PART 1

Chapter 3

EC – Commonwealth Trade Regime

Background

Commonwealth exporters seeking to sell more to the EC have to consider the Common Customs Tariff (CCT) and the Common Agricultural Policy (CAP). Commonwealth developing countries generally enjoy concessions under both the CCT and the CAP which give them, to a greater or lesser extent, special access conditions to the EC market. They can all benefit from the Generalised System of Preferences (GSP), while some have a more preferential position. For example, Commonwealth members of the African, Caribbean and Pacific (ACP) group enjoy highly preferential status under the terms of the Lomé Convention, while Mediterranean Commonwealth countries (Cyprus and Malta) enjoy a special association status. In terms of EC Commonwealth trade, there is a pyramid of preference, with the ACP states at the top, the Mediterranean associates in the middle, and the GSP beneficiaries of Asia at the base.

Commonwealth countries exporting to the EC enjoy preferential tariff status under the following corresponding trade regimes:

Country	ACP	GSP	LDDC	Associate
Antigua & Barbuda	●			
Bahamas	●	●		
Bangladesh		●	●	
Barbados	●	●		
Belize	●	●		
Botswana	●	●	●	
Brunei		●		
Cyprus		●		●
Dominica	●			
Gambia	●			
Ghana	●	●		
Grenada	●	●		
Guyana	●	●		
India		●		
Jamaica	●	●		
Kenya	●	●		
Kiribati	●	●		
Lesotho	●	●	●	
Malawi	●	●		
Maldives		●	●	
Malaysia	●	●		
Malta		●		●
Mauritius	●	●		
Namibia	●			
Nauru		●		
Nigeria	●	●		
Pakistan		●		
Papua New Guinea	●	●		
St Kitts	●			
St Lucia	●			
St Vincent	●			
Seychelles	●			
Sierra Leone	●	●	●	
Singapore		●		
Solomon Islands	●	●		
Sri Lanka		●		
Swaziland	●	●		
Tanzania	●	●	●	
Tonga	●	●	●	
Trinidad/ Tobago	●	●		
Tuvalu	●			
Uganda	●			
Vanautu	●			
Western Samoa	●	●	●	
Zambia	●	●		
Zimbabwe	●	●		

This chapter outlines the broad details of these three basic trade regimes which govern the terms and conditions under which Commonwealth exporters can sell into the EC market: first, the GSP; second, the Mediterranean Agreements; and third, the Lomé Convention.

1. The Generalised System of Preferences

Commonwealth members trading with the EC under the GSP conditions are:

- Bangladesh
- Brunei
- India
- Malaysia
- Maldives
- Pakistan
- Singapore
- Sri Lanka.

The GSP was introduced by the United Nations Conference on Trade and Development (UNCTAD) in 1968, and introduced by the EC in 1972. It was revised in 1981/2 and was due for review in 1992. However, the basic concept of GSP is that the richer, more industrialised countries throughout the world make offers of preferential access to their markets for the benefit of developing countries. The preferential access takes the form of a tariff reduction for developing countries in respect of manufactured and semi-manufactured products and special arrangements regarding a restricted range of agricultural products.

Under the GSP, imports from developing countries into the EC are exempt from customs duties, often subject to a ceiling or quota. The EC provides more generous entry conditions to the least developed countries, including Bangladesh and Maldives.

Rules of Origin

The EC GSP granted to developing countries specifies that only originating products transported direct from the beneficiary country to the Community can be eligible.

The EC regulations define the following as originating products:

(a) products which are wholly obtained in the exporting country, this includes:

i) mineral products extracted from the soil or sea bed

ii) vegetable products harvested there

iii) live animals born and raised in the exporting country

iv) products obtained by hunting or fishing conducted in the exporting country

v) products of sea fishing and other products taken from the sea by the exporting country's vessels; *

vi) products made on board factory ships registered in the exporting country exclusively from the products referred to in v)

vii) products obtained in the exporting country from live animals

viii) used articles selected in the exporting country only fit for the recovery of raw materials

* Conditions as regards ship registration, ship ownership and crew have to be respected

ix) waste and scrap resulting from manufacturing operations conducted in the exporting country

x) products produced in the exporting country exclusively from products specified in i) to ix).

(b) products obtained in the exporting country, but in the manufacture of which, non-originating products are used, providing that these products have undergone sufficient working or processing. To be considered as sufficiently worked or processed, the product obtained must be classified in the Common Customs Tariff under a Heading (4 digit code) different from the headings of all the non-originating products used in its manufacture.

