7

Future Prospects for ACP Exports to the EU for Agricultural and Horticultural Products Covered by the CAP

Summary

The EU's Common Agricultural Policy (CAP) will continue to provide substantial border protection to EU agriculture for some years to come, despite the outcome of the Uruguay Round of GATT negotiations, and the renewed efforts to secure CAP reform. Thus, the Article 168 tariff concessions of the Lomé Convention, and of the commodity protocols, will continue to provide potential benefits for ACP states for some years to come. Even for fruit and vegetables, the preferential margin is of value, although instances occur in which the GSP concessions for the least-developed developing countries are more generous than those available under Lomé. The concessions contained in the commodity protocols cannot readily be improved: indeed, the challenge for the ACP states is to maintain the value of these concessions despite CAP reform. The Protocol 8 arrangements for sugar appear to be consolidated as one of the EU's 'minimum access' tariff quotas in GATT, and thus it should now be independent of Lomé. Reform of the EU's beef regime is more likely than that for sugar; and for sugar – recognising the 'windfall' characteristics of the present arrangements – the beneficiary states should introduce some form of export tax, the proceeds of which could be reinvested in the economy, to wean their sugar industries away from dependence on unsustainable EU prices.

7.1 Introduction

This chapter is concerned with those agricultural products listed in Annex II to the Treaty of Rome and hence covered by mechanisms of the Common Agricultural Policy (CAP), with the notable exception of bananas. The EU's banana policies, and the ongoing dispute within the WTO, raise such important issues for the ACP states that bananas are considered separately in Chapter 8. Processed food products, not listed in Annex II to the Treaty of Rome, and known as Non-Annex II goods in the EU's jargon, and fish, are discussed in this chapter, as appropriate. However, this chapter does not consider the scheme for the *Stabilization of Export Earnings from Agricultural Commodities* set out in Part Three, Title II, Chapter 1, of the Fourth ACP-EC Convention of Lomé.

This is a long chapter, and some readers may prefer to move directly to Section 7.8 entitled 'Options for Agriculture within a Successor Agreement to Lomé IV'. Sections 7.3 and 7.4 set out background material on the CAP, and speculate on the nature and timing of further CAP reform. Section 7.5 reviews the debate within the EU of the role of the agricultural sector in free trade areas following the conclusion of the Uruguay Round. Section 7.6 examines the existing trade concessions for agricultural products within Lomé IV; whilst Section 7.7 reviews the EU's other concessional trade arrangements involving agriculture, including the EU's Generalised System of Preferences (GSP).

The CAP imposes major distortions on the EU's economy, and throughout the world. The *Agreement on Agriculture* which formed part of the Uruguay Round package will not, fundamentally, change the CAP, but there are some indications that further reform will sooner or later be triggered by budgetary and other pressures (including enlargement to embrace several states from Eastern and Central Europe, and the prospect of a further round of GATT negotiations

beginning in 1999). This poses a major dilemma for the ACP states. It is because the *present* CAP so distorts international trade that agricultural trade concessions – such as those included in the GSP and in Lomé, in particular the sugar protocol – remain of *potential* value to the recipients. We emphasised the word 'potential' because we should stress that, whilst such concessions may offer obvious short-term commercial advantages, it does not necessarily follow that this is in accord with the longer-term development interests of the recipient country.

Taking parasitic advantage of the present CAP is one thing. Adopting the CAP would be quite another, and yet the new WTO disciplines on free trade areas seem to imply that a free trade area (or areas) between the EU and the ACP would have to include all sectors of the economy. The inclusion of agriculture in its entirety, given the present unreformed CAP, would – in our view – necessarily involve the adoption of the CAP, or similar trade mechanisms, by the ACP. We cannot believe that this would be in the economic interests of the ACP states concerned.

Accordingly Section 7.8 presupposes that the ACP will be seeking further preferential access arrangements for agricultural products, in: (i) a revised Lomé Convention, (ii) an expanded GSP, or (iii) a free trade area agreement which excludes the bulk of CAP products.

7.2 The ACP's Trade with the EU

The EU is a major player in world agricultural markets. According to the European Commission's calculations, in the early 1990s the EU of twelve member states (prior to the accession of Austria, Finland and Sweden) accounted for about 22% of world agricultural imports, and about 15% of world agricultural exports (excluding intra-Community trade) (calculated from European Commission, 1996, Table 3.6.1). As such a major player in world markets, it is bound to have an impact on both the level of world market prices, and the degree of world market price stability. Its imports, as recorded by value in Table 7.1, are heavily influenced by tropical products which could not readily be produced in the EU, by products such as timber that are not subject to the CAP, and by concessionary imports under either GATT/WTO tariff quotas, or under other preferential access arrangements. Competitive imports of CAP products under the normal trade regime (the most-favoured-nation [mfn] tariff rate) are rare. Agricultural imports, as defined by the SITC codes listed in Table 7.1, accounted for 11.6% of the EU-12's imports by value in the period 1992-1994.

As Table 7.1 shows, the ACP states (together with the overseas territories of the member states) supplied 3.6% of the EU-12's total imports in the same period, but by contrast some 12.3% of the EU-12's agricultural imports. Thus the agricultural products listed in Table 7.1 accounted for 39.6% of the ACP's exports to the EU-12 in 1992-94. Clearly the agricultural sector represents a major component of the ACP's trade with the EU. As many agricultural products continue to experience excessively high degrees of border protection in the EU, the potential importance of the agricultural trade concessions to the ACP states is clear. It should perhaps also be noted that the rules of origin of the Lomé Convention can more readily be met by agricultural products than might be the case with manufactured goods, thus reinforcing the importance of the agricultural concessions in the Convention. The rules of origin on fish can nonetheless be difficult to meet, and we are advised that there is scope for rationalising the rules of origin for fish caught in ACP waters.

However, the overall aggregates reported in Table 7.1 can be misleading because, as already noted, of its inclusion of timber and of a range of tropical products that could not readily be produced in the European regions of the EU. Fish is also a significant component of the total. Of the range of products covered by the CAP, the most important export revenues earned for the ACP states are generated by fruit and vegetables (influenced strongly by the banana protocol), sugar and honey (influenced strongly by the sugar protocol)

Table 7.1 **EU-12's Agricultural Imports from the ACP States (together with the Overseas Territories of the Member States) and the World Market, by Value (Million Ecu), Annual Average 1992-1994**

SITC code	Product	World	ACP	ACP as % of World
00	Live animals	608	11	1.8
01	Meat	2,914	144	5.0
02	Milk and Eggs	720	4	0.6
03	Fish	6,941	950	13.7
04	Cereals	1,287	88	6.8
05	Fruit and vegetables	11,033	801	7.3
06	Sugar and honey	1,462	760	52.0
07	Coffee, cocoa, tea, spices	5,103	2,113	41.4
08	Animal feed	4,733	59	1.3
09	Food products	548	2	0.4
11	Beverages	1,007	144	14.3
12	Tobacco	2,406	301	12.5
21	Hides	884	44	5.0
22	Oilseeds	3,792	53	1.4
231	Natural rubber	682	130	19.1
24	Timber and cork	7,339	919	12.5
261 to 265 & 268	Natural textile fibres	2,968	238	8.0
29	Agricultural raw materials	2,108	202	9.6
4	Oils and fats	1,935	219	11.3
592.11	Starches, inuline			
592.12	Gluten	4	0	0.0
	TOTAL	**58,472**	**7,186**	**12.3**
	Imports of all products	**504,391**	**18,157**	**3.6**
	Agriculture as % of all imports	**11.6**	**39.6**	

Source: computed from European Commission, 1996, Tables 3.6.2 and 3.6.12.

and tobacco. For sugar and honey, the ACP accounted for 52% by value of the EU-12's imports.

7.3 The 'Old' CAP

The 'old' CAP has been amply documented elsewhere (see for example: Harris, Swinbank & Wilkinson, 1983; Ritson, 1978; BAE, 1985). Although differences existed between products, the CAP was characterised by a managed market system that ensured that EU prices were sustained well above world market levels. Imports were subject to variable import levies (cereals and rice, sugar, olive oil, milk and milk products, eggs and poultry, pigmeat, beef and veal), minimum import price regimes (some fruit and vegetables, wine) and voluntary export restraint agreements (manioc, sheepmeat). Where imports were relatively free and simply controlled by conventional customs duties (oilseeds, tobacco, some fruit and vegetables) EU production was nonetheless encouraged as a consequence of direct exchequer support to farmers. Export subsidies (known as refunds in the EU's jargon) were used to dump unwanted surpluses on world markets. Furthermore, surpluses could be bought-up (intervention) by the EU's authorities to accumulate in intervention stores, or were destroyed. Fruit and vegetables were often

destroyed and surplus wine distilled into unsaleable ethyl alcohol.

As a result of these policies the cost to the EU's budget was excessive; EU consumers paid unnecessarily high prices for food; environmental degradation was encouraged and world market prices were both much more unstable, and lower, than they would have been in the absence of the policy. Overseas suppliers were squeezed out of the EU market (and in particular suffered from trade diversion following the successive enlargements of the Community), and found that EU traders captured market share elsewhere in the world at their expense, funded by EU subsidies.

Non-Annex II goods

The Treaty of Rome specifies that the CAP shall extend to the products listed in Annex II to the Treaty. In Annex II will be found listed the main agricultural products and their first-stage processing equivalents (butter as well as milk; flour as well as cereals; white sugar as well as sugar beet and sugar cane; wine as well as grapes, for example). However, the list does not extend further down the food chain to embrace the products of the second-stage processing industries. Thus, Annex II to the Treaty of Rome does not list lemonade, pasta, or milk-chocolate bars for example, even though these products contain sugar, durum wheat, and milk, respectively. The CAP significantly increases the raw material costs of these industries, and they could not compete with imports (or sell in world markets) unless the sugar, cereal and milk components of second-stage processed products received a similar degree of protection to that afforded the basic raw materials. Thus, parallel to the CAP was developed a comparable trade regime (involving variable import levies and export refunds) for the Non-Annex II goods that made use of cereals, sugar and milk in their manufacture. These are mainly processed food products, but other industrial sectors are also involved (notably pharmaceuticals based on sugar). Regulation 3448/93 (*Official Journal of the European Communities*, 1993), as amended, sets out the arrangements. Under the old CAP the import taxes on such Non-Annex II goods were in two parts: a *fixed* component providing a degree of protection to the processing industry (usually in the form of an *ad valorem* customs duty) and a *variable* (*or agricultural*) component reflecting the variable import levies that would have been charged on the CAP raw materials had they been imported into the EU. Further details can be found in Harris & Swinbank (1997), or Noble (1995).

7.4 The 'New' CAP

The 'old' CAP was the subject of much criticism both from within the EU, and from its trading partners. However, apart from some piece meal reforms induced by budgetary pressures (the introduction in 1984 of physical controls – quotas – on the volume of milk produced, for example) little was done to curb the CAP's excesses, despite the fact that during the 1980s the level of guaranteed prices fell in real terms. In the 1990s, however, significant policy changes were introduced.

In 1986, together with the other GATT signatories, the EU embarked upon the Uruguay Round of GATT negotiations, which was finally concluded in Geneva in December 1993. An important component of those negotiations was the quest to liberalise world trade in agricultural and food products. Elsewhere, Swinbank & Tanner (1996) have argued that this prompted the EU's Mac Sharry reforms of 1992. The *Agreement on Agriculture* which emerged from the Uruguay Round discussions is being progressively applied to the CAP over the period 1995-2000.

These changes amount to a limited, but important, reform of the CAP, and are only the first steps in a long-term, progressive, and radical reform of policy. The European Commission (1995, p. 20) itself has commented: 'Now that the 1992 reforms and the Uruguay Round Agreement are being implemented, the time has come to draw the lessons from the past and to start an in-depth reflection on how the CAP can

be made fit for the first decades of the 21st century'.

Specifically, the concerns driving the current reform debate are:

- concern that a further expansion of the EU to embrace up to ten states from Central and Eastern Europe (and Cyprus) would be impossible with the present CAP given the GATT constraints already entered into, and the budgetary impact of applying the CAP in these new member states;
- renewed concern about the budgetary impact of the CAP, which was bound to emerge during the course of the latter 1990s, but which was reinforced in 1996 by the budgetary costs of the BSE crisis, and the concerns of some member states (notably Germany and France) to cut their public sector borrowing requirements in order to meet the convergence criteria, set by the Maastricht Treaty, for Economic and Monetary Union; and
- the need to begin a new, mini Round of GATT negotiations in 1999, as provided for in the *Agreement on Agriculture*, in the context of a changed world environment, notably the adoption by the USA of its *Federal Agricultural Improvement and Reform (FAIR) Act* of 1996 (see MAFF, 1996, for details).

Thus the CAP of the early 21st century may well differ significantly from the CAP of 1996, and this must be borne in mind in preparing for negotiations for a successor agreement to Lomé IV.

The Mac Sharry reforms

In May 1992, following proposals from the then Commissioner for Agriculture, Ray Mac Sharry, the European Council adopted a series of changes to the CAP which have become known as the Mac Sharry reforms (for further details see Swinbank, 1993). The main change was a switch in support from consumers to taxpayers, which is often seen as a precursor for the further reforms expected in the late 1990s. This view was, for example, largely endorsed by the Commission's *Agricultural Strategy Paper* of 1995 (Commission, 1995a, p36).

The main change in 1992 concerned cereals. Support prices were reduced by about 30%, and in return farmers became eligible for area compensation payments: that is a payment for each hectare of cereals grown, with the level of payment per hectare varying on a regional basis, reflecting average yields in the region in question in a period prior to the reforms. To qualify for the compensation payments, farmers claiming area payments on more than a small hectarage had to set-aside (i.e. not crop) a specified percentage of their arable land. The set-aside requirement was initially set at 15%.[7] However, the basic mechanisms of supporting the EU market price for cereals (variable import levies, intervention buying, export refunds) remained in place. With a dual system of support, and the new control mechanisms to ensure that area compensation payments (on land sown to cereals and land set-aside) were not fraudulently claimed, the new policy was more complex than the old.

Nonetheless, support had been switched from consumers to taxpayers, and a precedent set for further CAP reform. Despite this, the new policy contained the seeds of its own destruction. First, the new policy mechanisms were much more transparent than the old, and thus taxpayers could more readily monitor, and criticise, the cost of the policy, and the 'unfairness' of large landowners/farmers receiving significant subsidies from the public purse. Second, bowing to political pressure from the powerful farm lobby, Mac Sharry's initial suggestion that payments should be 'modulated' was rejected. Modulation referred to the concept of compensating small farmers in full, but larger farmers in part, for the

7 Reduced to a derisory 5% for the 1996/97 crop year, in response to the tight world market conditions.

price cuts. This meant that the cost to the budget of the new policy was intrinsically much greater than that of the policy it displaced. Third, although introduced as compensation for cuts in support prices, the area payments were in fact made a permanent feature of the CAP, payable to any farmer who in the future happened to grow cereals. The predicted cost of extending this scheme to farmers in Central and Eastern Europe is a major factor leading to the unease about these states acceding to an EU with an unreformed CAP.

