Executive brief: Update

April 2010

WTO agreement on agriculture: Implications for the ACP

Contents

About this update

CTA's *Executive brief: WTO agreement on agriculture: Implications for the ACP* was published in January 2009 and in CTA's *Agritrade: ACP–EU Trade Issues (2009 Compendium)*. This update consists of:

1. Background and key issues: briefly summarising the original executive brief, and where necessary, updating developments related to key issues;

2. Latest developments: reviewing developments that have taken place since the publication of the original executive brief;

3. Implications for the ACP: examining the implications of recent developments for the ACP countries concerned.

The original executive brief (2009) is available on request from: agritrade-mail@cta.int.

1 Background and key issues

The WTO provides the international framework for both the EU's and the ACP's wider trade relations, including tariff policy and the use of export promotion measures. It also establishes disciplines for the deployment of domestic support to the agricultural sector not only in the EU, but in other Organisation for Economic Cooperation and Development (OECD) countries whose policies have a severe impact on ACP countries. As a consequence there is a range of issues in the World Trade Organisation (WTO) that have a bearing on both ACP-EU agricultural trade relations and on the value of the preferential market access that ACP countries enjoy. Development in the WTO can also have a bearing on ACP members' efforts to promote regional integration and diversify their trading partners. For these reasons, developments in and around the WTO agreement on agriculture have both a direct and an indirect bearing on ACP-EU agricultural trade relations.

Traditionally ACP agricultural concerns have been divided into five areas: preserving the right to use certain traditional trade policy tools; domestic support; export competition; market access (including preference erosion); and cotton-sector issues. In the course of 2007/08, the issue of high food prices was added to this list, with concerns in this area having evolved since then towards a call for targeted initiatives on commodity issues.

On the use of traditional trade policy tools, ACP governments want to retain the policy space to be able to use such policy tools as import licensing and export taxes as an integral part of targeted, sector-specific agricultural development strategies. The focus of these discussions has increasingly shifted to the Economic Partnership Agreement (EPA) context at the level of EU-ACP relations, although the issue of export taxes has also been taken up by the EU in a case against China as part of the WTO dispute settlement process.

'Green box' and 'blue box' support measures in the WTO

Key to understanding the WTO negotiations are the concepts of 'green box' and 'blue box' issues.

Green box:	agricultural subsidies that are government funded and do not involve price support; they need not be reduced or eliminated. (E.g.: payments under environmental programmes.)
Blue box:	subsidies or direct payments to agricultural producers that are part of programmes aimed at limiting agricultural production; these payments do not need to be reduced or eliminated.

On domestic support the ACP group has called for:

- a real and substantial reduction in the use of domestic support that impacts on trade outcomes, including a review and clarification of the green box criteria, in order to ensure no or minimal trade distortion;
- the end of *de minimis* support for developed economies;
- the introduction of disciplines on blue box support at a product-specific level;

On export competition the ACP group has called for:

- a credible end date for the complete elimination of export subsidies;
- arrangements for food aid that accommodate the needs of net food-importing developing countries and food-aid recipients;
- provisions on state trading enterprises that allow ACP governments to continue to use such institutions, given the critical role they can play in addressing food security and poverty issues.

On market access the ACP group has called for:

- the issue of preference erosion to be concretely and comprehensively addressed, through longer tariff phase-downs and the provision of trade-related adjustment support;
- the granting of full duty-free, quota-free (DFQF) access to all OECD and advanced developing country markets;
- full access to the special safeguard mechanism (SSM) through procedures which allow effective protection against import surges;
- all least developed countries (LDCs) to get the 'round for free'.

On cotton issues the ACP has called for:

- the immediate elimination of export subsidies;
- the immediate reduction of production support in the cotton sector and its rapid phasing out;
- complete duty-free access for LDC cotton and cotton products to all OECD markets;
- the establishment of development-assistance programmes for the cotton sector to compensate for losses incurred by the trade-distorting policies pursued by OECD countries in the cotton sector.

On the issue of fluctuating food prices, the ACP has called for specific measures to address instability in commodity prices. The ACP has also fallen in behind calls for the needs of small and vulnerable economies (SVEs) to be fully addressed within all relevant provisions of a Doha Development Round agreement. This constitutes the broad agenda of ACP concerns in the WTO negotiations.

The EU's approach to the WTO agricultural negotiations is based on the process of EU common agricultural policy (CAP) reform and seeks to secure WTO acceptance of those trade policy tools that are central to the reformed CAP (notably decoupled payments). The shifting balance between trade policy tools and financial support instruments within the CAP sets the parameters for the EC position in the Doha Development Round. Critical to the EU position is securing tolerance for EU's interpretation of the 'blue box' and 'green box' concepts (see box above), which provide the WTO cover for the new decoupled forms of EU agricultural support.