However, the following operations will never be considered as sufficient working or processing to confer the status of originating products regardless of whether or not a change of heading occurs:

i) operations ensuring the preservation of products in good condition during transport and storage

ii) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, machining, washing, painting, cutting up

iii) changes of packing and breaking up and assembly of consignments

iv) simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards, etc., and all other simple packing operations

v) the affixing of marks, labels or other like distinguishing signs on products or their packaging

vi) simple mixing of products, whether or not of different kinds, where one or more components of the mixture do not meet the conditions enabling them to be considered as originating products

vii) simple assembly of parts or products to constitute complete products.

Direct transportation from the exporting country to the EC means the following:

- products transported through the territories of third countries with or without transhipment or temporary warehousing in these countries, providing that transport through these countries is justified for geographical reasons or the products have remained under the surveillance of the Customs Authorities of the country of transit or warehousing, and have not entered into commerce or been delivered for home use there, and have not undergone operations other than unloading and any operation intended to keep them in good condition; appropriate documentation will have to be supplied to the Customs Authorities to substantiate that the conditions have been respected.

On importation into the Community, originating products will be eligible to benefit from the tariff preferences on the following conditions:

- production of a Certificate of Origin (Form A)
- providing that the beneficiary country has fulfilled all administrative requests by the EC.

To summarise, the EC rules of origin impose stringent conditions. Perhaps the most important requirement to be borne in mind is that component parts must be classified under a different tariff code from the final exported product if the latter is to benefit from GSP rates.

Review of the EC GSP Scheme

The current EC GSP scheme began in 1972, review of the system is in process and is likely to be completed in 1993-4. Also in 1992-3 the United Nations (UNCTAD) began its review of the first 20 years of the GSP scheme. Alterations to the EC scheme in the light of the implementation of the Single European Market, may require the GSP scheme to be re-shaped and should define quotas in terms of access to the Community market as a whole rather than individual national markets (as has hitherto been the case).

It is therefore somewhat difficult to make definitive judgements about export prospects from Commonwealth developing countries and their opportunities to benefit from the GSP scheme, when the scheme itself is likely to undergo fundamental change during 1994. At the present time, sensitive and semi-sensitive products bear quotas and ceilings, with very strictly defined quantitative limits on the entry of goods into EC markets.

The European Commission (DGI) has proposed to the Member States that the EC GSP should be fundamentally reformed. These reforms, in the Commission's view, should focus on the following:-

(a) There should be a move away from quotas and ceilings for sensitive and semi-sensitive products.

(b) Rather than duty-free entry and quotas, graduated tariff discounts should be introduced in relation to the sensitivity of products and the competitiveness of the exporting countries.

(c) The system should be much more transparent and predictable, enabling exporting developing countries to have a much clearer view of their market entry prospects.

(d) Safeguard clauses should be more clearly defined.

(e) Overall, there should be greater consistency between the EC scheme and the objectives of GATT, especially to deliver more advantages to poorer developing countries.

It is likely that the EC's rules of origin will be changed in the context of the current EC review, which could benefit the least developed Commonwealth exporters.

Cumulation and Outward Processing Relief

At the present time, many developing country exporters suffer from the lack of a bilateral Community cumulation clause. This means that at present, whether Commonwealth countries import components from South Korea or from Germany, the end product is assessed in the same way for export to the EC.

The country content rules of the EC GSP regime have no provision for cumulation. Currently, only the exporting country origin counts towards eligibility for GSP. This means that products imported to Commonwealth countries from the United Kingdom or other EC countries and then further processed there and exported back to the EC are treated as if they had no EC country content.

In the context of the current EC review of the GSP, the Council of Ministers Group on the GSP has given the European Commission a mandate to propose new rules on cumulation and originating products. The Commission Working Group on Origin is likely to propose donor country content cumulation. This would work to the benefit of Commonwealth countries and other beneficiaries of the EC's GSP.

However, some EC states are rather sceptical and obstructive (especially Spain and Greece), but the United Kingdom, France and Germany are pushing hard to achieve this reform of GSP rules.

Sensitive products, especially those subject to the additional restrictions of the MFA (garments and textiles), are unlikely to be included in any cumulation provision.

Sensitive Products

Under the current EC GSP, some 60 or so products are identified as very sensitive, and some developing countries (including India, Pakistan, Malaysia and Singapore) are subject to individual tariff quotas. These quotas are sub-divided into specific allocations for each of the EC Member States. When imports from these markets from a competitive developing country exceed the allocated share, then they are subject to the normal CCT duty.