Fourth, the EU institutions failed to predict that world market prices would soar. Area compensation payments were fixed in advance in 1992 regardless of future market price developments. Although the EU applied export taxes on cereals in 1996, European farmers nonetheless enjoyed a bonanza on their 1995 and 1996 cereal crops as they benefited from high market prices and area payments which had been premised on significant price falls within the EU. Thus, in July 1996, the European Commission proposed a 7% cut in area payments on cereals, and a 27% cut in area payments on set-aside land, for 1997, ostensibly to meet the budgetary costs of the soaring intervention stocks of beef following the BSE scare (see *Inside Track*, August/September 1996, p.1). The Commission repeated this request in the context of the 1997/98 farm price review, but it was rejected by the Council (*Agra Europe*, 27 June 1997, p. E/1).

For oilseeds, except olives, and protein crops, similar area-based subsidy schemes linked to a set-aside requirement were applied. Changes to the rice regime, modelled on the Mac Sharry reforms of the cereals sector, followed in 1996. Sugar was not the subject of a reform proposal, and indeed in 1995 the existing sugar regime, involving high guaranteed prices and a form of quota mechanism, was – in all its key features – rolled forward for a further six-year term (European Commission, 1996, p.67).

Support prices for beef were cut, and instead, more taxpayer support was focused on a number of annual subsidy payments on eligible animals. These 'headage payments' on beef animals and suckler cows, and similar headage payments for sheep, were limited by various quota mechanisms. Milk quotas were rolled forward to the year 2000, but with no significant changes to milk policy, even though the Commission had proposed price cuts compensated by headage payments for grass-fed dairy cows, and quota cuts compensated by direct income payments attached to a transferable bond (for further details see Swinbank, 1997). The debate over the future form of EU milk policy, post-2000, has begun; and one idea being canvassed is that the current system of price support and quotas should be replaced by headage payments (for a discussion, see House of Commons, Agriculture Committee, 1996).

Support to tobacco producers was limited by quota, and the provisions for intervention buying and the granting of export subsidies were repealed. Reforms of the fruit and vegetables regime, and the wine policy, were deferred until a later date.

The GATT Uruguay Round and the Agreement on Agriculture

The second set of policy changes prompting the designation 'The New CAP' stem from the implementation of the Uruguay Round *Agreement on Agriculture*. For developed countries, the main elements of the Agreement are as follows:

- the overall level of support (as measured by an Aggregate Measurement of Support (AMS) is to be reduced by 20% over the six-year implementation period (1995-2000). However, various subsidy schemes deemed to be production neutral, including the EU's area and headage payments introduced by the Mac Sharry reforms, are excluded from the AMS calculations;
- all non-tariff barriers, including minimum import price regimes and the EU's variable import levy mechanism were to be converted into tariffs (tariffication) and

then, over the six-year implementation period, import tariffs are to be reduced by 36% on average (with a minimum reduction per tariff line of 15%). Where imports represented less than 5% of domestic consumption in the reference period, tariff quotas will apply to enable imports to capture up to 5% of the domestic market; and existing access arrangements under tariff quotas are to be retained (the minimum and current access provisions respectively).[8] When tariffication has been applied, Special Safeguard Provisions can be invoked if either imports are presented at prices that fall below an historic norm, or if an import surge is experienced;

- for each major product grouping, the level of expenditure on export subsidies must be reduced by 36%, and the volume of subsidised exports by 21%, over the implementation period; and
- a new, mini Round of GATT negotiations is due to begin in 1999 to continue the reform process, and in the meantime a Peace Clause (valid until 2004) protects countries from challenge in the WTO, provided they adhere to the terms of the Agreement.

In addition to the *Agreement on Agriculture*, an *Agreement on the Application of Sanitary and Phytosanitary Regulations*, and the strengthened disputes settlements procedures of the new World Trade Organization (WTO), will impact upon the CAP and other agricultural policies around the world.

The detail of the EU's implementation of these constraints is complex and their future impact on the CAP, and the prospects of third country suppliers in the EU market, uncertain (for discussion see Swinbank, 1996, or Tangermann, 1996). However, most commentators are agreed that the likely impact on the CAP up until the year 2000 will be limited.

The requirement to reduce the EU's AMS by 20% will have no impact upon the CAP, as this reduction has already been secured as a result of the Mac Sharry reforms. However, in the context of an EU Enlargement to embrace states from Central and Eastern Europe, this constraint would have more force, as would a further requirement to cut the AMS, post-2000, as a result of a successor Agreement to the present *Agreement on Agriculture*.

Tariffication was introduced into the CAP in July 1995. Thus the variable import levies so characteristic of the 'old' CAP have disappeared, and in their place *specific* customs duties have appeared.[9] Thus, for example, the variable import levy on white sugar, which had averaged 542 ecu/tonne in the base period 1986-88, was converted into a tariff equivalent of 524 ecu/tonne; and this in turn is being reduced by 20% in six equal annual steps to a new 'bound' rate of 419 ecu/tonne in the year 2000. For most products, however, there is so much 'water' in the tariff (that is, they have been set at such prohibitively high levels) that, in combination with the Special Safeguard Provisions, commercial imports paying the full mfn tariff rate cannot readily be envisaged. Thus tariff preferences will continue to play an important role.

Despite tariffication, the EU has maintained a minimum import price system for certain fresh fruits and vegetables, and wine, which can still act as a potent trade barrier (see Swinbank &

8 The GATT rules do not allow imports to be physically restricted by quotas; but they do permit tariff quotas. A tariff quota allows a certain volume of imports to be imported at a reduced duty, with quantities in excess of this volume paying the full mfn rate. Of course, the full mfn rate may be prohibitively high, in which case a GATT-legal tariff quota is equivalent to a GATT-illegal quota. Tariff quotas are applied both as part of the GATT Agreement, in which case they must conform with GATT rules, and within preferential trade agreements.

9 The words 'duty' and 'tariff' are used interchangeably, as are the phrases 'import duty/tariff' and 'customs duty/tariff'. Tariffs are acceptable to GATT, and following the Uruguay Round Agreement most GATT signatories have entered into GATT tariff bindings on the full range of agricultural products. A variable import levy is, however, a very different form of border protection, often known as a non-tariff-barrier. As a result of tariffication, variable import levies are now outlawed.

Ritson, 1995, for details). Furthermore, as requested by the USA, the EU applies a maximum tariff rate on cereals and rice which in effect re-invents a variable import levy mechanism (see Swinbank, 1996, p.399; or Yap, 1996, p.385, for further details).

The current access provisions consolidate earlier tariff quota concessions granted in GATT negotiations, and some other access arrangements such as manioc from Thailand and Indonesia, and butter and sheepmeat from New Zealand. Tariff quotas granted the Mediterranean states, and – with one notable exception – the ACP states are not listed. Thus, although the EU's schedule of commitments in GATT does include several tariff quotas for beef and veal, it does not include the ACP quantities listed in Protocol 7 of the Lomé Convention (and discussed below). The EU has, however, declared as part of its GATT commitment a tariff quota covering the quantities of ACP sugar provided for in Protocol 8 of the Lomé Convention. Thus, in our view, this tariff quota for ACP sugar now has a legal existence within GATT/WTO independent of the Lomé Convention (but see the arguments outlined in greater detail below). Quite why ACP sugar is in, and ACP beef is out, is unclear: but one might note that the inclusion of ACP sugar as a GATT tariff quota enabled the EU to avoid the necessity of opening new minimum access tariff quotas for sugar, as it could claim that the minimum 5% market access provision was being met.

It has been suggested that the country-specific tariff quotas, listed by the EU in its schedule of commitments signed in Marrakesh on the conclusion of the GATT Round, could still be challenged in the WTO as being inconsistent with the general mfn rules that form the basis of the GATT Agreement. However, this would open up a can of worms, for the country-specific tariff quotas relate not only to ACP sugar, but to many other products and countries, for example to butter from New Zealand. Furthermore, the *modalities* document which sets out guidelines for implementing the *Agreement on Agriculture* – a document which is not to be used as a basis for dispute settlement proceedings – whilst specifying that 'Current access opportunities on terms at least equivalent to those existing shall be maintained as part of the tariffication process,' and that any increase in current access opportunities is to 'be provided on an mfn. basis,' does not specifically forbid country-specific current access tariff quotas (GATT, 1993, p.9).

The EU's new minimum access tariff quotas relate mainly to livestock products, and in large part have already been allocated to states of Central and Eastern Europe in the context of the Europe Agreements. There are no obvious opportunities for ACP products.

The main constraints that the *Agreement on Agriculture* imposes on the CAP, at least up until the year 2000 and prior to the next Enlargement, are those relating to subsidised exports. Particular concern has been expressed by EU farm interests over the impact on cereals where – if world market prices subside, and the EU resumes its subsidy programme – further cut-backs in production (i.e. set-aside) are premised. Milk quotas may also have to be cut, and the volume of white sugar benefiting from CAP support may have to be reduced (by reduction of the A and/or B quota). However, these adjustments could be made without lowering support prices in the EU, or opening-up the EU market to competitively priced imports.

Fruit and vegetables

The products subject to the EU's new entry price system, introduced in 1995 as a result of the GATT Agreement, are listed in Table 7.2. In the main, the list, and the periods of applicability, are derived from the earlier minimum import price system applied by the EU (known as reference prices). However, cabbage, lettuce, endives (chicory), and aubergines are no longer protected by a minimum import price system. On the other hand, for tomatoes, cucumbers and courgettes, the earlier reference price system was not operative throughout the year, whereas the new system is, which has considerably increased the protective effect of the new mechanism.

Table 7.2 **Products for which Entry Prices are Fixed**

Product	Period of Applicability
Apples	All year
Pears	1 July – 30 April
Peaches (including nectarines)	11 June – 30 September
Plums	11 June – 30 September
Cherries	21 May – 10 August
Apricots	1 June – 31 July
Sweet oranges	1 December – 31 May
Mandarins (and other hybrids)	All year
Lemons	All year
Table grapes	21 July – 20 November
Tomatoes	All year
Cucumbers	All year
Courgettes	All year
Artichokes	1 November – 30 June

In the main, the level at which the new entry prices have been set reflects the level of reference prices applicable in the GATT reference period 1986-88. However, for complex reasons explained in Swinbank & Ritson (1995, p.349), the new entry price for sweet oranges was fixed at a level 35% higher than the reference price it replaced. These new minimum import prices for sweet oranges were first applied on 1 December 1995, and caused a storm of protest in the UK because they impacted upon the fresh orange juice market based upon imports of late Valencia oranges sourced in countries such as Cuba, Jamaica and South Africa (*Financial Times*, 12 January 1996). This prompted the EU to reduce the entry price on a 12,000 tonne tariff quota imported between 1 December and 31 March (CIMO, 1995, p.6). Similarly, reductions have since been agreed for cucumbers for processing, and sour cherries (CIMO, 1996, p.10).

When the entry price mechanism is being applied, each consignment of imports has to respect the entry price. Failure to do so triggers the application of an additional import tax, which rapidly escalates to a prohibitive level. Understandably, when the system was first applied to tomatoes on 1 January 1995 – a period of the year when the old reference price system for tomatoes did not apply – the EU's main supplier at that time of the year (Morocco) protested vigorously. Partly as a result of Moroccan protests, in the new Euro-Mediterranean Agreement between the EU and Morocco, the EU agreed to reduce the entry price on tomatoes originating in Morocco, within tariff quotas and delivery calendars. Morocco also benefits from reduced entry prices on artichokes, cucumbers, clementines and oranges; and Israel from reduced entry prices on oranges (CIMO, 1995, p.6). It seems likely that as the Euro-Mediterranean Agreements (discussed in Section 7.7) are revised, other Mediterranean states will be offered similar concessions on these entry price products. Preferential entry prices have also been determined for some products from Central and Eastern Europe.

To illustrate the complexity of the situation, it might be noted that the full mfn treatment for tomatoes imported into the EU in January 1996 was a minimum entry price of 895 ecu/tonne, and an import tariff of 8.8%. Some countries would have been entitled to supply the EU without paying an import tax, but within tariff quota constraints, provided the entry price had been respected. Morocco, however, had to respect an entry price of 500 ecu/tonne, and had duty-free access, within tariff quotas. Thus the minimum landed price that a non-preferred country could supply the EU with tomatoes in January 1996 was almost twice that of Morocco.

Moreover, from 1 September 1996, the EU has applied the Special Safeguard Clause, provided for in the GATT Agreement, to fruit and vegetables. For 1996-97 eight products are subject to the system. Imports are subject to import licences, and where the volume of imports exceeds the trigger levels indicated below an additional import duty (33% of the mfn rate) is applied.

The products involved are:

tomatoes	565 tonnes 59,923 tonnes	September 1996 1 October to 31 December 1996 – except tomatoes from Morocco
cucumbers	7,808 tonnes	1 September to 31 October 1996
oranges	598,202 tonnes	1 December 1996 to 31 May 1997
clementines	243,851 tonnes	1 Nov 1996 to 28 February 1997
mandarins	90,504 tonnes	1 Nov 1996 to 28 February 1997
lemons	89,313 tonnes 175,189 tonnes	1 September to 31 December 1996 1 January to 31 May 1997
apples	1,254,523 tonnes 1,746,872 tonnes 1,559,722 tonnes	1 September to 31 December 1996 1 January to 31 March 1997 1 April to 30 June 1997
pears	669,866 tonnes 524,006 tonnes	1 September to 31 December 1996 1 January to 30 April 1997

(Regulations 15555/96, 1556/96 and 1557/96, *Official Journal of the European Communities* L193).

Cereals and rice

Figure 7.1 is a schematic representation of the support arrangements for cereals following the Mac Sharry reforms of 1992 and the implementation of the GATT Agreement in 1995. Similar arrangements apply to rice (see also Yap, 1996, p.386).