Looking beyond the Doha Round negotiations, the EU agenda in the WTO is shifting. For the EU exporters, the main barriers to trade are no longer seen as being tariffs but rather a range of non-tariff barriers and so-called 'behind border' issues. In future the EC wants to see the WTO increasingly addressing issues related to the elimination of non-tariff barriers to trade and 'behind border' barriers to trade. This is an agenda that the EC has been actively pushing within the EPA negotiations with ACP governments.

2 Latest developments

2.1 WTO agricultural negotiations

2.1.1 Progress in 2009/10

The 2008 revised draft modalities consolidated the agreements reached at the July 2008 mini-Ministerial meeting. The document set out the chair's assessment of what might be agreed for cutting tariffs, trade-distorting agricultural subsidies and other agricultural provisions. It proposed:

- an 80% cut in EU trade-distorting support, to around €22 billion, but left green box support unaffected;
- a 75% cut in top-level tariffs of developed economies, but with numerous opt-outs which would mean that 'tariffs on [sensitive] products such as beef, dairy or sugar are likely to remain high';
- that developing countries be allowed to classify up to 5% of tariff lines as special products that would be exempt from any cuts so long as the overall cut for a country's special products was 11%.

Some suggestions were made on how to deal with the special safeguard mechanism (SSM), however this fell far short of a basis for consensus. The text also included 'new flexibilities for net food-importing developing countries and proposed disciplines on export restrictions', as well as a proposal for the phasing out of the 'special agricultural safeguard' over a seven-year period, a measure extensively used by the EU to protect its sugar sector. The text provided no further clarity on the way forward on cotton issues. According to the International Centre for Trade and Sustainable Development (ICTSD), the new draft was 'notable for the number of country-specific exceptions and opt-out clauses', with one developing country observer questioning 'whether it effectively provides special and differential treatment for developing countries'.

While the revised agricultural modalities were 'generally well received', there was a multiplicity of outstanding issues. The EC however maintained that these issues were all 'solvable' if ministers focused on 'the small handful of contentious outstanding points and [decided] if and how middle-ground solutions [could] be found'. This provided the background to efforts to carry the negotiations forward in 2009.

Throughout 2009 the commitment to concluding the negotiation was reiterated, yet despite extensive consultations and exchanges of technical information, a consensus on major outstanding issues proved elusive. Given these difficulties, a proposal was floated in May 2009 to skip the 'modalities' phase of negotiations and move 'directly into scheduling countries' specific commitments on cutting tariffs and reducing subsidy levels'. Developing country governments however were firmly opposed to such a move, fearing that it would leave systemic issues unaddressed (e.g. the trade effects of agricultural support programmes in OECD countries). Partly in response to this debate, WTO Director-General Pascal Lamy issued a call for the adoption of a twin-track approach to concluding the WTO negotiations speedily. He called for a continuation of technical negotiations but proposed that 'members would start some sort of outcome testing', to provide 'greater clarity on the use of flexibilities' and ultimately greater clarity on the 'value of the deal' to individual members.

As part of this twin-track approach, the chair of the agriculture negotiations has convened small group consultations on a set of controversial issues related to market access, including 'the conditions under which members might be allowed to establish new tariff quotas; rules on the 'sensitive' products that importers would be allowed to shield from tariff cuts in exchange for expanded market access through quotas; tariff simplification, and tariff caps'. These discussions followed earlier talks on domestic support 'which focused on production-limiting blue-box payments and on cotton'. While some of the small group discussions yielded results, notably with regard to the banana dispute, concerns have arisen among the broader WTO membership that the outcomes generated by this process can be significantly at variance with collectively agreed texts.

Despite this new approach, given the notable lack of concrete progress that followed it, the focus of the scheduled November/December 2009 WTO Ministerial meeting was re-oriented to look more at systemic issues related to the functioning of the WTO against the background of the global economic slowdown. A commitment however was made to convene a 'stocktaking' meeting in early 2010. Initially this stocktaking exercise was planned as a Ministerial-level meeting, but was subsequently convened at the level of senior officials. On the eve of the stocktaking meeting in March 2010, the ICTSD suggested that the end-of-year deadline for the conclusion of the negotiations '[seemed] to have already slipped out of reach', since it would take nine months from the date of Ministerial approval of the modalities to draw up concrete schedules of tariff reduction commitments.

Addressing the stocktaking meeting, the chair of the agriculture negotiations noted that 'members have not been in a position to substantively resolve matters'. This view was reiterated by Director-General Lamy, who noted an air of 'disappointment' but took solace from an evident commitment to 'weaving all strings of the negotiations into an overall package'. Director-General Lamy noted, in reference to the agricultural negotiations, that the remaining gaps in negotiating positions were now known, leaving scope for 'trade-offs', which, it was argued, would require a mix of technical and political preparations.