There are also a range of 60 or so less sensitive products, for which all developing countries have been given individual, identical tariff ceilings. These tariff ceilings differ from tariff quotas in two ways: first, they are not divided into Member States' shares and second, they constitute indicative rather than maximal thresholds. When imports from a developing country reach the ceiling, the CCT duty will not necessarily be imposed.

Non-sensitive Products

In addition, the EC GSP nominates almost 2,000 non-sensitive products from all developing countries which enjoy unrestricted duty free treatment under the CCT, although this could be withdrawn at relatively short notice if any one of the EC Member States alleges an abuse of the market situation. The European Commission has sought means to guarantee GSP access to developing countries for non-sensitive products, but several Member States have been reluctant to agree. Commonwealth exporters must constantly be aware that protectionist forces are at work in the majority of EC countries, and that they cannot take for granted the preferential access which they enjoy, unless it is bound in an international treaty, such as the Lomé Convention.

2. Non-preferential Commercial Agreements

Most Asian Commonwealth countries trade with the EC not only on the basis of GSP but also through non-preferential commercial agreements. Brunei, Malaysia and Singapore are all parties to the ASEAN-EC Agreement while Bangladesh, India, Pakistan and Sri Lanka enjoy bilateral agreements with the EC.

ASEAN

The Association of South East Asian Nations (ASEAN) came into being in 1967, and the group negotiated a non-preferential commercial agreement with the EC in 1976. The ASEAN-EC agreement is a mix of trade cooperation, economic/investment cooperation, and limited financial assistance. The agreement has run for renewable periods of 5 years at a time.

The trade cooperation regime consists of mutual most favoured nation treatment, together with a commitment by the EC to study ways and means of overcoming trade barriers and dealing with any trade problems. The EC is also committed to supporting trade development and export promotion measures in the ASEAN countries.

Singapore is the most significant beneficiary of ASEAN-EC trade, followed by Thailand, Malaysia and Indonesia.

The record of ASEAN-EC trade cooperation is generally seen as successful. Within the framework of the agreement there has been an important shift during the last decade involving a major change in the pattern of ASEAN exports from traditional commodities to manufactures. This is not to say that traditional ASEAN exports of commodities and raw materials have ceased to be important - on the contrary, these exports have flourished. These include particularly palm oil, tin, tropical wood and cocoa. However, manufactured exports have grown rapidly, especially textiles and clothing and, to an increasing extent, a wide range of electrical, electronic and engineering products especially from Singapore.

It should be emphasised that a major advantage for developing Commonwealth exporters in ASEAN is the existence of cumulation in the rules of origin (see section 1 above regarding EC rules of origin). Components from one ASEAN country can be imported to another ASEAN country and still qualify for preferential access to the EC. This has been particularly significant in encouraging cooperation between Malaysia and Singapore to achieve very successful levels of market penetration throughout the EC for manufactured products based on local raw materials.

South Asia *

Bangladesh, India, Pakistan and Sri Lanka have all negotiated non-preferential commercial cooperation agreements with the EC. The goal of these agreements is to promote bi-lateral trade, not on the basis of any special concessions, but through both sides offering the other most favoured nation treatment. However, it should be emphasised that for these Commonwealth exporters, they probably trade more preferentially with the EC under GSP than they could under the terms of the commercial cooperation agreements.

* The non-preferential commercial cooperation agreement was signed respectively in the following: Bangladesh - 1976, India - 1974, Pakistan - 1976, & Sri Lanka - 1975. They are all respectively for 5 year periods renewable.

Nevertheless, these agreements do have commercial value, especially in terms of the institutions which have been set up under them to examine specific barriers to trade. These joint committees provide a formal structure for discussion of trade problems. Thus, for example, talks within the EC-India joint committee have enabled India significantly to increase its trade in computer related products, to attract investment from the EC in this sector, and to expand its market in the EC for computer products and related services. Similarly, EC-Sri Lankan cooperation has provided a dynamic framework for the expansion of Sri Lanka's precious jewellery exports to the EC, much of which was financed by export promotion programmes assisting Sri Lankan jewellers to target specific EC market opportunities.

3. Mediterranean Association Agreements

Cyprus and Malta are two Commonwealth developing countries which enjoy associate status with the EC. This dynamic relationship is designed to pave the way for the eventual integration of Cyprus and Malta into the EC by means of full membership. As such, the association agreements are seen as interim arrangements, although they may last for many years and there is no specified date for eventual membership.