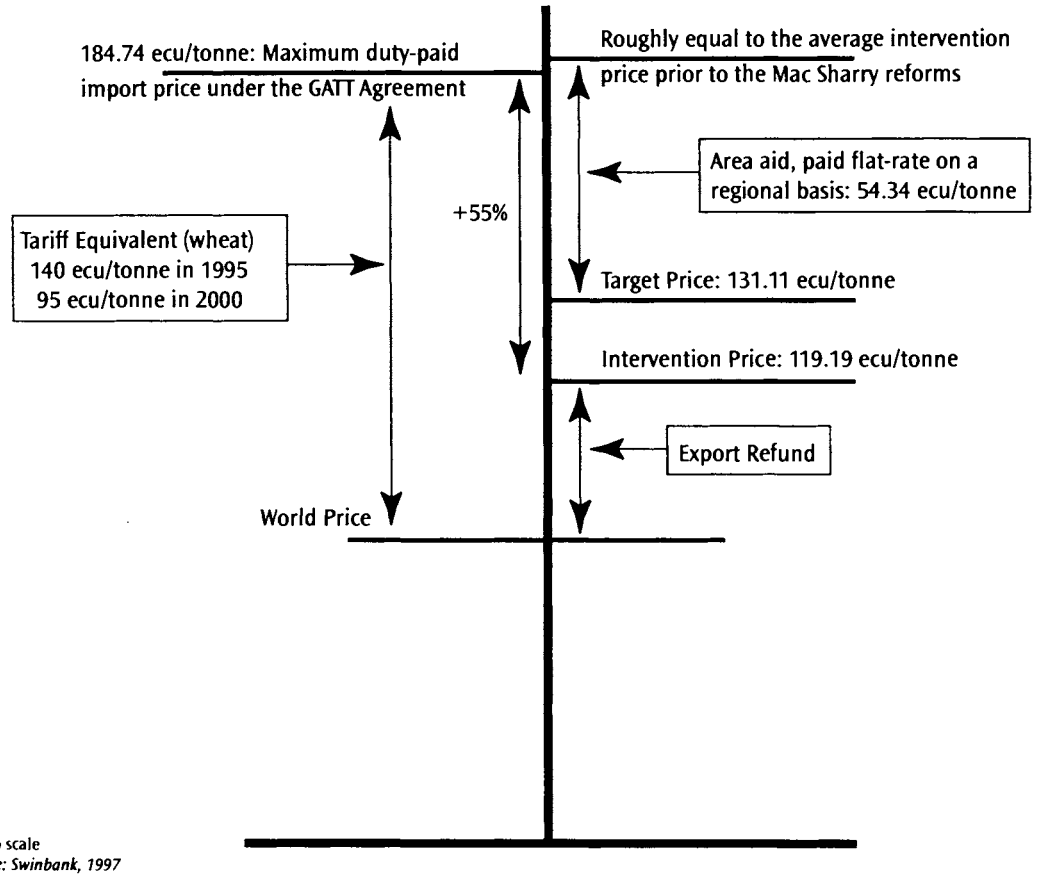
The intervention price for cereals at the beginning of the marketing year is 119.19 ecu/tonne. Farmers also eligible for an area payment, which is currently determined on the basis of the historic yield (in tonnes per hectare) of the region in which the farm is situated, multiplied by 54.34 ecu/tonne. If, on a particular farm, the area on which area payments is being claimed exceeds a specified maximum, then a specified percentage of that farm's arable land must be set-aside before payments are made (though the set-aside land also qualifies for area payments).

Tariffication has resulted in the variable import levy on wheat being converted into a tariff equivalent of 149 ecu/tonne. This was reduced to 140 ecu/tonne on 1 July 1995, and – following full implementation of the Agreement – the new tariff will be bound at 95 ecu/tonne on 1 July 2000. However, tariffication was computed on the basis of price gaps (between EU support prices, and world prices) existing in the base period 1986-88, prior to the Mac Sharry reforms. The Mac Sharry reforms considerably reduced the EU's support levels: thus the new tariffs are far too high. One approach to this problem would have been to reduce the new tariffs by the amount that cereal prices were reduced by the Mac Sharry reforms (i.e. by 54 ecu/tonne). Instead, the USA insisted that the EU agree to a formula under which the EU applies an import duty 'at a level and in a manner so that the duty-paid import price for such cereals will not be greater than the effective intervention price...increased by 55%'. The cereals covered by this undertaking are wheat (CCT heading ex 1001), rye (1002), barley (1003), maize excluding hybrid seed (ex 1005), and sorghum except hybrids for sowing (ex 1007). Thus the commitment does not cover oats (1004) or buckwheat, millet, canary seed and other cereals (1008). For millet a base period tariff equivalent of 87 ecu/tonne will be reduced by 36% over the six-year implementation period, to 56 ecu/tonne in 2000. For canary seed the reduction is from 22 to 14 ecu/tonne.

In an attempt to meet the requirement that the import charge on cereals should not result in the duty-paid import price exceeding the effective intervention price plus 55%, the EU determines an import duty on each of six categories of cereals on a fortnightly basis. In effect, and despite tariffication, the variable import levy has been reinvented (for details, see Swinbank, 1997). High world market prices have ensured that the tariffs actually paid on cereal imports into the EU have been significantly reduced (often to zero) in the period since tariffication; and indeed the EU has applied export taxes.

A similar commitment to limit the import

Figure 7.1 **Price Support for Cereals from July 1995**



charge actually applied also exists for rice. Here the EU's undertaking with respect to hushed rice falling within subheading 1006 20 55 is 'to apply a duty at a level and in a manner so that the duty-paid import price will not be greater than the effective intervention price...increased by 88% for Japonica rice, and 80% for Indica rice;' with parallel commitments for milled rice (for details see Yap, 1996). For both cereals and rice, the EU's trading partners have claimed that the reference price system used to determine the import charge to be applied is inappropriate. At the meeting of the WTO's Dispute Settlement Body on 25 February 1997, the USA said that 'it remained very concerned with the reference price system in the European Communities for imports of grain, adding that it was at a loss on how this system could be consistent with the EC's tariff bindings under the WTO;' and requested the establishment of a panel (*WTO Focus*, No 16, February 1997, p.7).

Sugar

As noted above, in May 1995 the existing sugar regime was rolled forward to the year 2001 with relatively few changes. Quite what will happen to EU sugar policy after that date is an open question on which we will speculate later. For the moment, the policy is characterised by high market prices buttressed by significant taxes on imports and an aggressive export subsidy programme. Furthermore, although the EU produces more than enough sugar to meet its domestic consumption requirements, it has complex preferential import arrangements for raw cane sugar which are particularly important for some ACP countries.

The EU's support for sugar is constrained by

quota. Quota A and B production can be freely sold within the EU, and benefit from the EU's support mechanisms (with the net price for quota B sugar being somewhat lower than that for quota A sugar), whilst C sugar has to be exported from the EU without subsidy. For 1996/97 the EU's A and B quotas total 14,592,000 tonnes of white sugar, whilst domestic consumption amounts to between 12 and 13 million tonnes.[10] EU exports of C sugar were as high as 2.9 million tonnes in 1993/94, but fell to 1.6 million tonnes in 1995/96.

The EU's intervention price for white sugar in 1996/97 is 631.9 ecu per tonne, but taking into account the storage levy that processors are obliged to pay, the effective support price on the EU market is 656.9 ecu per tonne, for bulk white sugar ex-factory. The costs of storing white sugar are reimbursed from funds generated by the storage levy, and hence the EU's massive oversupply of white sugar does not manifest itself in intervention stocks, but in private stores.

Under tariffication, the EU's base duty rate was set at 524 ecu per tonne, and this is being reduced by 20% in six annual steps to reach 419 ecu/tonne in the year 2000. It will be noted that, in the year 2000, the GATT-approved import charge will still amount to 66% of the current support price for sugar. However, even this understates the protection afforded EU sugar producers, for the safeguards clause permits the EU to charge an additional import tax if, on a consignment basis, the import price falls below the EU's average import price for the 1986-88 base period. The EU has, legitimately, declared a trigger price of 531 ecu/tonne,[11] reflecting the fact that in the base period the EU's imports were almost exclusively made up of preferential imports from the ACP states under the terms of the Lomé Convention (for further details, see Swinbank, 1996, p.399).

Thus, imports of sugar at the mfn tariff rates are most unlikely. However, the EU does import raw cane sugar for processing in its sugar refineries. First, there is a GATT tariff quota for 1,304,700 tonnes (white sugar equivalent), of which 10 thousand tonnes is allocated to India and the remainder to the ACP states in accordance with the provisions of Protocol 8 of the Lomé Convention (discussed below). In EU jargon, this sugar is now known as preferential sugar. It enters duty-free, but EU refiners must pay a specified minimum price for these imports, related to the EU support price for white sugar. Historically, these quantities were processed in the UK and France.

Second, the entry of Portugal into the EU in 1986 (and of Finland in 1995) meant that their sugar-cane processing industries would have been disrupted unless arrangements were made for preferential access of raw cane sugars. Accordingly, on an annual basis for the marketing years 1995/96 to 2000/01, tariff quotas are to be opened for additional quantities of unrefined cane sugar, at a reduced import charge of 69 ecu per tonne. Again, EU refiners are obliged to pay a minimum price for this sugar, related to the EU support price; and in 1995/96 this amounted to 511.7 ecu/tonne. The maximum tariff quota that can be determined under these provisions is 474,300 tonnes (white sugar equivalent) per year. These tariff quotas are to reflect supply agreements between the EU on the one hand, and *first*, the ACP states that benefit from the Sugar Protocol attached to the Lomé Convention, and India; and, *second*, other third countries. In EU jargon, this is known as *special preferential sugar*.[12]

To date, separate agreements have been reached with the ACP States party to Protocol 8 of the Lomé Convention, and India. Accordingly, these countries were due to supply 222,000 tonnes in the eight month period 1 July 1996 to 28 February 1997. Of these quantities,

10 Much of the data reported in this section is taken from Noble (1996).

11 See Regulation 1423/95 (*Official Journal of the European Communities*, L141, 1995).

12 See Article 37 of Regulation 1785/81, as amended in particular by Regulation 1101/95 (*Official Journal of the European Communities*, L110, 1995); and Regulation 1915/95 (*Official Journal of the European Communities*, L184, 1995).

Finland was to receive 50,000 tonnes, metropolitan France 10,000 tonnes, mainland Portugal 162,000 tonnes, and the UK 10,000 tonnes. The ACP states have undertaken 'collectively to implement between themselves procedures for the allocation of the quantities under this special ACP quota in order to ensure the appropriate supplying of the refineries.' The two agreements with the ACP states, and with India, state that 'Before 1 January 2001, the two parties to this agreement shall open discussions on its possible continuation.'[13] The tariff quotas for special preferential sugar are not tariff quotas bound in GATT. [14]

Third, in the Uruguay Round, Finland notified GATT of a current access tariff quota of 85,463 tonnes of raw sugar (about 82 thousand white sugar equivalent). On accession to the EU, this current access tariff quota became an EU obligation, over and above the GATT tariff quota for preferential (ACP and Indian) sugar. The tariff quota is allocated to traditional suppliers, with 68% allocated to Cuba, 28% to Brazil, and the remainder to other countries. This allocation was determined – it is understood – following pressure from Cuba in discussions in Geneva. Despite the country-specific allocations, it is referred to as an *mfn tariff quota*. A reduced import duty of 98 ecu per tonne is payable, but otherwise the import price is freely negotiated.

The GATT Agreement also constrains the EU's subsidised exports. However, this does not include C sugar, which is deemed not to be subsidised, or a quantity of white sugar exports equivalent to the volumes of *preferential* and *special preferential* imports of Indian and ACP sugar (which amounted to 1.6 million tonnes in the base period 1986-1990). Thus, it is only a small part of the EU's overall white sugar exports that are constrained by the GATT Agreement. The maximum annual expenditure, and maximum volume of subsided exports, together with the implicit average rate of refund if both maxima are reached, are given in Table 7.3. It should be noted that even in the year 2000, an average export subsidy of 391.9 ecu per tonne could still be granted on subsidised exports, amounting to some 60% of the current support price for white sugar in the EU. There are of course also constraints on expenditure on export subsidies on processed products (Non-Annex II goods), which may contain sugar.

If these export constraints become binding over the next few years, the EU might begin to stock-pile sugar within the EU – either in the form of publicly purchased intervention stocks, or as enlarged private stocks funded by the storage levy scheme – or cut-back quotas. The A and B production quotas could be reduced by the European Commission acting alone, as could the non-GATT tariff quotas. However, the GATT tariff quotas which embrace the Lomé Convention commitments, and the mfn tariff quota inherited from Finland, could not be reduced unilaterally by the EU: any reduction would have to be agreed with the beneficiaries in a WTO framework.

Enlargement and economic and monetary union

The pressures which are leading to calls for further reform of the CAP have already been mentioned. First, although the present *Agreement on Agriculture* will do little to prompt further change to the CAP, there are other considerations. The next round of GATT negotiations, due to begin in 1999, will probably result in further reductions in import tariffs, export

13 The Agreements are printed in the *Official Journal of the European Communities* (L181, 1995), and the tariff quotas are specified in Regulation 2308/95 (*Official Journal of the European Communities*, L233, 1995).

14 It is of interest to note, however, that in its draft submission the EU did include both preferential and special preferential sugar in its minimum access tariff quota which was it had intended to set at 1,565,000 tonnes, with 1,555,000 tonnes allocated to the ACP states. This was revised, to the situation outlined in the text, in February 1994 immediately prior to the submission of the final schedules of commitments for the formal signing of the Uruguay Round Agreements in Marrakesh.

Table 7.3 **GATT Constraints on EU-15 Sugar Export Subsidies**

	Maximum Expenditure (million ecu)	Maximum Subsidised Volume (thousand tonnes)	Implicit Average Refund (ecu/tonne)
Base period			
1986/90	779.90	1,612.0	483.8
1995/96	733.10	1,555.6	471.3
1996/97	686.30	1,499.2	457.8
1997/98	639.50	1,442.7	443.3
1998/99	592.70	1,386.3	427.5
1999/2000	545.90	1,329.9	410.5
2000 and thereafter	499.10	1,273.5	391.9
% change from base	–36%	–21%	–19%

Note: includes adaptations to the constraints following EU Enlargement
Source: Noble (1996, p. 5), based on information from the European Commission.

subsidies, and the Aggregate Measurement of Support, which *will* force change to the CAP. In the next round, the EU will probably not have the tacit support of the USA, as it did in the Uruguay Round. In the Uruguay Round, the USA and the EU were able to agree that both the USA's deficiency payments, and the EU's area and headage payments, were 'production neutral' (decoupled), and thus permissible under the rules formulated in the *Agreement on Agriculture*. This decision was then imposed upon the other GATT/WTO signatories – though conceivably it could still be challenged. Following the 1996 Farm Bill, which has considerably liberalised the system of US farm support, the EU will not readily find allies in the next round to sustain the *status quo* on 'production neutral' payments. Furthermore, the AMS and export subsidy constraints declared by the Central and Eastern European states (CEEs) that hope to become members of the EU in the not too distant future will simply not be compatible with the extension of the CAP to these states.

Few people were surprised when the UK Minister of Agriculture's CAP Review Group argued for radical reform of the CAP (MAFF, 1995), because this is what the UK's partners expect of British politicians and agricultural economists. However, press reports indicating that Germany's Ministry of Agriculture had drawn-up a discussion paper suggesting that 'The EU's agricultural policy will need major changes if it is to survive the huge challenges posed by eastern enlargement and the next round of world trade liberalisation' (*Agra Europe*, 21 June 1996, p. E/6) sent shock-waves through the EU farming circles.