2.1.2 Concerns over the benefits of the Doha Round

In the light of the reduced ambition of the Doha Round and the impact of the global economic downturn, questions have been raised about who will be the principal beneficiaries of the Doha Round. WTO and World Bank analysis has highlighted the importance of the round to limiting the scope of protectionism, a view endorsed by Director-General Lamy. As the International Food Policy Research Institute (IFPRI) has pointed out, under the current conditions some governments could double agricultural tariffs 'while remaining within the boundaries of their WTO commitments'. This, it is argued, would result in an 8% contraction in world trade and a global welfare loss of up to US$350 billion. It is this kind of development that the conclusion of the Doha Round could help to prevent. An agreement would also limit the use of export subsidies and constrain the ability of OECD countries to increase domestic support (while of course not actually reducing current levels of actual domestic support).

A contrasting perspective is provided by the November 2009 South Centre policy brief, 'Is development back in the Doha Round?' This analysis argued that currently 'a few large developing countries get the vast majority of developing country gains' with, according to earlier World Bank estimates, 'sub-Saharan Africa and other poor areas being worse off after Doha'. Specifically with reference to the agricultural dimension of the agreement, the South Centre brief argued for:

- the US and Europe to honour WTO rulings on cotton and sugar, in order to deliver tangible benefits to West African and Latin American farmers;
- more attention to be paid to African concerns over 'taming the highly concentrated and volatile global commodities markets';
- greater flexibility for poorer countries to exempt staple foods from tariff cuts to guard against import surges';
- a reassertion of the principle of special and differential treatment;
- a moratorium on north-south preferential trade agreements, since these 'curtail the ability of developing countries to deploy effective policies for development'.

A substantial range of issues would thus appear to need to be addressed if ACP countries are to fully benefit from a Doha Round agreement. Yet, as indicated by the World Bank analysis, there is a body of opinion that argues that 'contentious issues should not be allowed to prevent a deal'. Against this background, ACP governments in various fora sought over the course of 2009 to articulate their concerns clearly.

2.1.3 EU trade policy and the WTO: Developments in 2009

The WTO, in its 2009 review of the EU's trade policy, called on the EU to further liberalise its agricultural sector through a simplification of its agricultural tariff structure and a reduction of applied tariffs (not simply reducing bound tariffs). However from an ACP perspective, any accelerated reduction of agricultural tariffs by the EU would simply serve to accelerate the process of preference erosion, which is a major concern for the ACP. The WTO review expressed concern at the intensified use of export subsidies in response to difficult market conditions created by the global economic slowdown. Some WTO members even went so far as to suggest that the EC's increase in the use of export subsidies was a 'throwback to the past' and a step that sent 'the wrong signal at the worst possible time'. The EC, for its part, sought to highlight the WTO's acknowledgement that CAP reform was creating a more market-oriented system, as well as the WTO's praise for the EU's stance in supporting the multilateral trade system and its efforts to support the integration of developing countries into the world economy.

However some commentators have argued that the WTO has yet to get to grips with the impact of the EU direct-aid payment system on the production decisions of farmers and the consequent trade outcomes. It has even been suggested that in the light of the WTO's appellate body ruling in the US cotton case, the EU's single payment scheme should not be viewed as green box support. It may well be these types of concern, alongside the EU's ongoing use of more traditional trade-distorting policy tools in response to the current economic difficulties, that are contributing to the ongoing impasse in the WTO agricultural negotiations.

Looking to the future of the WTO negotiations, the EC trade commissioner in June 2009 argued that in future, WTO negotiations 'will not involve the classic tariff reduction rounds' but will be 'more relationship centred'. Specifically, 'future gains will come from identifying the non-tariff barriers that stifle trade in goods' and in services. In this context the EC sees WTO negotiations in the future being more about 'tackling non-tariff barriers – regulations, rules and behaviour that stifle trade', rather than the traditional tariff negotiations.

These non-tariff and 'behind border' issues highlighted by the EC trade commissioner in June 2009 reflect the trajectory that has developed within the interim EPA (IEPA) negotiations process. Non-tariff barriers and 'behind border' issues have become the principal point of contention in a number of the IEPAs, highlighting the kind of difficulties that the EC will face when it tries to take up these issues in a WTO context.

2.2 Progress in specific areas of ACP concern

2.2.1 Domestic support: Flexibilities and impacts

The issue of increased flexibility in the use of domestic support by developed countries is a multi-faceted issue. It has taken on increased significance in the past 18 months as the EU has resorted to expanded levels of direct support in an effort to insulate EU farmers from the worst effects of the economic downturn, a course of action wholly consistent with WTO commitments given the level of 'water' (i.e. the difference between current levels of support deployed and the higher WTO limitations on the support that can be made available within WTO rules) in the EU's existing commitments.