EC tariffs on all imports from Cyprus and Malta are being reduced in three stages. In return, and in total contrast to the Lom* Convention and the GSP, these countries committed to reducing their customs duties and other restrictions on imports from the EC. By the end of the final stage, it is intended that all trade with the EC will be free of restrictions.

It should be admitted that this final goal has somewhat faded into the distant future as the Mediterranean associates have been unable to meet their reciprocal obligations to the EC. In the 1980's both countries have experienced sufficiently severe problems to justify delays along the road to membership.

Cyprus signed its first agreement with the EC in 1977, establishing the first stage of association. The second stage was signed in 1987. The agreement allows for duty free entry for all industrial products except for agricultural or farm implements and agricultural equipment. These products must meet the EC requirements on rules of origin.

For Cyprus, concessions under the Common Agricultural Policy are extremely important. In the case of products subject to the CAP, duty free entry is allowed during certain periods of the year for specified agricultural products. Particularly sensitive agricultural products receive reduced customs duties. Potatoes are Cyprus's most important agricultural export to the EC. Between 1st January and 30th June of each year, Cyprus new potatoes enter the EC duty free, when potatoes grown within the EC are in short supply. Cyprus wines are also allowed reduced tariff entry within the limits of an annual EC tariff quota. Imports beyond the tariff quota are charged at full rate of duty.

Perhaps of most significance, there are no quota restrictions on textile and clothing exports from Cyprus to the EC. This therefore represents a significant potential export for Cyprus.

Cypriot exporters need to complete the EUR 1 form regarding certification of origin in order to obtain tariff free or reduced tariff treatment.

Malta signed its first association agreement with the EC in 1971, which was extended to the second stage in December 1980, and again in December 1990. Many commentators perceive Malta as a short term candidate for full EC membership.

Malta's exports enjoy similar preferential treatment to those from Cyprus, i.e. duty free import of industrial products except for farm or agricultural implements and duty free or reduced tariffs for most agricultural products with a similar tariff quota restriction for wine and other liqueurs. There are some quota restrictions regarding textile and clothing products under the MFA arrangement. These will be phased out during the 1990's.

Maltese exporters need to obtain a EUR 1 form to certify the origin of products export from Malta if they are to benefit from tariff free or reduced tariff treatment in the EC market.

4. The Lomé Convention for The African, Caribbean and Pacific Commonwealth

The majority of Commonwealth developing countries are signatories to the Lomé Convention, agreed between the EC and the ACP States originally in 1975 and renewed every 5 years. The Fourth Lomé Convention came into force in 1991 and is due to govern EC-ACP trade until the end of the Century.

Commonwealth ACP States are:

- Antigua & Barbuda
- Bahamas
- Barbados
- Belize
- Botswana
- Dominica
- The Gambia
- Ghana
- Grenada
- Guyana
- Jamaica
- Kenya
- Kiribati
- Lesotho
- Malawi
- Mauritius
- Namibia
- Nigeria
- Papua New Guinea
- St. Kitts & Nevis
- St. Lucia
- St. Vincent & The Grenadines
- Seychelles
- Sierra Leone
- Solomon Islands
- Swaziland
- Tanzania
- Tonga
- Trinidad & Tobago
- Tuvalu
- Uganda
- Vanuatu
- Western Samoa
- Zambia
- Zimbabwe

Commonwealth ACP countries receive GSP preferences from the EC, but the regime governing access for their exports to the EC under the Lomé Convention is at least of equivalent value, generally greater, and is guaranteed over the life of the Convention - currently 10 years. This is an exceptional arrangement for manufactured and many other products, although to date relatively few ACP Commonwealth exporters (with the exception possibly of Mauritius) have been in a position to take full advantage of these concessions. The Lomé Convention provides significant concessions for the export of agricultural products to the EC market, although there are some restrictions.

The basic principles of the Lomé Convention guarantee the ACP Commonwealth exporters access to the EC market on a non-reciprocal basis. If any EC state seeks to interfere with this basic arrangement, it must invoke the safeguard clause which can only be imposed under certain limited conditions. More than 99% of ACP Commonwealth exports to the EC enter duty free. This includes all the major tropical agricultural commodities, raw materials, and non-traditional exports of manufactured and semi-manufactured products.