Budgetary pressures are also important. As noted above, the Mac Sharry reforms introduced a system of support which was both more transparent in its delivery mechanisms, and inherently most costly to the EU's budget, than the 'old' CAP which it displaced. Budgetary pressures were bound to emerge, sooner or later, as a potent catalyst for CAP reform. This consideration was reinforced by the prospect of extending not just the CAP, but also the EU's regional and social aids, to the much poorer economies of the CEEs. More recently, the political imperative felt by some member states to achieve economic and monetary union, and thus to meet the convergence criteria – and in particular the condition relating to public sector deficits – has led these member states to reconsider the EU's spending priorities. The *Financial Times* (24 July 1996) began a report: 'France and Germany are leading efforts to hold European Union spending on agriculture in a race to meet the Maastricht targets for economic and monetary union next year'. Despite the escalating cost of supporting the EU's beef market, in the wake of the BSE crisis, EU

Finance Ministers voted to cut the 1997 draft budget for CAP support by 1 billion ecu (*Agra Europe*, 26 July 1996, p.P/5). This may prove more symbolic than real, but the consensus view is that attitudes are changing.

It is impossible to predict with any degree of certainty how policy will evolve. The role of the European Commission, as the *proposer* of policy reform, will be important but not crucial. The response of the Council of Ministers to any reform proposals will be central to the outcome. External pressures, such as GATT/WTO trade negotiations may play a role. The timetable is, however, tight. The EU is committed to begin accession negotiations with Cyprus within six months of the conclusion of the recent Inter-Governmental Conference which was concluded in Amsterdam in June 1997. Negotiations with the selected CEEs will begin at the same time; but for serious enlargement negotiations on the agriculture dossier to proceed it would be preferable that the future form of the CAP be known.

The European Commission, in the *Agricultural Strategy Paper* produced at the request of the European Council meeting in Essen in December 1994, suggested that there were three possible options for 'Future Orientations for the CAP' in view of the possible accession of the CEEs. The first of these, the status quo, would involve further supply control measures (an increase in set-aside, and further quota controls, for example) if the EU were to meet its Uruguay Round obligations. 'In the end, the situation would become increasingly untenable, and a major CAP reform would probably be unavoidable... Thus the status quo option which could appear to be the 'easy way' today would rapidly turn out to be an impasse and an illusion' (Commission, 1995a, p.21).

The European Commission also rejected its second option, that of radical reform, involving the elimination of supply controls, the near removal or elimination of price support, and income compensation payments decoupled from production, but possibly linked to the provision of environmental services. The European Commission commented that 'Although such a radical reform may be appealing from an economist's point of view, it would imply a number of social and environmental risks...', and 'at least in the first five to ten years, before compensatory payments are phased out to a large extent, it would imply high sums of additional public expenditure' (Commission, 1995a, p.22).

The European Commission's preferred alternative was its third option, 'Developing the 1992 Approach', and although this had three components – a move 'towards higher competitiveness', an integrated rural policy, and 'simplification – the exact details were left (deliberately?) vague (Commission, 1995a, pp.22-24). Readers were, it seems, left to choose which version of the third option they preferred: an option 3 which more closely approached the status quo, or an option 3 that approximated radical reform.

Postscript: Agenda 2000

As the final version of this chapter was being prepared, various newspaper reports commented on the likely content of the Santer Package (or Agenda 2000) which Commission President Jacques Santer was to present to the European Parliament on 16 July 1997. As well as the Commission's 'avis' on the membership applications of the 10 CEE applicants, the Santer package is slated to include proposals for CAP reform, reform of the regional fund, and proposals for financing the EU budget from 1999 to 2006. It is suggested that five CEEs (the Czech Republic, Hungary, Poland, Estonia and Slovenia) together with Cyprus will be invited begin entry negotiations early in 1998, with the applications of the other five CEEs subject to an annual review (*Financial Times*, 11 July 1997, p.2). The proposals for CAP reform will be limited, it is suggested, to cereals, beef and milk. For cereals, the intervention price would be reduced by 24 ecus/tonne, and in *partial* compensation the area aid would be increased by 12 ecus/tonne; beef support prices would be slashed and headage payments increased; and there

would be some reduction in the support price for milk, offset by headage payments, but the quota mechanism would be retained (*Financial Times*, 8 July 1997, p. 29). It appears that the European Commission has toyed with the idea of setting a maximum amount that individual farmers can claim in area and headage payments, but whether this is retained in the actual proposals remains to be seen. These suggestions have already attracted the wrath of the EU farm lobby (*Financial Times*, 10 July 1997) and it will probably be well into 1998 before the Council concludes its deliberations on these proposals and enacts the next instalment of CAP reform.

7.5 GATT, Free Trade Areas and the CAP

The Uruguay Round Agreements have, potentially, changed the way trade in agricultural products will be dealt with in future customs unions and free trade areas. As is well known, Article XXIV of the GATT has always provided for the formation of customs unions, free trade areas, and of interim agreements leading to the formation of customs unions and free trade areas, in which trade barriers are removed on 'substantially all the trade between the constituent territories'. Quite what this phraseology has meant has been unclear, but an informal 80% rule has applied, and potential partners have presumed that a valid customs union or free trade area could be created if 80% of the trade between the partners could be said to be included. Furthermore, and within this 80% framework, the EU has frequently excluded the bulk of the agriculture sector from its customs union and free trade area agreements. Thus, the European Economic Area with the EFTA countries excluded agriculture; and in 1995 the Commission noted that the customs union between the EU and Turkey, due to commence on 1 January, 1996, 'will not include the agricultural sector where only limited adjustments to the current arrangements are foreseen' (Commission, 1995a, p.131).

Furthermore, the frequent use of non-tariff barriers within the CAP, such as variable import levies and minimum import price mechanisms, allowed a degree of obfuscation to persist. Customs duties might be removed, but the other border mechanisms of the CAP would be retained. Thus, the nature of a customs union or free trade area between the EU and a partner, and incorporating products subject to the CAP, was difficult to specify. Tariffication has eliminated this ambiguity, but has starkly emphasised the difficulty of incorporating a highly protected CAP product into a free trade area or customs union. How, for example, could sugar be included in a free trade area between the EU and a third country if that third country did not adopt the EU's support arrangements for sugar, or something similar? The customs union agreement for Cyprus and the EU envisages the adoption by Cyprus of measures analogous to the CAP if certain agricultural products are to be included in the customs union (see Swinbank & Ritson, 1991, and Tanner & Swinbank, 1997, for further discussion).

As a result of the Uruguay Round there is now an *Understanding on the Interpretation of Article XXIV* annexed to the General Agreement on Tariffs and Trade 1994 (GATT Secretariat, 1994). The intent is that the requirements of Article XXIV must be satisfied, that agreements should be scrutinised and that customs unions and free trade areas should report periodically to the Council for Trade in Goods, and that the dispute settlement procedure can be invoked with respect to any matter relating to the formation of customs unions and free trade areas. The 'reasonable length of time' referred to in Article XXIV:5(c), in which interim agreements should evolve into full customs unions or free-trade areas, 'should exceed 10 years only in exceptional cases'. Quite what impact all this will have is unclear, but many assume that spurious customs unions and free trade areas will be subject to more stringent review, and challenge, in the future; and that agreements which do not include reciprocal trade concessions or which seek to exclude entire sectors of the economy – such as agriculture – will be deemed invalid.

The EU – which in the past has been accused

of spinning an elaborate web of preferential trade agreements dressed-up as legitimate free trade areas and customs unions – may itself take the lead. Press reports indicate that the EU's Commissioner for Trade, Sir Leon Brittan, would like the EU to ask the WTO 'to tighten its rules on regional trade agreements, to ensure that they comply fully with multilateral principles and do not discriminate against non-members', and for the WTO 'to vet a backlog of about 90 outstanding regional free trade agreements, some notified many years ago' (*Financial Times*, 25 July 1996). It is far from clear that the European Commission, let alone the Council of Ministers, would agree to such a plan, because of the potential impact on the EU's own web of agreements. But the EU's Council of Farm Ministers has certainly taken the threat seriously.

In May 1996, the Italian Presidency of the Council of Ministers initiated a discussion at an informal meeting of the Agriculture Council in Otranto. In its discussion paper, the Italian Government remarked that 'Following the integration of agriculture into the general rules governing the trading system, and the reform of the CAP begun in 1992, agriculture in the EU is now at a delicate stage in the transformation process, which is still being completed', and commented on 'the major unknown factors, arising from the throwing into question of the European agricultural system as it has been defined from its inception until the present day' (Italian Government, 1996, p.2).

The discussion document continues: 'It seems clear that, following the Marrakesh declaration, the contracting parties' room for manoeuvre when altering the content of their agreement and establishing the implementing rules has been considerably reduced. In particular, the exclusion of the agricultural sector from the regional free trade agreements under negotiation and from the agreement establishing a customs union with Turkey as from 1 January, 1996, can only be temporary. Under the criterion of 'substantially all the trade', which leaves open the possibility of excluding a few sensitive products from the agreement, it is doubtful whether it will be possible to exclude all sensitive agricultural products, since it should be remembered that there are also 'sensitive products' in the industrial sector, such as textiles, for example' (Italian Government, 1996, p.8).

If it is true that free trade areas and customs unions will in future be subject to more rigorous review in the WTO, and that agriculture cannot be excluded from such agreements, then three possible scenarios arise:

- that, as a result of the political necessity to forge such alliances, there will be increased pressure for CAP reform, bringing EU price levels more in line with world market prices;
- alternatively, as a result of political pressure from the powerful EU farm lobby, the EU may be less willing to enter into such agreements in future, partly because of the erosion of protection to agricultural producers under the CAP; but
- in those instances in which the EU does participate in customs unions and free trade areas which do include trade in agricultural products, the EU's trading partners in those arrangements will gain a more preferred status for their agricultural products in the EU market vis-à-vis trading partners who are excluded.

7.6 The Agricultural Trade Concessions in Lomé IV

For the purposes of this chapter, the relevant sections of the Fourth ACP-EC Convention of Lomé as Revised by the Agreement signed in Mauritius on 4 November 1995, are:

- Article 168 dealing with trade preferences for CAP products in general;
- Articles 182 to 184, and Protocol 6, dealing with rum;
- Article 213, and Protocol 8, dealing with sugar; and
- Protocol 7 on beef and veal.

Furthermore, Protocol 5 is concerned with bananas, which will be discussed in the next chapter of this report.

In Council Regulation (EEC) No 715/90 of 5 March 1990 *on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (OCT)*, as amended, the EU has specified in greater detail the concessions to be granted under Article 168 and Protocol 7 of Lomé IV. [15]

Article 168 and Regulation 715/90

Article 168 is an anachronism in that it still does not recognise the revision of the EU's import arrangements for CAP products introduced in 1995 as a result of tariffication. Instead, annexed to the Lomé Convention, as revised on 4 November, 1995, is a declaration concerning agricultural products referred to in Article 168(2)(a)(ii) – i.e. CAP products which used to be protected by variable import levies and other non-tariff barriers which have now been tariffied – which reads:

> *'The import treatment applicable to agricultural products and foodstuffs originating in the ACP states agreed between the Community and the ACP states in the context of the mid-term review of the Fourth ACP-EC Convention is in the process of being technically adapted to take account of the new Community Common External Tariff resulting from the Uruguay Round Agreements and other modifications to the Combined Nomenclature.*
> *The text of this revised Annex will be published as soon as it is agreed by the Contracting Parties.' [Annex XL]*

Neither has Regulation 715/90 been amended to take account of tariffication, although it was amended for other reasons in 1996. However, on 8 January, 1997, the European Commission did submit a proposal to the Council for a Council Decision approving the adoption of the revised Annex XL to the Fourth ACP-EC Convention (Commission, 1997).

Article 168 deals with CAP products listed in Annex II to the Treaty of Rome, and other products 'subject, on import into the Community, to specific rules introduced as a result of the implementation of the common agricultural policy' (that is to say, Non-Annex II goods). Specifically, Article 168 states that such products from the ACP states can be imported free of customs duties provided the only form of border protection for these products is customs duties. Under the 'old' CAP, prior to tariffication in 1995, there were very few such products. Article 168 also states that where other forms of border protection apply (for example, the variable import levies and minimum import price regimes of the 'old' CAP) then 'the Community shall take the necessary measures to ensure more favourable treatment than that granted to third countries benefiting from the most-favoured-nation clause for the same products'. Table 7.4 lists the concessions the ACP states enjoy as a result. It is not a definitive statement. It is based on our reading of Article 168 and Regulation 715/90, supplemented by the proposed changes to Annex XL.

In paragraph 2 of Article 168 of the Lomé Convention there is the provision that: 'If, during the application of this Convention, the ACP states request that new lines of agricultural production or agricultural products which are not the subject of specific arrangements when this Convention enters into force should

15 *Official Journal of the European Communities* L84, 1990. Amended by Regulations: 297/91 (*Official Journal of the European Communities* L36, 1991), 444/92 (*Official Journal of the European Communities* L52, 1992), 234/94 (*Official Journal of the European Communities* L30, 1994), 235/94 (*Official Journal of the European Communities* L30, 1994), 2484/94 (*Official Journal of the European Communities* L265, 1994), 619/96 (*Official Journal of the European Communities* L89, 1996). As the OCT have enjoyed totally free access to the EU market since 20 September 1991, these provisions no longer apply to the OCT.

benefit from such arrangements, the Community shall examine these requests in consultation with the ACP states.' In line with this provision, in October 1994 seedless table grapes (in the period 1 December to 31 March) were added to the list of fresh fruit and vegetable products that could obtain duty-free access to the EU market within:

(i) a tariff quota of 400 tonnes between 1 December and 31 January; and

(ii) a reference quantity of 100 tonnes in the period 1 February to 31 March.

Subsequently, Namibia requested a further tariff quota of 600 tonnes for the period 1 to 31 January. The EU agreed to a further 400 tonnes, 'on account of the economic importance of seedless table grapes for the ACP states', so that a tariff quota of 400 tonnes now applies for December and a further tariff quota of 400 tonnes for January, as well as the reference quantity of 100 tonnes to cover the months of February and March (Regulation 619/96, *Official Journal of the European Communities* L89).

A *reference quantity* is almost a tariff quota. Regulation 715/90 specifies that, 'if imports of the product ....exceed the reference quantity' the EU has the right to make such imports subject to 'a ceiling equal to the reference quantity, having regard to the annual balance of trade in the product.' (Article 16(2).

The mid-term review undertaken in 1994/95 extended some of the Article 168 concessions. These additional concessions included some increase in tariff quotas and increased margins of preference. These additional concessions have not as yet been incorporated into Regulation 715/90; but they are included in the proposed revision to Annex XL and are thus reflected in Table 7.4.

Protocol 6 on rum

Protocol 6 on rum is concerned with rum, taffia and arrack, and provides for the duty-free importation of these products within tariff quotas. The EU has not as yet adopted 'a common organization of the market in spirits' and, in order to preserve flexibility should such a development seem desirable in the future, the life of Protocol 6 is limited to the date of the entry into force of such arrangements.