Analysis from the ICTSD posted in September 2009 noted that in response to pressure to cut back trade-distorting forms of support, governments have been increasingly shifting their subsidy spending to green box forms of support, which are classified as non-trade distorting and hence subject to no quantitative ceilings. However the paper noted that there is growing evidence that 'green box payments can affect production and trade, harm farmers in developing countries and cause environmental damage'. The paper argued that existing studies suggest that 'green box subsidies encourage agricultural production by creating a guaranteed income stream and a lower perceived income risk for farmers, which raises the potential for overproduction'. It also highlighted the element of 'cross-subsidisation' within the system 'when subsidies on a certain crop indirectly finance losses on another crop or on total production'. This, it was argued, 'creates an exit deterrence effect' such that farmers are 'encouraged to produce what they otherwise would not'. These concerns were brought into sharp focus by the EU decision in January 2010 to authorise a further 500,000 tonnes of out-of-quota sugar exports (see section 2.3.2. for further information).

These views needs to be seen against the background of growing calls in 2009 for 'the green box to be amended so as better to reflect developing countries' concerns', notably the concern that 'green box programmes may be causing more than minimal distortion to production and trade'. Such moves however have been resisted by the EU, US and import-sensitive G-10 members.

It should be noted that there is a considerable divergence of views between the EU and the African Group on green box issues, with the only obvious area of convergence being over the need to allow scope under green box measures for addressing new non-trade concerns. It is against this background that ACP governments are looking for progress in addressing domestic support issues in the WTO agricultural negotiations.

At the March 2010 stocktaking meeting, the chair of the agriculture negotiations made a number of observations on the issue of the flexibilities on domestic support allowed to developed economies. In terms of blue box support, the agriculture negotiations chair argued that 'no further technical preparation is required for the eventual decision to be taken with respect to agreements within the framework of the draft modalities'. The implication was that agreement was only needed on the figures included in the bracketed text (i.e. text where implementation of commitments is suspended until outstanding areas of contention have been resolved). On the issue of the flexibilities granted to developed economies in the treatment of sensitive products, it was noted that Japan and Canada are seeking a ceiling higher than 4% of tariff lines for the limit on the number of products which can be designated 'sensitive products'. It remains unclear whether other members would agree to this, and if so, what payment would be required in terms of expanded tariff-rate quota (TRQ) access.

Significantly, underlying concerns about 'box shifting' (i.e. the movement of public support from one 'box' which faces restrictions under WTO to a 'box' on which no restrictions or more limited restrictions are placed), the production and trade effects of green box payments, and the cumulative effect of different types of subsidies on farmers' production decisions, were not substantively taken up in the March 2010 stocktaking exercise. Securing a consensus on these underlying issues is likely to prove extremely difficult in the current difficult economic circumstances.

2.2.2 Eliminating all forms of export subsidy

The parameters for an agreement on the elimination of export subsidies are in place, provided that this agreement covers all aspects of export support currently used and that this forms part of a wider WTO agreement. While EC Agriculture Commissioner Mariann Fischer Boel had said earlier that she saw no place for export subsidies in the CAP beyond 2013, the consequences of the economic downturn for some products of importance to the EU agricultural sector have been such that the EC has renewed its use of export subsidies. In this context, with pressure increasing for a maintenance of traditional market management tools in a future CAP, it now seems unlikely that the EU will abandon its use of export subsidies outside a wider WTO deal.

2.2.3 Market access: Preference erosion, the SSM, DFQF and the 'round for free'

The debate intensified during 2009 on how to reconcile conflicting proposals on the treatment of 'tropical products' and 'preference erosion' products (e.g. bananas and sugar). In the course of 2009, the World Bank issued a report looking specifically at the issue of preference erosion. It reviewed the current value of preferential access, the implications of preference erosion under different scenarios and the possible policy responses to the challenges faced. Overall, the report highlighted the importance of the EU preferential arrangements to LDCs and certain other developing countries (notably the ACP), with the EU accounting for 40% of Quad countries (the USA, Japan, Canada and EU) trade preferences for developing countries. It noted that while at the aggregate level for all developing countries the losses from preference erosion are outweighed by the trade gains of multilateral liberalisation, 'for a limited number of preference-dependent countries, deep global reforms will have significant costs', with all these developing countries being ACP members (although not all ACP members are equally affected). The worst-affected countries are a limited number of often island economies dependent on a limited range of products, notably sugar and bananas. However the World Bank noted that domestic agricultural reform in the EU and the spread of reciprocal free-trade agreements was also eroding the value of preferences.

In terms of the policy response to preference erosion, the World Bank paper suggested a four-pronged approach:

- addressing the negotiating priorities of preference-dependent countries in other areas of the WTO negotiations, rather than holding back the process of multilateral trade liberalisation;
- the adoption of certain trade-based solutions, such as improving rules of origin, in order to enhance the use of preferences in ways that offset the economic impact of preference erosion;
- the implementation of new preferential market-access arrangements by non-OECD importers;
- 'aid for trade' to help countries with adjustment processes and to exploit remaining and emerging trade opportunities.