In terms of agricultural exports, the Lomé Convention introduces three main instruments of trade preference: derogation from tariff, subject to a marketing time-table in the case of certain fruits and vegetables; reductions in the variable agriculture levy generally in the order of 50%, although this in some cases may be subject to tariff quotas (as is the case regarding millet, sorghum, rice, poultry meat, pig meat and dairy products); and specific quotas for beef and sugar. There are also special arrangements for ACP bananas. There is a general consensus in the GATT Secretariat and the Commonwealth Secretariat that the Uruguay Round tariff liberalisations, if and when they are agreed, are unlikely to affect ACP exports of agricultural products under the Lomé Convention. However, there could be some specific impact on ACP Commonwealth exporters of boneless beef (principally Botswana, Swaziland and Kenya) and conceivably on prices regarding sugar. However, it is almost impossible to predict the future shape of the world sugar trade, and ACP export revenue from sugar is much more likely to be affected by internal CAP reforms which could reduce the price of sugar allocated to ACP exporters by as much as 5%.

Lomé IV improved ACP Commonwealth access for a wide range of agricultural products, including millet, sorghum, yams, rice, molasses, strawberries, tomatoes, citrus fruit and a wide range of processed agricultural products.

In the case of agricultural products subject to specific restrictions, there are several protocols attached to Lomé IV. In the case of beef and veal, there is an overall annual import quota of 39,100 tonnes and ACP exporters are not required to levy an export tax in exchange for the 90% reduction in levies accorded by the EC. The principal beneficiaries of this protocol are Botswana, Kenya, Swaziland and Zimbabwe.

In the case of the Caribbean Commonwealth, Lomé IV significantly extended market access for rum. As part of the Single European Market programme, the special protocol on rum provided for the phasing out of restricted national EC quotas for rum from ACP countries, with a rapid increase in the global quota from 1993 and the abolition of quota restrictions after 1995.

The protocol on bananas attached to Lomé IV was renewed. It was supplemented by an EC declaration which undertook to maintain the advantages of traditional banana suppliers even after the internal market regime for bananas is completed. It should, perhaps, be mentioned that the EC has not yet succeeded in establishing a common regime for banana imports, and the free movement of bananas is apparently restricted by special arrangements in the British, French, Spanish, Portuguese and to a lesser extent Italian markets.

ACP Rules of Origin

The basic principles of rules of origin are similar to GSP stipulations. The Lomé IV Convention made significant revisions to the rules of origin applicable to ACP exports to the EC. Improvements included the following:

- a single simplified list of exceptions
- the requirement concerning the degree of processing or working in the ACP state has been reduced to 40%
- the abolition of the double threshold rule for a number of products, whereby previously the use of components from third countries was limited to 40% of the value, with at least half the value of the materials originating in either the ACP or the EC
- the origin criteria for fishery products has been liberalised, and ACP countries may now charter third country vessels and an extended quota has been provided for ACP Commonwealth canned tuna
- procedures for obtaining derogation to the basic rules of origin for ACP exports have been revised, to make the system more rapid and transparent.

ACP countries have the advantage of cumulation in the rules of origin. Raw materials, components and the like from any EC country or EC of the Overseas Countries and Territories (OCT) can be imported to an ACP country and the end product can be reexported to the EC under preferential arrangements agreed by the Lomé Convention.

5. The GATT Uruguay Round

Discussion of EC trade regimes is not complete without mentioning the GATT Uruguay Round discussions on World Trade. The countries within the EC negotiate as one trading bloc and the outcome of these discussions will correspondingly affect EC's trade relations with other countries. The EC for instance is currently waiting to finalise its second 10-year revision of the GSP scheme dependent on the outcome of the Uruguay Round.

Changes induced by the Uruguay Round in terms of reduction of CCT tariffs could adversely affect developing countries. This will lessen the overall preferential benefit of GSP. It will also reduce the level of preference enjoyed by the Mediterranean associated countries (especially Cyprus and Malta) and the ACP states.

The reforms already negotiated in the Uruguay Round have imposed a distinction within the GSP between "least developed countries" and other developing countries. It has generally been agreed by the industrialised countries which operate the GSP scheme that least developed countries should enjoy "graduated" privileges at their earlier stages of development. This has very clear implications for Commonwealth exporters from those countries with a more advanced industrial export base. For example, more industrialised countries such as Singapore and Malaysia, and probably India and Pakistan, can expect to have their GSP benefits reduced for their most competitive exports to the EC in the coming years. However, the final outcome of the Uruguay Round is still awaited.