The tariff quota is expressed in hectolitres of pure alcohol, and in 1995 stood at 244,000 hectolitres for all ACP rum. As of 1996, new arrangements have come into play, and duty-free access for 'light' rum is no longer controlled by tariff quota. Until the year 2000, however, duty-free access for 'traditional' (dark) ACP rum[16] is to be controlled by tariff quota:

- in 1996, 58,000 hectolitres (expressed as pure alcohol);
- in 1997, 61,000 hectolitres;
- in 1998, 64,000 hectolitres; and
- in 1999, 67,000 hectolitres (Regulation 2599/95, *Official Journal of the European Communities* L267). The Commission administers the tariff quota.

Although rum is not a product of interest to European farmers (except as a competitive product to other spirits such as brandy and whisky), it is of course of interest to EU producers in the French Overseas Departments (the DOMs, or Départements d'Outre-Mer), and hence it remains a sensitive product for the CAP. As a result of the Uruguay Round Agreement, the import tariff on rum shipped in bulk is being reduced by 40% from 1.0 to 0.6 ecu per degree alcohol per hectolitre. Thus, the preference inherent in the Protocol will be seriously eroded by the year 2000.

'16 'Rum with a content of volatile substances other than ethyl and methyl alcohol equal to or exceeding 225 grams per hectolitre of pure alcohol with a 10% tolerance.'

Table 7.4 **Article 168 Concessions on the Import of Various CAP Products from the ACP States as Listed in the Proposed Revisions to Annex XL**

Beef and veal	Free of ad valorem customs duties, provided import growth does not exceed 7% per annum. 92% abatement of the specific customs duty, within tariff quotas, as detailed in Protocol 7
Sheep and goatmeat	Free of customs duties
Poultrymeat	Live poultry: 16% reduction in customs duty Fresh meat: 65% abatement of customs duty, 400 tonnes per year Prepared products: 65% abatement of customs duty, 500 tonnes per year
Pigmeat	Fresh meat: 50% abatement of customs duty, 500 tonnes per year Sausages: 65% abatement of customs duty, 500 tonnes per year
Milk products	16% reduction in customs duty for some products Concentrated milk: 65% abatement of customs duty, 1,000 tonnes per year Cheese and curd: 65% abatement of customs duty, 1,000 tonnes per year
Fish	Free of customs duties
Oils and fats	Free of customs duties
Cereals	Sweetcorn: customs duty reduced by 1.81 ecu/tonne Grain sorghum: 60% abatement of customs duty on 100,000 tonnes per year; 50% abatement thereafter. Millet: full abatement of customs duty on 60,000 tonnes per year; 50% abatement thereafter
Rice	Complex array of abatements of the customs duty on the equivalent of 125,000 tonnes per year of husked rice and 20,000 of broken rice. Entry into the EU is conditional upon an export charge of an amount equivalent to the reduction being charged by the exporting country
Sugar	16% reduction in customs duties on some products, but not white sugar Molasses: exemption from customs duties on 600,000 tonnes per year
Fruit and vegetables	Four possibilities: i) free of customs duties; ii) free of customs duties but constrained by tariff quotas or reference quantities; iii) tariff reductions; or iv) no concessions
Processed fruits and vegetables	Selected products: free of customs duties.
Grape must	Free of customs duties
Tobacco	Free of customs duties
Cut flowers, etc	Free of customs duties

Warning: this is not a complete or definitive list!

Trinidad and Tobago is the main beneficiary of this concession, accounting in 1992 for 41% of the EU's total rum imports by value (61% of its rum imports from the ACP states) (Davenport *et al*, 1995, p. 15). Davenport *et al* report that it is a light rum, rather than a dark rum producer.

Beef and veal [17]

In the first Lomé Convention, the ACP concession on beef and veal was limited to an elimination of conventional customs duties, on 'a quantity equivalent to imports into the Community during whichever year between 1969 and 1974 Community imports of products

17 We are very grateful to Mr Ove K Neilson, Chief Executive of the Botswana Meat Commission (UK) Holdings Ltd, for his help in researching this topic.

of that origin were highest, plus an annual growth rate of 7%' (Article 2 of Regulation 715/90), but it was intended that the full variable import levy remained payable. These original quantities were determined at:

Botswana	18,916 tonnes (1973)
Kenya	142 tonnes (1971)
Madagascar	7,579 tonnes (1972)
Swaziland	3,363 tonnes (1973)
total	**27,531 tonnes**

Under the 'old' CAP a distinctive feature of the mfn import regime for beef and veal was that customs duties (at 20% *ad valorem* on boneless beef) *and* variable import levies were applied. For Botswana and Swaziland, which had traditionally enjoyed free access to the British market, the prospect of paying the full variable import levy was problematic, and indeed a sharp rise in the variable import levy in March 1975 quickly rendered the trade commercially unviable. There followed a flurry of diplomatic activity, which resulted in the EU offering a 90% abatement of the variable import levy, on the quantities listed above, provided the exporting state levied an export tax of an equivalent amount, the proceeds of which could be used at the discretion of the exporting state. In the case of Botswana, the government levied the tax under the Export Tax (Chilled or Frozen Boneless Meat) Regulations 1975, and then paid the proceeds back to the Botswana Meat Commission under the Meat Industries Beef Equalization Special Order, 1975 (Botswana Meat Commission, 1989, p.6). The requirement upon the exporting state to charge an export tax equivalent to the levy abatement no longer applies.

Under Lomé IV, in addition to the Article 168 concession abating to zero the conventional customs duties applicable on the signing of Lomé (for traditional quantities augmented by a 7% annual growth factor as detailed above) Protocol 7 provides for an abatement of the variable import levy on annual tariff quotas of 52,100 tonnes of boneless beef and veal from six ACP states, allocated as follows:

Botswana	18,916 tonnes
Kenya	142 tonnes
Madagascar	7,579 tonnes
Swaziland	3,363 tonnes
Zimbabwe	9,100 tonnes
Namibia	13,000 tonnes

Namibia was included in the scheme in 1991, with an annual tariff quota of 10,500 tonnes, which was increased to 13,000 tonnes in 1993.

The concession, as specified in Article 1 of the Protocol, amounts to a 92% abatement of any import charge *other than* customs duties.[18] Tariffication, on 1 July 1995, resulted in the replacement of the variable import levy by a specific customs duty. Thus, the mfn import charge on boneless beef in the period 1 July 1996 to 30 June 1997 amounts to an *ad valorem* customs duty of 17.6% *and* a *specific* customs duty of 417.1 ecu/100 kg (Regulation 1035/96, *Official Journal of the European Communities* L152). In implementing Protocol 7, the EU now applies the 92% abatement to the specific component of the customs duty, in addition to the total elimination of the *ad valorem* component. This remains a significant tariff concession, and will remain so until the EU's mfn tariff rate on beef and veal is substantially reduced in a future GATT/WTO negotiation. Nonetheless, given the problems of oversupply in the EU beef market – in part triggered by fall in EU consumption the wake of the BSE crisis – the EU may rapidly move to a radical reform of the beef regime

18 See also Articles 3 and 4 of Regulation 715/90 (*Official Journal of the European Communities* L84), as amended. The abatement was increased from 90 to 92% in the 1994/95 mid-term review (Vernier, 1996, p. 10). The ACP states and the EU are in dispute as to whether the switch from 90 to 92% should have occurred on 1 July 1995, with tariffication (the ACP view), or on 1 January, 1996, with the coming into force of the other components of the mid-term review (the EU's view).

involving very much lower market prices (to stimulate consumption), and direct support to producers, possibly in the form of enhanced headage payments.

Despite the potential benefit of these concessions, the ACP states have had difficulty filling the tariff quotas, and some commentators have criticised the unsuitability of the concession. The ACP states are not relieved of the need to meet stringent veterinary and public health checks imposed by the EU, involving controls against foot and mouth disease for example, and their products must meet customer requirements in the EU. Because of drought and foot and mouth disease, there has been a history of the ACP failing to fill the tariff quotas allocated;[19] and more recently the BSE crisis has adversely affected all beef consumption in Europe, whatever its origin. Table 7.5 records the quantities shipped in the period 1992 to 1995. Zimbabwe has in the main filled its tariff quota, whereas Kenya and Swaziland have been much less successful.

Article 3 of Protocol 7 does say that the Community 'is willing to consider' postponement of deliveries to the following year, 'In the event of an actual or foreseeable recession in these exports due to disasters such as drought, cyclones or animal disease'. Furthermore, if in any year one of the beneficiaries is unable to supply the tariff quota quantities, and does not wish to benefit from the provisions of Article 3, then – on a request from the ACP states – the Commission is authorised to share out this quantity among those ACP states able to supply. We understand from the Commission Services that such a request would normally be accepted, and this is consistent with the data recorded in Table 7.5. Thus in 1993 some of the unused quantities were carried forward to 1994, for the benefit of Zimbabwe; and further transfers to Zimbabwe were effected in 1994 and 1995. In the period recorded in Table 7.5, only 72% of the total tariff quota offered ACP states was taken up. Thus, the impression gained is that exports to the EU are not constrained by the global 52,100 tonne tariff quota.

Namibia was added to the list of beneficiaries with effect from 1991 on becoming an ACP state. Given the chronic problems of over-supply in the EU's beef market, it seems unlikely that the EU would willingly countenance an extension of the global quantity of 52,100 tonnes, even though other ACP states might wish to become beneficiaries. Davenport *et al* (1995, p.17), for example, have suggested that Ethiopia could benefit from being listed among the beneficiaries, but this would undoubtedly involve a reduction in the tariff quota currently extended to one or more of the existing beneficiaries.

In practice the Botswana Meat Commission plays a dominant role in the trade. Its European subsidiaries, operating from London, manage the EU's imports under the Lomé Protocol from Namibia and Swaziland as well as Botswana, and for many years they did so for Zimbabwe, selling into the UK, Germany, The Netherlands and Greece. The European subsidiaries handle applications for import licences under the tariff quotas, and by virtue of their ownership of a bonded warehouse they can control release from customs control and thus the date of the official 'import' into the EU.[20] Meat is shipped as chilled vacuum-packed hindquarter cuts, mainly for the catering trade, and frozen forequarter cuts for manufacture (mainly burgers).

Beef consumption in the wake of BSE, the future of the EU's beef regime, and the continuation of the Lomé concessions, are all vital issues relating to this trade, but the Botswana Meat

19 Drought first accelerates slaughterings and shipments, and then has a depressing effect. A severe drought afflicted the whole of Southern Africa in 1991/92 (Botswana Meat Commission, 1993, p.24).

20 We understand that Zimbabwe, whose product is no longer handled by subsidiaries of the Botswana Meat Commission, has requested a change in the regulations to allow Zimbabwe to issue the licences for the tariff quota, rather than authorities in the EU. Elsewhere in this chapter we refer to the difficulties a beneficiary country can face in 'capturing' any rents that may be implicit in a tariff quota. In the case of Protocol 7 beef however, where a wholly-owned subsidiary has controlled the supply chain, including importation and the bonded warehouse from which the product clears customs, the probability is that the bulk of the rent is captured by the importer.

Table 7.5 **ACP Utilisation of Beef Quotas, 1992-1996**

1992	Quota	Utilised	Unused
Botswana	18,916	15,914.90	3,001.10
Kenya	142	15.00	127.00
Madagascar	7,579	1,275.62	6,303.38
Namibia	10,500	9,200.80	1,299.20
Swaziland	3,363	128.31	3,234.69
Zimbabwe	9,100	8,326.87	773.13
Total	**49,600**	**34,861.50**	**14,738.50**

1993	Quota	Transfer, March '94	Utilised	Unused
Botswana	18,916	-1,000	14,650.00	3,266.00
Kenya	142	-142	—	—
Madagascar	7,579	-2,500	1,784.30	3,294.70
Namibia	13,000	-1,000	10,350.50	1,649.50
Swaziland	3,363	-500	703.00	2,160.00
Zimbabwe	9,100		9,100.00	0.00
Total	**52,100**	**-5,142**	**36,587.80**	**10,370.20**

1994	Quota	Transfer 1993	Transfer 1994	Utilised	Unused
Botswana	18,916		-1,000	12,425.00	5,491.00
Kenya	142			0.00	142.00
Madagascar	7,579		-2,500	2,159.14	2,919.86
Namibia	13,000		-1,000	11,087.00	913.00
Swaziland	3,363		-1,000	642.00	1,721.00
Zimbabwe	9,100	5,142	5,500	16,242.50	3,499.50
Total	**52,100**	**5,142**	**0**	**42,555.64**	**14,686.36**

1995	Quota	Transfer Oct '95	Utilised	Unused
Botswana	18,916		13,770.77	5,145.23
Kenya	142	-142	—	—
Madagascar	7,579		4,040.62	3,538.38
Namibia	13,000	-500	11,778.20	721.80
Swaziland	3,363	-1,000	719.50	1,643.50
Zimbabwe	9,100	1,642	10,742.00	0.00
Total	**52,100**	**0**	**41,051.09**	**11,048.91**

Table 7.5 **ACP Utilisation of Beef Quotas, 1992-1996** *(continued)*

1996	Quota	Utilised	Unused
Botswana	18,916	11,511.00	7,405.00
Kenya	142	0.00	142.00
Madagascar	7,579	1,730.69	5,848.31
Namibia	13,000	10,256.99	2,743.01
Swaziland	3,363	533.20	2,829.80
Zimbabwe	9,100	7,752.82	1,347.18
Total	**52,100**	**31,784.71**	**20,315.29**

Source: European Commission.

Commission (UK) Holdings Ltd also raise a number of specific issues relating to the implementation of Protocol 7:

- footnote 12 has already alluded to the dispute between the EU authorities and the importers as to the date on which the levy abatement should have been increased from 90 to 92%;
- although the concession relates to boneless beef, making no reference either to chilled or frozen products, import licences do specify chilled or frozen, thus adding to the complexity of managing imports. Furthermore, if an import licence is taken-out, but not used, the quantities will be lost because the tariff quota is operated with regard to licenses issued rather than quantities imported;
- requests for import licences have to be lodged by noon on the 10th day of the month, and – after examination by the European Commission in Brussels to ensure sufficient volumes of the tariff quota remain used – they are then issued on the 21st of the month. This means that in managing an *annual* tariff quota, imports cannot be effected in the first three weeks of January, compounding the problems of managing the business. Other preferential import arrangements for beef do, apparently, overcome this difficulty by allowing traders to lodge securities which would be forfeited if a tariff quota licence was not subsequently obtained;
- difficulties have arisen over the definition of a forequarter. For marketing purposes, forequarter meat-cuts are packed in standard-weight cartons of 28 kg, based predominately on the forequarter of a particular carcass, but perhaps with meat added or removed to make up a standard weight. This means the product is then classified as 'other meat cuts', paying a higher duty than would be the case if it were classified as a forequarter; and
- finally, an issue not specific to Protocol 7, is the complaint that with tariffication on 1 July 1995 an anomaly crept into the new duties fixed for frozen forequarters and cuts, and frozen 'other', so that these products now face an import tax disproportionately high in relation to chilled boneless meat.