At the end of 2009, as part of the banana deal, the EU, ACP and Latin American governments agreed to 'jointly promote' an approach to 'tropical products' and 'preference erosion products' in the ongoing Doha Development Round negotiations. This proposed to defer tariff cuts in 'preference erosion products': instead, 'the EU, the ACP and countries pushing for faster opening of trade in Tropical Products will present plans for these cuts to the WTO'. If agreement is reached as part of a wider WTO deal, then the agreed cuts will be implemented.

Agreement was reached at this time by these parties – the EU, Latin American and ACP governments – on how to draw up a comprehensive list of 'preference erosion products', which would be subject to 'gentler and slower tariff cuts' (phased in over 10 years rather than five). A letter setting out this agreement was sent to WTO Director-General Pascal Lamy and Agriculture Negotiations Chair David Walker on 15 December 2009. Specifically with regard to sugar, the commodity of greatest shared interest across the ACP, the letter proposed to treat sugar either as a 'sensitive' product or as a 'preference erosion' product. If sugar were treated as a sensitive product, tariff reductions and the new TRQs would both be implemented in annual instalments over a seven-year period. If sugar were treated as a preference erosion product, tariffs would be reduced over an eight-year period, with the first two years free from any reduction.

There remains some disagreement on the specific products to be treated as 'preference erosion products'. Beyond bananas and sugar, it has been suggested that products such as flowers, fruits and their juices, arrowroot, peanut oil and tobacco should also be classified as preference erosion products. Some WTO members are reported to be 'irritated' by the products selected for inclusion, 'due to the significant divergence from the December 2008 WTO agriculture modalities'. One official described the 'preference erosion' agreement as 'a plurilateral agreement that needed to be multilateralised'. Equally there is also no agreement on which countries should be designated 'preference-granting country members' and hence be eligible to make use of such provisions. The March 2010 stocktaking exercise provided an opportunity to 'multilateralise' the 'plurilateral' agreement concluded in mid-December 2009, however some members continued to express concern over the impact that the existing agreement could have on their interests. Further technical consultations were therefore held to be necessary.

The nature of the special safeguard mechanism (SSM) for agricultural products to which developing countries should have recourse, particularly its operational effectiveness in addressing the problem of 'import surges and price declines', is an area of particular concern to the ACP. It was this issue of the SSM that nominally led to the 2008 suspension of the WTO negotiations. However, according to analysis posted in the Estey Centre Journal of International Law and Trade Policy, while the application of the SSM in some sectors would lead to 'sizeable additional duties', these are 'not very trade distorting, even when pre-Doha bound rates are breached'. The analysis notes that in many developing countries 'applied and bound tariffs are very similar, which makes it almost impossible not to exceed pre-Doha bound tariffs when the SSM is triggered'. It further notes that 'least developed countries that are not making tariff cuts and have even larger gaps between bound and applied tariffs will gain a lot of policy flexibility with the SSM'. The analysis maintains that ultimately 'the question of whether or not developing countries should be allowed to exceed their pre-Doha bound tariffs depends fundamentally on the product being traded, the extent to which bound tariffs will be cut, and the gap between applied and bound tariffs'. This means that the significance of the SSM for developing countries, including the ACP, will ultimately be determined by the outcome of the hard negotiations which are still ongoing, although it can be argued, given the limited economic consequences of allowing developing countries greater flexibility, that this is one of those areas where 'contentious issues should not be allowed to prevent a deal'.

Addressing the stocktaking meeting in March 2010, the chair of the agriculture negotiations noted that a substantial number of contributions had been received on the technical aspects of the SSM issue, including on the flexibilities to be allowed to small and vulnerable economies (SVEs), seasonality issues, price and volume cross-checks and a solely price-based SSM. This is seen as reflecting the complexity and 'politically charged' nature of this issue. Despite all these submissions, the agricultural chair concluded that further technical discussions were needed in order to move towards a consensus on the SSM.

Regarding the extension of duty-free, quota-free (DFQF) access to LDCs by all OECD and advanced developing countries, this has already been agreed in principle. The main debate is over the extent to which this principle should be qualified. In this context, it should be noted that the exclusion of even a handful of tariff lines, if carefully selected, could largely undermine the benefits of DFQF access.

In terms of LDCs getting the 'round for free' and not being required to make any tariff cuts, this principle had been broadly accepted. However in the case of the EU this principle is simply not applied in the development of bilateral relations with ACP least developed countries. In the (I)EPA context, the EC has insisted that LDCs should fully participate in tariff elimination commitments agreed at a regional level.

