widening with globalisation. Hence, a failure to agree changes to rules does not necessarily mean that the *status quo* will remain in force. What it may well mean is that the existing rulebook becomes increasingly obsolete as it fails to address new methods and types of trade and

an increasingly free hand is given *de facto* if not *de jure* to the market. A related problem is that the impasse in the multilateral system, whatever its cause, may result in like-minded countries developing their own sub-multilateral rules. Whilst these would not apply *de jure* to non-partners, there is the danger that they will apply *de facto*. Africa already experiences the impact of wholly informal rule-making on agricultural standards imposed by European supermarkets, against which there is no appeal. The task is to bring these under some degree of public control – and to avoid the extent of private rule-making spiralling.

Africa's task is to avoid the twin challenges of inappropriate new public rules (whether multilateral or regional) and the danger that, in the absence of public regulation, the private sector determines the rules of the game. In recent years its negotiators have demonstrated to the rest of the world that the region cannot be taken for granted in international trade negotiations. The task for the future is to develop capacity to develop more proactive positive rule changes that would respond more appropriately to Africa's particular needs.

References

- African, Caribbean and Pacific (ACP) Group (2002) 'ACP Guidelines for the Negotiations of Economic Partnership Agreements', Brussels, 5 July.
- Cerrex (2002) 'The Usage of the EU Trade Preferences (GSP and Lomé)', a study on behalf of Department for International Development (mimeo). London: Cerrex Limited.
- Commission on Intellectual Property Rights (CIPR) (2002) *Integrating Intellectual Property Rights and Development Policy*. London: CIPR.
- Delich, V. (2002) 'Developing Countries and the WTO Dispute Settlement System' in B. Hoekman, A. Mattoo and P. English (eds.), *Development, Trade, and the WTO*. Washington DC: The World Bank.
- Dolan, C., Humphrey, J. and C. Harris-Pascal (1999) 'Horticulture Commodity Chains: The Impact of the UK Market on the African Fresh Vegetable Industry', *Working Paper No. 96*. Brighton: Institute of Development Studies at the University of Sussex, September.
- European Commission (EC) (1997) *Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century*. Luxembourg: Office for Official Publications of the European Communities.
- European Commission (EC) (2002) 'Mid-Term Review of the Common Agricultural Policy', COM (2002) 394 Final, 10.7.2002. Brussels: Commission of the European Communities.

- European Commission (EC) (2003) 'Communication from the Commission to the Council and the European Parliament: accomplishing a sustainable agricultural model for Europe through the reformed CAP – the tobacco, olive oil, cotton and sugar sectors', COM(2003) 554 final, Brussels, 23 September.
- General Agreement on Tariffs and Trade (GATT) (1947) *The General Agreement on Tariffs and Trade*, Geneva: GATT.
- Gillson, I. and N. Rios (2003) 'Report on Special and Differential Treatment in the WTO Seminar'. London: Department for International Development (mimeo, March).
- Stevens, C. and J. Kennan (2001) 'Food Aid and Trade', in S. Devereux and S. Maxwell (eds), *Food Security in Sub-Saharan Africa*. London: ITDG Publishing.
- Technical Centre for Agricultural and Rural Cooperation (CTA) (2004) 'Sugar Executive Brief', AgriTrade website (http://agritrade.cta.int/sugar/executive_brief.htm) accessed 25 July 2004. Wageningen: CTA.
- World Trade Organization (WTO) (2002) 'Committee on Trade and Development. Special Session. Draft Report to the General Council. Revision', TN/CTD/W/12/Rev.1, 22 July 2002. Geneva: WTO.
- World Trade Organization (WTO) (2001) *Ministerial Declaration*, WT/MIN(01)/DEC/1, 20 November. Geneva: WTO.
- World Trade Organization (WTO) (1995) *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*. Geneva: GATT Secretariat/WTO.