Sugar

The Sugar Protocol (Protocol 8) is potentially one of the most vexatious in the Convention. It reproduces the text of Protocol 3 of the original Lomé Convention of 1975. Article 1 states that 'The Community undertakes for an indefinite period to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originate in the ACP states and which these States undertake to deliver to it'. Key phrases are: 'indefinite period', 'purchase and import', and 'guaranteed prices'.

Article 10, however, does limit the concept of an indefinite duration. Basically it specifies that although the Sugar Protocol will remain in force even after the Lomé Convention lapses, the Sugar Protocol may nevertheless 'be denounced by the Community with respect to each ACP State, and by each ACP State with respect to the Community, subject to two years' notice'. The EU did add a declaration that 'The Community declares that Article 10 .... providing for the possibility of denunciation in that Protocol, under the conditions set out in that Article, is for the purposes of juridical security and does not represent for the Community any qualification or limitation of the principles enunciated in Article 1 of that Protocol'.

Whilst the Protocol is in force, it commits the EU 'to purchase and import, at guaranteed prices, specific quantities of cane sugar.' This is reflected in part in the tariff quota the EU has entered into in the WTO. The 'current access quota' commitments in the EU documentation submitted at Marrakesh specify a conventional 1,304,700 tonne tariff quota for cane or beet sugar under tariff heading 1701. Under column 7, 'Other terms and conditions', the following wording appears:

> *'Allocated to supplying countries as follows:*
> *India 10,000 tonnes*
> *ACP 1,294,700 tonnes in accordance with the provisions of the Lomé Convention.'*

Two questions are raised by this. First, is this provision in any way linked to the waiver arranged for Lomé IV? (i.e. would it lapse if a successor agreement and waiver were not agreed?); and second, are country-specific tariff quotas acceptable in GATT? (i.e. are they compatible with Article XIII of GATT?).

It is our current interpretation, supported by discussions with some, but not all, the Commission officials we met in Brussels, and in the WTO Secretariat, that the tariff quota is not linked to Lomé IV and its waiver: that the phrase 'in accordance with the provisions of the Lomé Convention' simply refers to the distribution of the 1,294,700 tonnes allocated to the ACP states, and does not refer to the tariff quota in its entirety. But it would appear that there are two views on this. A corollary attached to our interpretation is that the EU cannot unilaterally withdraw the tariff quota: instead it would have to seek the acceptance of India and the ACP states.

We understand that any *country-specific* tariff quota notified by the EU is potentially subject to challenge because of its violation of the GATT's most-favoured-nation rules and in particular Article XIII of GATT on the 'Non-discriminatory Administration of Quantitative Restrictions', but we think this unlikely as such a precedent would open up a whole series of challenges (for example the tariff quota extended by the EU to New Zealand for butter). We do not believe this conclusion is inconsistent with the reports we have seen of the banana panel's recent ruling on the application of Article XIII, but the full panel report requires further examination.

The GATT binding does not commit the EU to 'purchase and import', and nor does it specify prices, but in our view *it is a commitment of indefinite duration* (or until the ACP states concerned voluntarily agree to release the EU from this commitment).

The words 'to purchase and import' are fairly unambiguous. It would appear that the EU is bound to purchase and import the quantities specified. In practice of course, it is not the EU authorities which 'purchase and import', but instead private traders, but the EU is required to purchase any quantities that private traders do not take up. Furthermore, although the EU does import this sugar, an equivalent quantity of EU sugar is in fact exported to the world market. Some CAP apologists have in the past suggested that it would be more rational to do away with the requirement to import ACP sugar given that the EU then exports an equivalent amount of EU sugar.

The phrase which is most problematic is the reference to 'guaranteed prices'. Article 5(4) of the Protocol specifies: 'The guaranteed price, expressed in units of account, shall refer to unpacked sugar, c.i.f. European ports of the Community, and shall

be fixed in respect of standard quality sugar. It shall be negotiated annually, *within the price range obtaining within the Community*, taking into account all relevant economic factors, and shall be decided at the latest by 1 May immediately preceding the delivery period to which it will apply' (italics added). The critical issue for the ACP states is the level of sugar prices that might apply in the EU in the future, following any reform of the sugar regime. If, for example, the support price for sugar were to be slashed, and EU producers 'compensated' by some type of direct payment, in the form say of area payments, then it seems clear that the price guarantee to the ACP states would be unilaterally reduced. The Protocol would provide no protection for the ACP states, and only moral and diplomatic pressure on the EU could secure 'compensation' for ACP suppliers who faced a sudden, and dramatic, price cut.

Article 3 of the Lomé Convention (and Annex) sets out the quantities, expressed in tonnes of white sugar, as follows:

Barbados	49,300
Belize	39,400
Fiji	163,600
Guyana	157,700
Jamaica	118,300
Kenya	5,000
Madagascar	10,000
Malawi	20,000
Mauritius	487,200
Republic of Congo	10,000
St Kitts-Nevis-Anguilla	14,800
Surinam	4,000
Swaziland	116,400
Tanzania	10,000
Trinidad and Tobago	69,000
Uganda	5,000

The provisions relating to rules of origin are lax, or non-existent, except for a requirement that the sugar originates within the ACP states; but in practice the sugar has to be *shipped* from the relevant ACP state listed above. Shortfalls, as a result of *force majeure*, can at the discretion of the Commission be shipped in later periods or – with the consent of the ACP state concerned – be reallocated to other beneficiaries. Shortfalls which are not the result of *force majeure* result in a permanent reduction in the allocated tariff quota, and may at the discretion of the Commission be permanently reallocated to other beneficiaries.

As noted in Section 7.4, these same ACP states, and India, are also beneficiaries of annual tariff quotas that could amount to 474,300 tonnes per annum, at a special import tax of 69 ecu per tonne, with the EU refiners obliged to pay a minimum price related to the EU support price. The justification of this programme is the support of the 'port-related refining industry ... in Finland, mainland Portugal, the United Kingdom and southern and western France.'[21] These are clearly not traditional CAP constituencies, and the programme may seem illogical in the face of the massive over-supply of white sugar and other sweeteners in the EU. Nonetheless, the potential benefit to the ACP states is clear. Retaining this concession, post-2000, will require considerable diplomatic effort on the part of the ACP. Allocating the tariff quota among the potential ACP beneficiaries – given the financial benefits attached – may strain the ACPs' institutional arrangements to their limits.

7.7 The EU's Other Preferential Trading Arrangements

The Generalised System of Preferences [GSP]

The EU's GSP dates back to 1971, and the EU's offer on trade preferences in the context of the United Nations Conference on Trade and Development (UNCTAD). The EU's present scheme for agricultural products,[22] valid from 1 January, 1997, to 30 June, 1999, is set out in

21 Regulation 1101/95 (*Official Journal of the European Communities*, L110, 1995), p.2.
22 The EU's GSP for agricultural goods is a separate, but similar, scheme to that applied for industrial products (Driessen, 1996).

Council Regulation (EC) No 1256/96 (*Official Journal of the European Communities* L160). The beneficiary states include Albania and the non-Baltic states of the former USSR (including Russia), following the break-up of the Soviet empire. A number of beneficiaries have high per capita incomes, such as Cyprus, Saudi Arabia and the United Arab Emirates.

All of the ACP states are included as GSP beneficiaries, as are the Mediterranean countries (except Malta and Turkey) referred to in the next section. The Central and Eastern European states with which the EU has signed Europe Agreements (discussed below) are no longer GSP beneficiaries.

A distinction is drawn between the 'least-developed developing countries', which includes some, but not all, of the ACP states, and the rest, and some further distinctions are drawn in the granting of preferences. Table 7.6 lists the ACP states, with those that are deemed to be the 'least-developed developing countries' identified. This distinction is potentially divisive among the ACP ranks.

The Regulation contains five lists of agricultural products. It should be noted that in practice there is a sixth, unpublished, list detailing the agricultural products on which preferences are not granted.

The 'least-developed developing countries' have duty-free access for all the agricultural products listed in the five published lists. Latin American countries, in the Andean Group and in the Central American Common Market, have duty-free access for products listed in the fifth of those published lists (Annex VI to the Regulation).

The first four lists (Sections 1, 2, 3 and 4 of Annex I of the Regulation) list 'very sensitive', 'sensitive', 'semi-sensitive', and 'non-sensitive' products respectively. As noted above, the 'least-developed developing countries' have duty-free access for all of the products on these four lists. For the remaining countries however, the tariff concessions are limited. For 'very sensitive' products, the concession is a 15% abatement of the tariff. Thus, beneficiaries pay 85% of the mfn rate.[23] For 'sensitive' products, the abatement is 30%, and for 'semi-sensitive' products a 65% reduction applies. Duty-free access is available for all the GSP countries for 'non-sensitive' products.

Given that the products listed in Section 1 of Annex I are known as 'very sensitive' products, it is difficult to find the correct vocabulary to describe those that are not listed at all. However, examples of products which are not listed – and consequently on which no GSP tariff concessions apply – can readily be found. Thus, for example, tomatoes (CN code 0702) are not to be found on any of the lists. There are, however, limited concessions on tomatoes under the Lomé Convention.

Nonetheless, the GSP concessions are potentially valuable, particularly for the 'least-developed developing countries'. Thus, for example, new potatoes (from 1 January to 15 May) appear on the 'very sensitive list', as does asparagus throughout the year. All 'least-developed developing countries' can gain duty-free access, with a 15% tariff reduction for the remaining GSP beneficiaries. The Lomé Convention offers no further concessions on new potatoes, and on asparagus an elimination of tariffs between 15 August and 15 January, a 40% tariff reduction from 16 January to 31 January, and a 15% reduction for the remainder of the year. Thus, for the 'least-developed' Lomé countries in particular, the GSP concessions on these products are superior to those contained in the Lomé Convention.

Two further features of the GSP should be noted: first, the 'graduation' mechanism which is to 'be used to transfer preferential margins from advanced to less-developed countries'. None of the countries concerned are in the

23 For Greenland and a number of states of the former USSR, a shortened list applies.

Table 7.6 **List of ACP States with the 'Least-Developed developing Countries' Identified**

- Angola
- Antigua and Barbuda
- The Bahamas
- Barbados
- Belize
- Benin
- Botswana
- Burkina Faso
- Burundi
- Cameroon
- Cape Verde
- Central African Republic
- Comoros
- Congo
- Chad
- Côte d'Ivoire
- Djibouti
- Dominica
- Dominican Republic
- Equatorial Guinea
- Eritrea
- Ethiopia
- Fiji
- Gabon
- The Gambia
- Ghana
- Grenada
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Jamaica
- Kenya
- Kiribati
- Lesotho
- Liberia
- Madagascar
- Malawi
- Mali
- Mauritania
- Mauritius
- Mozambique
- Namibia
- Niger
- Nigeria
- Papua New Guinea
- Rwanda
- São Tomé and Principe
- Senegal
- Seychelles
- Sierra Leone
- Solomon Islands
- Somalia
- South Africa
- St Kitts and Nevis
- St Lucia
- St Vincent and the Grenadines
- Sudan
- Surinam
- Swaziland
- Tanzania
- Togo
- Tonga
- Trinidad and Tobago
- Tuvalu
- Uganda
- Vanuatu
- Western Samoa
- Zaire (Democratic Republic of Congo)
- Zambia
- Zimbabwe

• *'least-developed developing countries' under the EU's GSP for agricultural products*

Source: Annex I of Regulation 715/90, as amended; and Annex IV of Regulation 1256/96.

South Africa's membership of the Lomé Convention was agreed in April 1997, but for the duration of Lomé IV the articles concerning trade and development are not applicable to it.

Angola is not listed as a least-developed country under the EU's GSP for industrial products (Driessen, 1997, p176).

Lomé group. Second, provisions 'to withdraw temporarily some, or all of a country's preferential entitlement' if certain labour standards are not met, or if the country fails to apply adequate controls with respect to drugs trafficking or money laundering, and plans for a system of 'additional preferential margins' for countries that meet certain environmental and International Labour Organization (ILO) standards.

The Euro-Mediterranean Agreements

The EU's trade arrangements with its Mediterranean partners date back to the 1960s and 1970s. The EU had entered into preferential trade agreements with Cyprus, Malta and Turkey which envisaged the eventual formation of customs unions; interim free trade area agreements with Israel and the former Republic of Yugoslavia; and a series of agreements with Jordan, Lebanon, Syria and most of the North African states which the EU claimed involved a free trade area obligation on the part of the EU under Article XXIV of GATT, but which did not involve reciprocal trade barrier reductions on the part of the EU's trading partners, as – claimed the EU – was sanctioned by the *Trade and Development* provisions in Part IV of the GATT (Swinbank and Ritson, 1991, p.279). This web of preferential trade agreements covered all the Mediterranean states except Albania and Libya.

The agricultural trade concessions in these agreements were limited, reflecting the fact that many of the products considered to be of export interest by the Mediterranean states were considered by farming interests in the southern member states to threaten their legitimate expectations established under the CAP. The preferences, though limited, were sophisticated. On fruit and vegetables and wine there would generally be a tariff reduction, but usually within a tariff quota and calendar. Thus, a country might have benefited from, say, a 50% reduction in the mfn tariff rate on 10,000 tonnes of product landed in the EU in the months of May and June, for example. Reference (minimum import) prices had still to be respected. For olive oil the general arrangement was to allow a small reduction in the variable import levy (of 0.5 ecu/100 kg) to allow the Mediterranean States a 'commercial' advantage on EU markets; and a second, but more substantial, levy reduction of 20 ecu/100 kg provided the Mediterranean State levied an equivalent export tax. The EU called this second levy reduction an 'economic' advantage even though it did not allow EU market prices to be undercut (see Swinbank and Ritson, 1991; and Swinbank and Ritson, 1995).

In 1991 the EU embarked upon a 'New Mediterranean Policy' with Algeria, Egypt, Israel, Jordan, Cyprus, Lebanon, Malta, Morocco, Tunisia, Syria and Turkey. Responding to the reduced value in preferences enjoyed by the other Mediterranean states, following the accession of Portugal and Spain to the EU, the EU enhanced the agricultural preferences enjoyed by its Mediterranean associates (including the Palestinian autonomous territories) in three ways. First, tariff quotas were increased by 5% (3% for sensitive products) per year, for five years; second the within-tariff quota tariff rates were reduced to zero; and third, for some countries, on certain products (citrus, table grapes and tomatoes), and for specified quantities, an abatement of the reference price system was introduced.