2.2.4 Cotton-sector issues

While the special safeguard mechanism (SSM) provisions were the issue that nominally led to the suspension of the WTO negotiations in 2008, many suspected that cotton-sector issues were the real cause and that the US was reluctant to move on this politically sensitive issue in an election year. This was despite the fact that the July 2008 modalities text would have affected only a 'small part of American support', since notified US support 'represents only a small share of their total subsidies'. Analysis posted by the ICTSD in November 2009 exploring the impact of the cotton provisions of the December 2008 revised draft modalities text under six different scenarios, noted that 'reform of cotton subsidies and tariffs in the Doha Round could potentially have significant impacts on price, production and trade patterns and ultimately contribute to economic development in the global south'. However such an outcome depends on the depth of domestic policy reforms adopted by the US and EU: the paper noted that to date, 'unilateral domestic reforms in the EU and US have had limited if any impact on world cotton markets', with decoupling having left EU farmers' production decisions unaffected. The paper concluded that 'The WTO membership must address the urgent need to rebalance existing trade rules that permit developed countries to highly subsidise domestic production, depress world prices, push famers elsewhere out of production and impair prospects for economic development in the developing world. The adoption of ambitious domestic support reforms for cotton would be a significant step towards the establishment of a fair and market-oriented trading system.' This provides the context in which ACP cotton producers are looking for progress in the WTO agricultural negotiations.

In March 2010, at the stocktaking meeting, the agricultural chair noted that the question of cotton subsidies remains controversial, adding that members have failed to contribute any new 'technical or substantive' proposals on the matter.

However there appeared to be some movement on cotton issues in April 2010, with the US and Brazil negotiating an agreement which may avert retaliatory sanctions from Brazil authorised by the WTO in its 2009 ruling on the US-Brazil cotton dispute. This agreement has three components:

- an offer to Brazil of US$147.3 million per year in a 'technical assistance' fund;
- a commitment to making changes to an export credit programme that supports buyers overseas to purchase US cotton;
- a commitment to begin opening up the US market to imports of Brazilian meat products.

2.2.5 The need for provisions on commodity issues

ACP concerns over commodity issues focused at first on high food prices. However this has evolved into a general concern about price volatility in agricultural commodity markets. In general, the issue of commodity price instability is not currently a major focus of discussion in the WTO. The situation of particular commodities, such as cotton, or commodities that fall within the 'preference erosion products' versus 'tropical products' debate, such as bananas and sugar, are the subject of intense discussions. However, these are quite separate issues compared to discussions and actions related to the regulation of commodity markets in general in an era of heightened price instability.

2.2.6 Addressing the needs of small and vulnerable economies

Discussions have continued on the need to address small and vulnerable economies' needs throughout the various provisions of the modalities text. However, since this primarily relates to building flexibilities into a wide range of provisions, progress in this area is contingent on progress towards agreement on the specific provisions where flexibilities need to be built in (e.g. on the application of the special safeguard mechanism in the case of small and vulnerable economies). To date, progress on these issues is being held back by the lack of progress overall.

2.3 Developments in the WTO dispute settlement process

2.3.1 The resolution of the EU-US beef hormone dispute

On 6 May 2009 the EU and the USA reached a provisional agreement to resolve the long-running beef hormone dispute. This agreement established a quota for high-quality traditionally raised (hormone-free) beef, and neatly side-stepped the issue of whether the 'growth-promoting hormone oestridiol-17 is harmful to human health'. A number of beef exporters however have criticised the deal, claiming that it 'would unfairly discriminate against their exports' by creating a quota defined in ways that make it available only to US exporters. The EC has claimed that 'the new TRQ is 'non-discriminatory' and 'open to any country that can meet the requirements', a view endorsed by the US.

2.3.2 The re-emergence of a sugar sector challenge

The EC announcement on 27 January 2010 of its intention to allow the export of a further 500,000 tonnes of out-of-quota sugar in the marketing year to 31 July 2010, above and beyond the 1.35 million tonnes for which export permits had been issued, has reignited the debate about the cross-subsidisation effects of basic EU agricultural support schemes. The Brazilian, Australian and Thai governments have objected to this EU decision, arguing that these exports are *de facto* cross-subsidised and as such are in violation of the WTO's 2005 ruling. Against this background, the Brazilian, Australian and Thai governments are considering the filing of a joint case against the EU at the WTO.

The EC for its part argues that 'the current situation on the world market is exceptional', with world market prices 'currently at record levels, well above the market price for EU quota sugar'. This, it is argued, allows EU out-of-quota sugar to be exported without any need for export subsidies or cross-subsidisation and means that EU exports can take place above the WTO ceiling for export-refund-supported exports 'without violating the EU's WTO subsidy commitments'.