Cyprus is now of course an applicant for EU membership, as was Malta until the recent election, and as noted above a customs union with Turkey came into being on 1 January, 1996, which, however, largely excludes the agricultural sector. Following the conclusion of the Uruguay Round, and the enlargement of the EU to embrace Austria, Finland and Sweden, the EU embarked on a new Euro-Mediterranean partnership, and new agreements with Morocco, Tunisia and Israel have already been concluded (European Commission, 1996, p.156). Reflecting, perhaps, the more stringent interpretation of Article XXIV of GATT, following the Uruguay Round, the new agreements with Morocco and Tunisia envisage the establishment of free trade areas within twelve years (Italian Government, 1996, p.12). However, the concessions on agricultural products retain the characteristics of the old agreements (elimination of tariffs within tariff quotas, concessions on the new entry (minimum import) price system for fruit

and vegetables, discussed in Section 7.4) and certainly do not extend to free trade in agricultural products.

On the initiative of the Spanish Presidency, a Euro-Mediterranean Conference was held in Barcelona in November 1995. One outcome of this conference was a declaration of the participants' intention to establish a Euro-Mediterranean free trade area by the year 2010 (Italian Government, 1996, p.12).

The Europe Agreements

Ten Central and Eastern European states (CEEs) have Europe Agreements with the EU. They are:

Bulgaria
Estonia
The Czech Republic
Hungary
Latvia
Lithuania
Poland
Romania
Slovakia
Slovenia

At the meeting of the European Council in Copenhagen in June 1993, the EU decided that all of these associated countries 'that so desire shall become members of the European Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required' (Commission, 1995a, p.4), and although the formal negotiations will not begin until 1998, preparatory work is underway.

The trade component of the present agreements is a series of interim free trade area agreements between the EU and each of the ten CEEs, although the Visegrad four (the Czech Republic, Hungary, Poland and Slovakia) have their own free trade area agreement.[24] For the moment, the trade concessions granted by the EU in the context of these agreements are limited, and the CEEs have had difficulty in making full use of the tariff quotas made available to them (for an overview, see Tracy, 1994). However, as and when these economies develop, it must be expected that they will be better able to take advantage of the trade concessions offered by the EU.

Furthermore, the geo-political imperatives that lie behind the quest for enlargement will almost certainly mean:

- that the more economically (and politically) advanced of these economies will join the EU within the next decade;
- that as a precursor to membership, not only will the EU embark upon CAP reform but it will also extend more generous trade concessions on agricultural products to the member states-designate; and
- that, by way of compensation, the other CEEs will be offered more meaningful trade concessions on agricultural products.

Indeed, it might not be too far fetched to imagine the eventual formation of a Europe-wide free-trade area, involving not only the existing EU (and EEA) and CEEs, but the other European states left out of the present arrangements (Switzerland, Albania, and the other states of the former Yugoslavia and the former USSR). One scenario for the year 2010 then is for the EU to form the hub of a number of free trade areas embracing:

- a European free trade area;
- a Mediterranean free trade area;
- a North-Atlantic free trade area (embracing say the EU, the USA, and Canada); and
- a free trade area successor agreement to Lomé IV.

24 Enders and Wonnacott (1996) discuss some of the complications that arise in these overlapping free trade area agreements.

The EU has explored a number of other possibilities. Its flirtations with the USA, and with Russia and the Ukraine, are subsumed within the speculations of the preceding paragraph. In addition, it has an economic co-operation agreement with the MERCOSUR countries (Argentina, Uruguay, Paraguay and Brazil) which could eventually lead to the establishment of a free trade area; and it has entered into negotiations with the Republic of South Africa.

In 1995 the EU extended to the Republic of South Africa the GSP, excluding the GSP concessions on 'very sensitive' agricultural products. In June 1995 the EU institutions agreed to open negotiations with South Africa with a view to establishing a trade and co-operation agreement, and accession to the Lomé Convention. However, South Africa was to be excluded from the Lomé Protocols on bananas, rum, beef and veal and sugar 'because of the good level of development in these sectors' (European Commission, 1996, p.158).

By February 1996 press reports indicated that the EU's Foreign Ministers were having second thoughts about the ongoing negotiations to establish a free-trade area with South Africa, and that in particular they were worried about any precedent which might be established. Particular concern focused on the agriculture sector where several states wanted to exclude from the free trade area a number of 'sensitive' products – including maize, beef and sugar not exported by South Africa to the EU – whilst recognising that a long negative list could breach WTO rules (*Financial Times*, 27 February, 1996). Later South Africa rejected the proposed free trade area agreement; and in February 1997 Spain blocked South Africa's partial membership of the Lomé Convention because of an unresolved dispute over access to fishing grounds (*Financial Times*, 25 February, 1997).

7.8 Options for Agriculture within a Successor Agreement to Lomé IV

We are of the view that the global interests of the EU, and of its trading partners, would be best served by radical reform of the CAP. This, it is believed, would also be in the long term interest of the ACP states. Radical reform of the CAP would involve the substantial reduction, indeed possibly the elimination, of border protection; the elimination of export subsidies and of internal mechanisms of domestic price support; and possibly the introduction of decoupled compensation payments. However, adopting a more pragmatic stance, it is recognised that such an outcome is unlikely in the near future, and that the CAP will continue to provide significant protection to EU farmers. Under these circumstances, preferential trade agreements, such as the Lomé Convention, will continue to offer significant potential benefits to the EU's favoured trading partners. These benefits will, however, be eroded as levels of EU farm price support are reduced, as GATT/WTO negotiations reduce mfn tariff rates, and as the web of preferential trading arrangements grows.

Set against this background, the following comments attempt to explore how the ACP states might make better use of the preferential arrangements for agricultural products embodied in the Lomé Convention, and what further concessions they might legitimately hope to negotiate in any successor agreement. It avoids 'knocking-copy': hence it does not suggest that the ACP states should seek a reduction of the preferential arrangements enjoyed by non-ACP states. Even though it might seem intuitively obvious that such a move would increase the ACP's preferential margin, diplomatically this would be a suicidal approach. Instead, the ACP states should be seeking preferential terms which match those currently on offer to the EU's other preferred suppliers.

A particular issue that has not been addressed in this chapter is the resolution within the ACP camp of the conflicting interests of the 'least-developed developing countries' and the other ACP states, in that the former can obtain better preferences under the agriculture GSP than they do under the Lomé Convention. Elsewhere in this report, the alternative possibilities of a range of successor agreements to both the Lomé

Convention and the GSP are explored, with the possibility of either geographical or economic indicators resulting in different levels of preference.

Tariff quotas

One general issue of direct relevance to this chapter, however, is the role of tariff quotas. On preceding pages, tariff quotas have frequently been identified, either (i) bound in GATT, either on an mfn basis or reserved for specified countries, (ii) extended unilaterally by the EU to specified countries, but not bound in GATT (as with the arrangements for sugar imports over and above the Sugar Protocol quantities), or (iii) extended to particular supplying countries in the context of their free trade or other preferential agreement with the EU. Superficially, tariff quotas can appear attractive, but appearances can be deceptive. They lack transparency, they can encourage fraud and corruption, and they may not confer their significant potential financial benefits on the exporting country.

The problem lies in the quota rents that can be earned by those who control the allocation or use of licences. When a tariff quota is opened on an mfn basis, or for a group of countries without specifying the allocation between the countries, it will have to be administered by the importing country. Import licenses are valuable: they allow traders to import goods at a reduced tariff rate. If these licences are issued to the EU's traders – which is the EU's intent – then the bulk of the financial benefit implicit in the reduced tariff will be captured by the EU-based trader rather than by the supplying country. This is not to say that the supplying country will gain no benefit, for trade has to take place for the quota rent to be captured, but it is almost axiomatic that the bulk of the quota rent will be retained by the importer, and not transferred to the exporter. The ACPs' interest in such instances is to press for annual increases in the tariff quota, until such time as the tariff quota is no longer fully utilised and all the EU's imports are effected at the reduced tariff-quota rate. At this stage the EU can safely abolish the tariff quota, and apply the lower tariff quota rate to all its imports from that group of countries (e.g. the ACP), or on a mfn basis, as appropriate.

Where the tariff quota is country specific, the country concerned should insist that it issues the licenses.[25] Again it should be noted that as they are in limited supply they have a financial value. Corrupt civil servants should not be allowed to expropriate this value, and nor should traders (whether multinational or located in the exporting country). Instead, the government concerned should capture the benefit for the country as a whole by allocating the licences to traders by open tender. Again, it *may* be in the interest of the recipient to seek an increases in the tariff quota until it is no longer a binding constraint, but this requires some careful thought as an increased volume of exports may drive down the price in the EU market and could conceivably lower overall export revenues.

Where tariff quotas are allocated to the ACP as a group, a dilemma arises. Only one authority can legitimately issue licences, and until now it has been the European Commission on a first-come, first-served basis, or by scaling back any application received. However, in the case of *special preferential sugar* a precedent has been set, in that the ACP states involved have collectively been charged with allocation of the overall tariff quota. Admittedly, the case is rather different in that the EU refiners are obliged to pay a specified minimum price if the sugar is to be legally traded. Nonetheless, on the basis of this precedent, the ACP states should investigate the possibility of establishing an ACP international authority which the EU would recognise as the legitimate authority for issuing export licences within the constraints of EU tariff quotas

25 In the case of Protocol 7 beef, although licences have been issued in the EU, the Botswana Meat Commission's European subsidiaries, by controlling the marketing chain and customs clearance, have in effect controlled the licences.

extended to the ACP states. This ACP international authority would be empowered to allocate by competitive tender the licences to ship ACP produce. The quota rents implicit in the tariff quotas would then accrue to the ACP states collectively, rather than to EU-based traders.

Sugar

The Sugar Protocol cannot readily be improved: instead, the challenge for the ACP states is to retain the benefits it contains. Similarly, it is difficult to imagine that the arrangements for *special preferential sugar* could be improved: here the prospect of a diminution of the benefits post-2000 is real.

The Sugar Protocol already provides for duty-free access. It sets out tariff quotas, repeated in GATT bindings, that cannot readily be reduced by the EU. Two conditions would have to be met for the quantities to be reduced: first, an ACP beneficiary would have to fall short of its allocated tariff quota because of circumstances other than *force majeure*, to trigger the provisions of the Protocol; and within the WTO all the ACP beneficiaries would have to agree to a reduction in the overall tariff quota.

Equally, there is little likelihood that the EU will be willing to increase these tariff quotas, or consolidate within the Lomé Protocol the preferential arrangements it currently has in place to import up to 475 thousand tonnes (white sugar equivalent) at a reduced import tax of 69 ecu/tonne to supply the cane refineries of Portugal and Finland. Indeed, as the EU tries to grapple with the constraints on its subsidised exports of sugar, imposed by the GATT Agreement, these additional concessionary imports are likely to be phased down, if not eliminated entirely.

Under the present sugar regime, the Sugar Protocol allows the recipient ACP states to obtain high prices from the EU market. The downside, of course, is that the EU's subsidised exports depress and destabilise world market prices. If the EU were to substantially reduce its internal support prices for sugar, which is a distinct possibility at the end of the present quota regime in 2001, then the price benefits of the Sugar Protocol would be eroded (and would disappear if EU price support were to be abolished). With EU price cuts of sufficient magnitude to stimulate EU consumption and cut back on production, there would be some offsetting gain as world market prices increased.

The diplomatic challenge facing the ACP states, in such a scenario, is that of convincing the EU that in addition to providing compensation payments to EU producers consequent upon cuts in EU support prices, corresponding compensation payments should also be made to ACP states who also lose out as a consequence of the price cuts.

In the meantime, the individual ACP states that benefit from the Sugar Protocol should treat the price advantage of protected sugar sales into the EU market as a windfall gain. Local producers should not be encouraged to believe that existing EU prices can be paid indefinitely on their sales to the EU. Instead, they should be encouraged to produce (to fill the tariff quotas) at costs approximating those of efficient producers elsewhere in the world, and the governments concerned should impose an export tax to ensure that this is the case. The proceeds from such export taxes should be used to provide a sustainable future income source for the country, preferably by productive investment in the economy. Each government will need to take specific advice relating to its circumstances, and in particular the costs of sugar production, before deciding on the appropriate level of export tax.

With respect to *special preferential sugar*, effective collaboration between the ACP states is vital to ensure that the ACP states do fulfil the tariff quota, and that import opportunities are not left unfilled, giving the EU cause to turn to other third countries for supplies. Equally, a continuation of the effective collaboration with the cane refiners in the EU is important, to ensure that post-2000 an influential EU lobby continues to press for preferential access of raw cane sugar.

Beef

There seems to be little prospect that the EU will be willing to expand the ACP tariff quota beyond the existing volume of 52,100 tonnes per year; in part because of the severe problems of over-supply on the EU's market, and in part because of the past failures of the ACP to fill the tariff quota. It might be argued that, as a negotiating strategy, such a request should be tabled in the hope that this might trigger a counter-offer by the EU for a more useful concession on another product; but in our view this would be an unproductive – even a counter-productive – strategy.

Nonetheless, while the EU maintains market prices for beef well in excess of those prevailing on world markets, protected by the existing customs duties bound in GATT, and provided European beef consumption recovers from the BSE scare, the existing tariff quota is *potentially* of significant benefit to the ACP states, and negotiating effort might best be directed to ensuring greater flexibility in the reallocation of tariff quota in the event of supply shortfalls, to ensure that the tariff quota is fully utilised every year. We listed various ways in which the existing regulations could be ameliorated to facilitate the trade.

We are conscious of the fact that the tariff quota provides only potential benefits, and that considerable costs must be incurred by the ACP states in meeting the stringent health and veterinary requirements laid down by the EU. It was not in our brief, and we have not attempted, to undertake a benefit-cost analysis of the net costs or benefits of the scheme, either for the group of ACP states as a whole, or for individual countries; but we would emphasis that ACP countries should be clear that they can gain advantages from Protocol 7 before embarking on extensive negotiations to seek its revision.

Greater flexibility in the utilisation of the tariff quota involves two components. First, reallocation of quantities within the existing group of beneficiaries in the event of one or more of the countries being unable to fill their allocation in any particular year; and second the reallocation of quantities from existing beneficiaries to other ACP states not currently benefiting from Protocol 7.

The traditional route for providing relief on the first issue would be to seek improved administrative procedures in Brussels, and in particular more speedy decisions from the Commission. However, this leaves the allocation of potential benefits in the hands of the Commission; and existing beneficiaries may well be unwilling to give up their allocated quantities until the year is so far advanced that a reallocation becomes impractical. An alternative solution, which would better ensure reallocation and fulfilment of the overall tariff quota, and maintain the financial benefit to recipient states, would involve the free transferability of export licences between ACP states. So, for example, the authorities in Kenya (or their agents) would be entitled to request import licences for 142 tonnes of boneless beef per annum, but these licences would be valid for products originating in *any* of the six beneficiary states (or indeed in any ACP state). The relevant ACP authorities in receipt of licences would be entitled to sell them to the highest bidders in another (Protocol 7) ACP state.