To date, the three governments most concerned, although they have taken the issue to the WTO, are holding back from taking retaliatory action against the EU, preferring to continue negotiations with the European Commission with the aim of resolving the issue. This arises in part from the realisation that the EC is not technically in violation of the WTO panel ruling. It is, however, leading to a questioning by sugar producers in Brazil, Thailand and Australia of the production effects of EU direct-aid payments, which are increasingly seen as sustaining EU sugar production at higher levels than would be the case without these payments. It is further leading to a questioning of the classification of such payments within the green box, despite EC insistence on the WTO consistency of such payments. The 32% decline in raw sugar and 26% decline in white sugar prices that occurred on world sugar markets following the announcement of the additional 500,000 tonnes of EU out-of-quota exports are seen by Brazil, Thai and Australian sugar exporters as illustrative of this underlying reality.

This issue raises the thorny issue of the production and trade effects of EU domestic support programmes, which are currently classified as non-trade-distorting green box measures. This can be seen as major unresolved issue in the WTO negotiations, and one that has profound implications for the ACP, given the intensity of their agricultural trade relationship with the EU.

3 Implications for the ACP

3.1 The domestic support issue

While green box reform remains on the agenda of the Doha negotiations, its focus has been increasingly limited. Restrictions on the use of green box support seem more likely to emerge from the process of panels and litigation within the WTO, rather than the process of negotiations.

The fundamental issue of whether green box measures should be a 'temporary adjustment tool' or should perform a 'permanent function of correcting market failures and delivering public goods' would appear to have a resonance beyond the WTO negotiations. If green box measures are a temporary adjustment tool, then a case can be made for linking the phasing out of the use of trade policy tools (import tariffs, import licensing etc.) by ACP governments to the phasing out of the use of green box measures by the EU, since, given the inability of most ACP governments to finance such green box measures, the equivalent measures are trade policy tools.

3.2 The export subsidies issue

Given the renewed use of export refunds in response to the global economic downturn, ACP governments can make the case not only for excluding such products from tariff elimination commitments, but also for retaining the right to take special safeguard measures against import surges. However, such rights should be asserted independently of the debate on export refunds, since this policy tool is becoming less significant as the gap between EU and world market prices is closed as a result of the implementation of agreed CAP reforms and the medium-term upward pressure on global agricultural commodity prices. Increasingly it is the production effects and consequent trade outcomes of direct-aid payments that are causing concern (e.g. in the sugar sector).

3.3 Market access: Preference erosion, the SSM, DFQF and the 'round for free'

The issue of preference erosion arises not only in the context of a Doha Round agreement, but also as a result of the resolution of WTO trade disputes and the conclusion of bilateral preferential trade arrangements between the EU and a multiplicity of advanced developing countries. These developments are reducing the margins of tariff preference enjoyed by ACP exporters far more rapidly than the stalled WTO negotiations. The most recent case in point is the free-trade area agreement concluded with Colombia and Peru which saw the granting of annual quotas for sugar exports to the EU of 62,000 tonnes and 22,000 tonnes respectively (with a 3% annual increase), and a reduction in the tariff on bananas to €75 per tonne by 2020 (€29 more than in the December 2009 deal to resolve the banana dispute after only a further two years). Similar agreements with Central American countries are envisaged by May 2010 (granting a further 250,000 tonnes of access for sugar exports) and negotiations with the Mercosur group are ongoing, meaning that preference erosion in areas of core interest to the ACP is increasingly taking place outside the WTO context.

This gives added importance to the need for the adoption of a comprehensive approach to preference erosion. While the World Bank has advocated a four-pronged approach to addressing preference erosion, there is little evidence that the development of such an approach is imminent. There is no momentum towards the adoption of preferential rules of origin for preference-dependent economies, and indeed the pressure from the EU is towards the harmonisation of rules of origin across all trade agreements. Equally there is no evidence of an acceleration of the granting of preferential access to preference-dependent economies by other OECD and advanced developing countries. In addition, while bilateral adjustment support is being extended by the EU to ACP countries where exports are subject to preference erosion (i.e. notably in the sugar and banana sectors), there is little evidence that this is being targeted on specific production and trade adjustment measures. These are measures that would, for example, assist ACP suppliers in getting to grips with increasingly strict agricultural product quality standards, or which would strengthen the position of producer organisations within supply chains characterised by acute inequalities in commercial power relations. Against this backdrop, a more joined-up approach would appear to be necessary if ACP concerns over preference erosion are to be addressed.

3.4 Cotton-sector issues

The conclusions of the chair of the agriculture negotiations at the March 2010 stocktaking meeting suggest that a resolution of cotton issues remains as distant as ever, even though members have reiterated their commitment to addressing cotton issues 'ambitiously, expeditiously and specifically'. This is despite suggestions that Ministerial-level consultations 'have been useful in enhancing understanding of respective perspectives'. As noted in the November 2009 ICTSD analysis, the adoption of ambitious domestic support reforms in the cotton sector is an essential prerequisite for ACP cotton producers to be able to gain significant benefits from the Doha Round.