The second issue, a permanent reallocation of the right to issue licenses within the overall tariff quota framework of 52,100 tonnes per annum is essentially a political issue for the ACP states to resolve among themselves, and lies beyond the scope of this report. Nonetheless, it might be noted that a market-based solution could entail the sale and purchase of the right to issue export licenses.

In the foregoing discussion, it has been assumed that the Protocol 7 concessions will remain valuable for the foreseeable future. The present support arrangements for beef in the EU retain the concept of high market prices, and the tariff bound in GATT remains high. However, as a result of the BSE scare, market prices in the EU have slumped, and thus the value of the Protocol 7 concessions has been seriously eroded. As a result of the beef 'crisis' currently underway in the EU, radical reforms to

the regime in the near future cannot be ruled out. Any move to further weaken market prices within the EU, perhaps to a level approaching the world market price, would ultimately render the Protocol 7 concessions virtually valueless. If imports from around the world were to be allowed free access to the EU market, it is far from clear that ACP products could retain market share. In the direct consumption market, high quality ('Hilton') beef imports would dominate; and in the market for manufacturing beef (for meat products), the price advantage of the lean carcasses reared on the extensive grasslands of South America could be significant.

Rum

The ACP states now enjoy duty-free access for light rum, unconstrained by tariff quotas, and the tariff quota constraints on the duty-free access for dark rum are due to be abolished in 2000. Consequently there is no further concession that can be negotiated.

Fruit and vegetables

As was noted earlier in this chapter, the EU's protective regime involves minimum import prices (known as entry prices) as well as customs duties. Both customs duties and entry prices vary through the year, and there is a bewildering array of preferential access arrangements: GSP, Lomé, Euro-Mediterranean and for the CEEs. These preferential arrangements include abatement of customs duties (frequently by 100%), and concessions on entry prices, but often limited by tariff quotas or reference quantities. A further complication arises in that, potentially, some Lomé countries (the 'least-developed developing countries') can gain better access under the GSP than they do under the Lomé Convention. It is beyond the remit of this report to identify the products, the periods of the year, and the ACP states, that could benefit from further concessions under the Lomé Convention. A detailed study of the ACP's export potential in these products is required, because much time and effort could be expended on trying to achieve concessions for the ACP states which might have no practical relevance.

However, some general principles can be enunciated. First, on items where *limited* concessions are already offered to the ACP, and these are utilised, then the ACP should press to remove or relax the limitations. Thus if the concession is less than a full abatement of the customs duty, full abatement should be the objective. If the concession is limited in time to only particular weeks or months in the year, then the ACP should press to see these time constraints relaxed, provided at least one ACP state indicates that it could take advantage of such a concession. Where the concession is limited by tariff quotas (or reference quantities), and these tariff quotas are already filled or in danger of being filled, then the ACP should press for the tariff quota to be expanded, or better still removed.

Second, the ACP states should undertake an investigation to determine whether or not the entry price system is having a harmful effect on their exports to the EU. If it is, then on those products the ACP should seek to have special, lower entry prices determined for ACP produce. The precedent has already been set, in the Euro-Mediterranean Agreements with Morocco and Israel.

Third, if ACP states already export fresh fruit and vegetables to the EU without benefit of tariff concessions, the ACP should ask for tariff concessions on these products.

Finally, if ACP states can identify products that they could export to the EU if tariff concessions were conceded, then tariff concessions on these products should also be sought.

It is doubtful that the EU would be willing to extend significant further concessions on fresh fruit and vegetables. One over-riding consideration is the complementarity of EU and ACP production seasons. If ACP suppliers are competing with EU production, particularly with expensive 'out-of-season' EU produce, then Europe's farm lobby will be opposed to further concessions. However, if product and calendar niches can be identified that involve ACP sup-

plies that do not compete directly with EU farm production, opposition is much less likely. Indeed Europe's retailers wish to obtain good quality, competitively priced, supplies throughout the year to ensure continuity of supply on their supermarket shelves.

Cereals and rice

In Table 7.4 we reported on the limited concessions on cereals and rice: a small tariff reduction on sweet corn; a 100% abatement of the tariff on a tariff quota of 60,000 tonnes of millet, and a 60% abatement on 100,000 tonnes of sorghum, and a 50% abatement on both thereafter; and a 15% abatement of the tariff on 125,000 tonnes of rice.

ACP rice imports into the EU have had difficulty filling the tariff quota. In recent years imports have been:

42,382 tonnes in 1992/93;

87,267 tonnes in 1993/94; and

20,683 tonnes in 1994/95 (European Commission, 1995 p.51; 1996, p.63).

By contrast, the duty-free imports of rice from the Dutch Antilles (an OCT) have been much more buoyant, at about 140 thousand tonnes per year. Under present conditions there is little to be gained by an increase in the tariff quota: instead the ACP should seek an increase in the abatement of the tariff, ideally to 100%, to match the tariff concession available to the OCT.

However, there is a further complication in the case of rice. The tariff abatement is conditional upon the exporting country collecting 'an export charge of an amount equivalent' to the tariff reduction. Thus, from the perspective of the trader, there is no commercial advantage to be gained from the concession: in effect the trader faces the EU's full mfn rate, of which part is collected on export, and part on import into the EU. Set against these circumstances, the ACP export volumes are creditable. If the intent really is to increase exports, rather than simply to transfer tax revenue to the ACP, then some part of the tariff concession should be reflected in lower overall charges faced by the trader, thus encouraging exports.

Wine and grape must

The ACP enjoy no tariff preferences on wine, although they do on grape must. Although climatic factors rule out most ACP states as potential wine producers, the accession of South Africa, a major wine producer, to the Convention would provide an excuse for the addition of wine to the list of preferences, to the benefit of other ACP states.

Grape must is subject to the entry price regime, as with some fresh fruit and vegetables. If this is proving an obstacle to ACP suppliers, then a request for a special, lower entry price for ACP products should be lodged.

Processed Products and Non-Annex II Goods

Whilst an increase in agricultural exports, and higher export prices on sales to the EU, is of direct benefit to the ACP states, the benefits could be enhanced if those same agricultural exports were to be exported not in unprocessed or semi-processed form, but in processed foods and other products. Mostly these will be treated as Non-Annex II goods, rather than CAP products, on import into the EU.

The Article 168 concession has been a full abatement of what used to be known as the fixed component, which provided protection to the processing activity, but only limited concessions on the agricultural component reflecting the protection on the agricultural raw materials included in the product. Thus, under Tariff heading 1704 (Sugar confectionery including white chocolate, not containing cocoa) there is only a partial abatement on chewing gum, but a full abatement on white chocolate. This means that on ACP imports into the EU, the sugar component of chewing gum would be taxed, whilst the sugar contained in white chocolate enters duty free.

Where the ACP enjoy a tariff preference on an agricultural product, but not on that product when incorporated into a processed product, the

ACP states suffer from a high degree of *effective* protection on the processed product because of this tariff escalation. The tariff structure means that there is a commercial incentive to locate the processing industry within the EU, to process the imported ACP raw material, rather than to locate that industry within the ACP.

An important principle to establish with the EU in any successor agreement should be that where tariff concessions have been extended to the ACP states on agricultural goods, these same concessions should be carried through to processed products. This would eliminate tariff escalation, and encourage the location of processing industries in the ACP. Although this may have little practical effect at the outset, the long term development prospects of a number of countries could be enhanced.

Where the agricultural concession is limited by tariff quota, and the EU is unwilling to extend the preference to processed products, it could conceivably be in the interest of the ACP states to count the processed product against the tariff quota. Further study of the potential of individual processing sectors would be required, but if, for example, it could be shown that there was the potential to produce (to EU customer requirements) chewing gum and boiled sweets in ACP states, then it might be more profitable to ship Protocol 8 sugar in the form of chewing gum and boiled sweets than in the form of unrefined cane sugar.

This last example was left deliberately vague, to illustrate the complexities that can arise with respect to rules of origin on processed products. The Protocol 8 concessions are of course country specific. More generally, agricultural raw materials originating in one ACP state might be processed in another. Thus, for a scheme along the lines outlined in the previous paragraph to be fully effective, the rules of origin would have to permit production in one ACP state, and processing in a second, to be counted against either the ACP tariff quota, or the country specific tariff quota, on the raw material as the case may be.

Moreover, sugar was a bad example to use in that the political support within the EU for Protocol 8 sugar comes from the refining industry which wishes to maintain its access to unrefined sugars and would not welcome the prospect of Protocol 8 sugar being shipped in processed form.

Fish

The ACP states enjoy duty-free access or fish, and so no further concession need be sought here. However, the fishing industry does give rise to problems relating to rules of origin. Country of registration – and country of ownership – of fishing boat, port of landing, and country of processing, are all relevant considerations as well as the territorial waters in which the fish were caught. Further relaxation of the complex rules of origin would be beneficial to the ACP states.

References

Botswana Meat Commission (1993), *The Botswana Meat Commission in Europe 1973-1993*, Lobatse, Botswana, Botswana Meat Commission.

Bureau of Agricultural Economics (BAE) (1985), *Agricultural Policies in the European Community. Their Origins, Nature and Effects on Production and Trade*, Policy Monograph No.2 Canberra, Australian Government Publishing Service.

CIMO (European Association of Fresh Produce Importers) (1995), *Information Bulletin* No.237, Brussels: CIMO.

CIMO (European Association of Fresh Produce Importers) (1996), *Information Bulletin* No.241, Brussels: CIMO.

Commission of the European Communities (1995a), *Study on Alternative Strategies for the Development of Relations in the Field of Agriculture Between the EU and the Associated Countries with a view to Future Accession of these Countries (Agriculture Strategy Paper)* COM(95)607, Brussels, CEC.

Commission of the European Communities (1995b), *Free Trade Areas: An Appraisal* SEC(95)322, Brussels, CEC.

Commission of the European Communities (1997) *Proposal for a Council Decision approving the exchange of letters between the Community and the ACP States concerning Annex XL to the Fourth ACP-EC Convention relating to the Joint Declaration on agricultural products referred to in Article 168(2)(a)(ii)* COM(96)686, Brussels, CEC.

Davenport, M., Hewitt, A. and Koning, A. (1995), *Europe's Preferred Partners? The Lomé Countries in World Trade*, London, Overseas Development Institute.

Driessen, B. (1996), On Very Sensitive Cauliflowers and the (P)Re-Cooked EU Agricultural Generalised Scheme of Preferences *Journal of World Trade*, 30(6); pp. 169-182.

Enders, A. and Wonnacott, R.J (1996), The Liberalisation of East-West European Trade: Hubs, Spokes and Further Complications *The World Economy*, 19(3); pp. 253-272.

European Commission (1995), *The Agricultural Situation in the Community 1994 Report*, Luxembourg, Office for Official Publications of the European Communities.

European Commission (1996), *The Agricultural Situation in the Community 1995 Report*, Luxembourg, Office for Official Publications of the European Communities.

GATT Secretariat (1993), *Modalities for the Establishment of Specific Binding Commitments under the Reform Programme*, MTN.GNG/MA/W/24, Geneva, GATT Secretariat.

GATT Secretariat (1994), *The Results of the Uruguay Round of Multilateral Trade Negotiations. The Legal Texts*, Geneva, GATT Secretariat.

Harris, S.A., Swinbank, A and Wilkinson, G.A. (1983), *The Food and Farm Policies of the European Community*, Chichester, John Wiley & Sons.

Harris, S.A. and Swinbank, A (1997, forthcoming), The CAP and the Food Industry in C. Ritson and D.R. Harvey (eds) *The Common Agricultural Policy* 2nd edition, Wallingford, CAB International.

House of Commons, Agriculture Committee (1996) *The UK Dairy Industry and the CAP Dairy Regime* Volume I, First Report Session 1995-96, HC 40-I, London, HMSO.

Italian Government (1996), *Establishment of Free Trade Areas and Their Effects on Community Agriculture*. Presidency working document. Informal Meeting of Ministers for Agriculture of the European Union. Otranto, 5 to 7 May 1996, Brussels, Council of the European Union.

Ministry of Agriculture, Fisheries and Food (1995), *European Agriculture. The Case for Radical Reform*, Conclusion of the Minister of Agriculture, Fisheries and Food's CAP Review Group, London, MAFF.

Ministry of Agriculture, Fisheries and Food (1996), Note from MAFF on the US Federal Agricultural Improvement and Reform Act 1996 (The FAIR Act) in House of Lords Select Committee on the European Communities Enlargement and Common Agricultural Policy Reform, 12th Report Session 1995-96, HL Paper 92, London, HMSO.

Noble, J. (1995), *The Trade Regime for Non-Annex II Goods*, London, Joan Noble Associates Ltd.

Noble, J. (1996), *The European Sugar Policy to 2001*, London, Joan Noble Associates Ltd.

Ritson, C. (ed) (1978), *The Lomé Convention and the Common Agricultural Policy* Commonwealth Economic Papers No.12, London, Commonwealth Secretariat.

Swinbank, A. (1993), CAP Reform, 1992 *Journal of Common Market Studies*, 31(3); pp.359-372.

Swinbank, A. (1996), Capping the CAP? Implementation of the Uruguay Round Agreement by the European Union *Food Policy*, 21(4/5); pp.393-407.

Swinbank, A. (1997, forthcoming), The New CAP in C. Ritson and D.R. Harvey (eds) *The Common Agricultural Policy* 2nd edition, Wallingford, CAB International.

Swinbank, A. and Ritson, C. (1991), The CAP, Customs Unions and the Mediterranean Countries in C. Ritson & D.R. Harvey (eds) *The Common Agricultural Policy and the World Economy*, Wallingford, CAB International.

Swinbank, A. and Ritson, C. (1995), The Impact of the GATT Agreement on EU Fruit and Vegetable Policy *Food Policy*, 20(4), pp.339-357.

Swinbank, A. and Tanner, C. (1996), *Farm Policy and Trade Conflict. The Uruguay Round and CAP Reform*, Ann Arbor, The University of Michigan Press.

Tangermann, S. (1996), Implementation of the Uruguay Round Agreement on Agriculture: Issues and Prospects *Journal of Agricultural Economics*, 47(3). pp.315-337.

Tanner, C. and Swinbank, A. (1997, forthcoming), Agricultural Trade Liberalisation: Regionalism versus Multilateralism in A. Levy (editor) *Handbook on the Globalisation of the World Economy*, Aldershot, Edward Elgar.

Tracy, M. (ed) (1994), *East-West European Agricultural Trade. The Impact of Association Agreements*, La Hutte [Belgium], Agricultural Policy Studies.

Vernier, G. (1996), The Lomé IV Mid-Term Review. Main Innovations *The Courier, No.155*, pp.8-13.

Yap, C.L. (1996), Implications of the Uruguay Round on the World Rice Economy *Food Policy*, 21(4/5); pp.377-391.