The conclusion of a US-Brazil agreement to avert retaliatory sanctions is unlikely to yield the early harvest sought by ACP countries, since the systemic issue of the production and trade effects of cotton-sector subsidies can only be substantively addressed in the 2012 review of the US Farm Bill. More noteworthy however is the 'buying off' of complainants through a combination of technical assistance and market-access concessions in other areas, as a means of averting further challenge on systemic issues. Such arrangements will largely leave systemic issues of concern to ACP governments unaddressed.

3.5 Commodity issues

While internally in the EU considerable policy attention is now being paid to how best to insulate EU farmers from the worst effects of global price instability, in order not to 'fundamentally undermine the production base', far less attention is being paid to this issue in ACP-EU agricultural relations and at the WTO level. In order for this lacuna to be addressed, the EU could usefully extend its evolving policy on the functioning of food supply chains to the international level. Discussions are currently under way in the EU on a sector-specific basis to determine how best to address 'significant tensions in contractual relations between actors in the chain, stemming from their diversity and differences in bargaining power' and a 'lack of transparency of prices along the food chain'. The adoption of such an approach internationally would appear to be appropriate in those commodities where a handful of multinational companies dominate the global trade and where the scope for abuse of a dominant market position is considerable. Building on the current initiatives taken by the EU in the dairy sector, this could look at matters such as contractual relations, bargaining power and transparency in price formation.

3.6 The needs of small and vulnerable economies

While the lack of progress in the general agricultural negotiations on the details of contentious provisions has held back the elaboration of specific provisions and measures to address the needs of small and vulnerable economies, it should be noted that momentum in a particular area of negotiations need not necessarily lead to the needs of small and vulnerable economies being addressed. This suggests a need for continued vigilance on the part of small and vulnerable economies to make sure that their specific concerns are addressed wherever progress is made in building a consensus around specific provisions.

3.7 The implications of the beef hormone dispute

The resolution of the EU-US beef hormone dispute potentially carries systemic implications, since access to the quota is based on the 'production system' in use. This production system-based approach to defining which producers are eligible for access to the quota could in principle be applied across a wide range of sectors. For example, it could be used to create a special duty-free TRQ for fair-trade bananas, with the system of production used being the defining criterion for securing access to the TRQ. However, given that virtually all ACP countries now enjoy full duty-free, quota-free access to the EU market under either the (I)EPAs or the 'Everything But Arms' initiative, this would benefit exclusively non-ACP suppliers. ACP governments may therefore need to pay close attention to developments of this nature, if such developments are not to add to the process of preference erosion that is under way.

3.8 The implications of the re-emergence of the sugar challenge

Securing acceptance of the non-trade-distorting nature of the EU's green box measures is one of the EU's most important 'red lines' in the Doha Round WTO negotiations. To date the EU has successfully kept any questioning of the production and trade effects of its green box-classified single payment scheme off the negotiating table. However concerns over the market impact of the EU decision to export a further 500,000 tonnes of out-of-quota sugar have once again raised the question of the production and trade effects of the EU's decoupled single payment scheme, a scheme of paramount importance for the underlying trajectory for CAP reform. Against this background, the stark reality faced by the ACP is that in order to avert any challenge at the WTO to green box measures such as the single payment scheme, the EU is likely to progressively extend preferential market-access arrangements to potential complainants. Such a course of developments could serve to exacerbate yet further the process of preference erosion that is under way. This highlights the vital importance of proactively getting to grips with production and trade adjustment challenges in those sectors of ACP economies most profoundly affected by the process of preference erosion.

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agritrade

Launched by CTA (Technical Centre for Agricultural and Rural Cooperation EC-ACP) in 2001, the Agritrade website (http://agritrade.cta.int) is devoted to agricultural trade issues in the context of ACP (Africa, Caribbean and Pacific) – EU (European Union) relations. Its main objective is to better equip ACP stakeholders to deal with multilateral (World Trade Organization - WTO) and bilateral (Economic Partnership Agreement – EPA) negotiations. Thus it provides regular and updated information and analysis on technical aspects of the trade negotiations, developments in the CAP and their implications on ACP-EU trade, as well as on major commodities (bananas, cereals, sugar, fisheries, etc).

CTA was created in 1983 in the framework of the Lomé Convention between ACP (Africa, Caribbean, Pacific) and EU (European Union) countries. Since 2000, the Centre has been operating under the ACP-EU Cotonou Agreement. CTA's tasks are to develop and provide services that improve access to ever-changing information for agricultural and rural development, and to strengthen the capacity of ACP countries to produce, acquire, exchange and use information in this area.

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